

RULES OF THE
DEPARTMENT OF REVENUE

CHAPTER 810-3-28

Partnership Returns

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810-3-28-.01 Partnership Returns.

(1) (a) Each subchapter K entity, and every single member limited liability company having income from property owned or business conducted in this state shall file Form 65, "Partnership Return of Income," on or before the fifteenth day of the fourth month following the close of the taxable year.

(b) The entity will be granted an automatic five month extension of time for filing the Form 65.

1. 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.

2. 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.

(c) An Alabