

ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-2-8

Alabama Business Privilege Tax & Corporate Shares Tax

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810-2-8-.01 Taxable Income for Determining the Applicable Privilege Tax Rate.

(1) For tax years beginning after December 31, 1999, the taxable income used to compute the tax rate for the Alabama Business Privilege Tax shall be determined as follows:

(a) C Corporations.

1. The taxable income used to determine the tax rate for the privilege tax shall be the federal taxable income before net operating loss and special deductions. This income shall be apportioned in accordance with §40-27-1, Code of Alabama 1975, and the accompanying rules. Deductions shall not be allowed for the federal income tax or the Alabama net operating loss in computing an income category for purposes of determining the rate for the privilege tax. C corporations filing as members of an Alabama consolidated group shall determine taxable income for the privilege tax on a separate company basis.

2. Corporations granted permission by the Alabama Department of Revenue to use separate accounting to determine Alabama taxable income shall compute the income based on Internal Revenue Service Form 1120. The taxable income before the deductions for the net operating loss and special deduction shall be used to determine the income category for purposes of determining the rate for the privilege tax.

3. Corporations granted permission by the Alabama Department of Revenue to use any other alternative methods to apportion income shall use these methods to determine the taxable income used to compute the tax rate for the privilege tax.

(b) S Corporations.

1. The taxable income used to determine the tax rate for the privilege tax shall be the federal ordinary income or (loss) from trade or business activities plus any items of income or applicable deductions passed through to the shareholders that were determined pursuant to 26 U. S. C. §1366. This income shall be apportioned in accordance with §40-27-1, Code of Alabama 1975, and the accompanying rules. Deductions shall not be allowed for the federal income tax or the Alabama net operating loss in computing an income category for purposes of determining the rate for the privilege tax.

2. S Corporations granted permission by the Alabama Department of Revenue to use separate accounting to determine Alabama taxable income shall compute the income based on the Internal Revenue Service Form 1120S. Any Alabama income or expenses passed through to the shareholders shall be added

to or subtracted from the Alabama taxable income to arrive at the taxable income used to determine the rate for the privilege tax.

3. S Corporations granted permission by the Alabama Department of Revenue to use any other alternative methods to apportion income shall use these methods to determine the taxable income used to compute the tax rate for the privilege tax.

(c) Limited Liability Entities.

1. The taxable income used to determine the tax rate for the privilege tax shall be the federal ordinary income or (loss) from trade or business activities plus any items of income or expenses passed through to the shareholders that were determined pursuant to 26 U. S. C. §702. This income shall be apportioned in accordance with §40-27-1, Code of Alabama 1975, and the accompanying rules.

2. Limited Liability Entities granted permission by the Alabama Department of Revenue to use separate accounting to determine Alabama taxable income shall compute the income based on Internal Revenue Service Form 1065. Any Alabama income or expenses passed through to the shareholders shall be added to or subtracted from Alabama taxable income to arrive at the taxable income used to determine the rate for the privilege tax.

3. Limited Liability Entities granted permission by the Alabama Department of Revenue to use any other alternative methods to apportion income shall use these methods to determine the taxable income used to compute the tax rate for the privilege tax.

(d) Real Estate Investment Trusts.

1. The taxable income used to determine the tax rate for the privilege tax shall be the federal income before the net operating loss deduction, the total deduction for dividends paid, and the 26 U. S. C. §857(b)(2)(E) deduction. This income shall be apportioned in accordance with §40-27-1, Code of Alabama 1975, and the accompanying rules.

2. Real Estate Investment Trusts granted permission by the Alabama Department of Revenue to use separate accounting to determine Alabama taxable income, shall compute the income based on Internal Revenue Service Form 1120-REIT.

3. Real Estate Investment Trusts granted permission by the Alabama Department of Revenue to use any other alternative methods to apportion income shall use these methods to determine the taxable income used to compute the tax rate for the privilege tax.

(e) Disregarded Entities.

1. The taxable income used to determine the tax rate for the privilege tax shall be the federal ordinary income or (loss) from trade or business activities plus any items of income or expenses passed through to the shareholders that were determined pursuant to 26 U. S. C. §1361 or 26 U. S. C. §61. This income shall be apportioned in accordance with §40-27-1, Code of Alabama 1975, and the accompanying rules.

2. Disregarded Entities granted permission by the Alabama Department of Revenue to use separate accounting to determine Alabama taxable income, shall compute the income based on either Internal Revenue Service Form 1065 or Form 1120S which ever is applicable. Any Alabama income or expenses passed through to the shareholders shall be added to or subtracted from Alabama taxable income to arrive at the taxable income used to determine the rate for the privilege tax.

3. Disregarded Entities granted permission by the Alabama Department of Revenue to use any other alternative methods to income shall use these methods to determine the taxable income used to compute the tax rate for the privilege tax.

(f) Financial Institutions.

1. For Financial Institutions filing as C corporations with the Internal Revenue Service, the taxable income used to determine the tax rate for the privilege tax shall be the federal taxable income before net operating loss and special deductions. For Financial Institutions filing as S Corporations with the Internal Revenue Service, the taxable income used to determine the tax rate for the privilege tax shall be the federal ordinary income or (loss) from trade or business activities plus any items of income or expenses passed through to the shareholders that were determined pursuant to 26 U. S. C. §1366. This income shall be apportioned in accordance with Chapter 16, Title 40, Code of Alabama 1975, and the accompanying rules. Deductions shall not be allowed for the federal income tax or the Alabama net operating loss in computing an income category for purposes of determining the rate for the privilege tax. Financial Institutions filing as members of an Alabama consolidated group shall determine taxable income for the privilege tax on a separate company basis. (Note: Financial Institutions are subject to the Financial Institution Excise Tax in Alabama and may not file as an Alabama C or S Corporation.)

2. Financial Institutions given permission by the Alabama Department of Revenue to use separate accounting to determine Alabama taxable income shall compute the income based on either the Internal Revenue Service Form 1120 or Form 1120S which ever is applicable. For Financial Institutions filing as

S Corporations with the Internal Revenue Service, any Alabama income or expenses passed through to the shareholders shall be added to or subtracted from Alabama taxable income to arrive at the taxable income used to determine the rate for the privilege tax.

3. Financial Institutions granted permission by the Alabama Department of Revenue to use any other alternative methods to apportion income shall use these methods to determine the taxable income used to compute the tax rate for the privilege tax.

(g) Insurance Companies. For U. S. Life Insurance Company filing Internal Revenue Service Form 1120-L, federal taxable income shall be total taxable income less the dividends received deduction and the operations loss deduction. For U. S. Property and Casualty Insurance Companies filing Internal Revenue Service Form 1120-PC, federal taxable income shall be taxable income less the dividend received deduction and the net operating loss deduction. This income shall be apportioned in accordance with Title 27, Code of Alabama 1975, relating to insurance companies.

Author: Voncile Catledge

Authority: Section 40-2A-7(a)(5), Code of Alabama 1975, as amended.

History: New rule: Filed July 26, 2000, effective August 30, 2000.

810-2-8-.02 Determination of the Apportionment Factors for the Privilege Tax.

(1) For tax years beginning after December 31, 1999, taxpayers engaged in multistate operations will determine the Apportionment Factors used to compute Alabama net worth as follows:

(a) C Corporations, S Corporations, Limited Liability Entities, Real Estate Investment Trusts, and Disregarded Entities engaged in multistate operations shall apportion net worth computed under §40-14A-23, Code of Alabama 1975, in accordance with §40-27-1, Code of Alabama 1975, and the accompanying rules. During the determination period, the factors used to determine Alabama net worth shall be computed in the same manner as prescribed for purposes of the income tax levied by Chapter 18, Title 40, Code of Alabama 1975.

(b) Financial Institutions shall apportion net worth computed under §40-14A-23 in accordance with Chapter 16, Title 40, Code of Alabama 1975, and the accompanying rules. During the determination period, the factors used to determine Alabama net worth shall be computed in the same manner as prescribed for purposes of the financial institution excise tax.

(c) Insurance companies subject to the insurance premium tax levied by Chapter 4A of Title 27, Code of Alabama 1975, shall apportion income based on the ratio of the insurer's Alabama premium income to its nationwide total direct premiums. The information used to determine this ratio is reflected on Schedule T of the insurer's annual statement filed with the insurance commissioner for the immediate preceding tax year.

Author: Voncile Catledge

Authority: §§ 40-2A-7(a)(5) and 40-14A-1, Code of Alabama 1975

History: New rule: Filed July 26, 2000, effective August 30, 2000.

810-2-8-.03 Execution of Privilege Tax Return. A paid preparer may execute and file the business privilege tax return, extension request, and the annual report, if a power of attorney is on file, or is filed simultaneously with the return, etc., authorizing this action. Otherwise, the return, etc. must be executed by one of the officers specified in Section 40-18-39(e), Code of Alabama 1975.

Author: Michael E. Mason

Authority: Sections 40-2A-7(a)(5) and 40-14A-26, Code of Alabama 1975

History: New rule: Filed March 20, 2001, effective April 24, 2001.

810-2-8-.04 Business Privilege Tax - Transition Rules from a Calendar Year Basis To a Fiscal Year Basis.

(1) **Scope.** This rule is issued pursuant to Section 40-2A-7(a)(5), Code of Alabama 1975, to provide guidance to business entities subject to the Business Privilege Tax to transition from a calendar year tax basis to a fiscal year tax basis and provide for the computation of a tax obligation when an accounting period change is made.

(2) **Definitions.** The following terms have the meanings ascribed to them for purposes of this rule:

(a) Business Privilege Tax. The tax levied by Section 40-14A-22, Code of Alabama 1975.

(b) Calendar Year Tax Period. The period from January 1 of each year through December 31 of that year.

(c) Fiscal Year Tax Period. Any 365 consecutive day period other than a calendar year tax period.

(d) Determination Period. A taxpayer's taxable period that precedes the taxpayer's current taxable period.

(e) Determination Date. The date upon which the Business Privilege Tax accrues.

(3) **Applicability of Taxing Statutes.**

(a) Pursuant to Section 40-14A-2(b), for taxable years 2000 and 2001, all taxpayers subject to the tax levied in Section 40-14A-22, shall have a determination date of January 1 following the determination period. For all taxable years ending after December 31, 2000, the determination date shall be the first day of the taxable year following the determination period.

(b) If the taxpayer has a change of accounting period, that change shall follow the rules provided in Section 40-18-30(a), Code of Alabama 1975.

Author: Michael E. Mason

Authority: Sections 40-2A-7(a)(5) and 40-14A-1, 40-14A-2, 40-14A-22 and 40-18-30(a), Code of Alabama 1975.

History: New rule: Filed March 20, 2001, effective April 24, 2001.

810-2-8-.05 Election to File as a Family Limited Liability Entity.

(1) Any entity qualifying to elect status as an Electing Family Limited Liability Entity as defined by § 40-14A-1(h), Code of Alabama 1975, must file with the Department of Revenue an annual election to be taxed as a family limited liability entity for the taxable year represented by the Business Privilege Tax return.

(2) The election must be attached to the Business Privilege Tax return and filed on or before the due date of the return (including extensions).

(3) The election must be made on forms prescribed by the Department, and must contain the following:

(a) Name and FEIN of the taxpayer;

(b) A statement that the profits and capital interests of the entity were calculated using the constructive ownership rules of 26 U.S.C. §318, without regard to the 50% limitation contained in 26 U.S.C. §318(a)(2)(C) and 26 U.S.C. §318(a)(3)(C);

(c) Indication whether the entity meets the gross receipts test, the assets test, or both, by completing the Electing Family Limited Liability Election Form in its entirety; and

(d) Signature of the taxpayer or authorized representative.

(4) Electing Family Limited Liability Entity status will be disallowed if the election is not filed in a timely manner, does not contain the required information, or is not properly signed by the taxpayer or authorized representative.

Authors: Tamera P. Bruton, Ann F. Winborne, and Richard H. Henninger
Authority: §§40-2A-7(a)(5) and 40-14A-1(h) Code of Alabama 1975
History: New Rule: Filed December 15, 2004, effective January 19, 2005.

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Attachment – 810-2-8-.05

Authority: Sections 40-2A-7(a)(5) and 40-14A-1(h), Code of Alabama 1975
History: Form BPT-E (10/04) Family Limited Liability Entity Election Form
Filed: December 15, 2004, effective January 19, 2005.

810-2-8-.06 Extension of Time for Filing of Business Privilege Tax Returns.

(1) Corporations are required to file an Alabama Business Privilege Tax (“BPT”) return no later than two and a half months after the beginning of a taxpayer’s taxable year. Generally, all other taxpayers must file no later than three and a half months after the beginning of the taxpayer’s taxable year.

(2) Notwithstanding the requirement in (1) above, any taxpayer required to file a BPT return will be granted an automatic six month extension of time for filing the return.

(3) However, in no event shall a taxpayer extend the original due date to pay the tax. An extension of time granted to file the return pursuant to this section is not an extension of time for payment of tax. The amount of tax due must be paid on or before the due date of the return without regard to the extension to file the return.

(a) Payment of the tax shall be made via the paper Payment Voucher or by Electronic Funds Transfer (EFT). However, payment must be made via EFT if the payment exceeds \$750. Please refer to Regulations 810-13-1-.01 and 810-13-1-.03.

(b) Underpayment of tax penalties plus any applicable interest will be imposed as provided by law without regard to any extension granted under this section.

(4) An entity that fails to file the required return by the extended due date may not be granted an automatic extension the following (ensuing) year, but may be required to request the extension in writing. If a written request is required, the request must be made to the Commissioner of Revenue or to his designee, and must explain the reason for the request and the reason for failing to timely file the return in the previous year. The request also must state that the entity has no outstanding debts owed to the Department.

Author: Ann F. Winborne, CPA, and Richard H. Henninger

Authority: Sections 40-2A-7(a)(5) and 40-14A-25, Code of Alabama 1975

History: New rule: Filed November 26, 2008, effective December 31, 2008.

810-2-8-.07 Definition of Homeowners Association for Purposes of Administering the Alabama Business Privilege Tax Law.

(1) For purposes of administering the Alabama business privilege tax law levied by §40-14A-22, Code of Alabama 1975, effective with business privilege taxable years beginning on or after January 1, 2009, and business privilege tax determination periods beginning on or after January 1, 2008:

(a) Entities which are formed by restrictive covenant or a declaration of restrictions by the owners of real property in a defined area which are united as a nonprofit association to improve or maintain the area's quality will be presumed to be exempt from the Alabama business privilege tax as "homeowners associations" referred to in §40-14A-43, Code of Alabama 1975.

(b) The not-for-profit corporations referred to as "property owners' associations" in §40-14A-22, Code of Alabama 1975, will be treated as "homeowners associations," as referred to in §40-14A-43, and will be exempt from the Alabama business privilege tax.

(c) A unit owners' association organized under the Alabama Uniform Condominium Act will be treated as a homeowners association in accordance with §40-14A-43, if the association is a nonprofit entity.

(d) For-profit entities are not presumed to be homeowners associations for purposes of the Alabama business privilege tax exemption provided for in §40-14A-43, Code of Alabama 1975.

Authors: Voncile Catledge and Ed Cutter

Authority: §§ 40-2A-7(a)(5), 40-14A-22 and 40-14A-43, Code of Alabama 1975

History: New rule: Filed August 20, 2009, effective September 24, 2009.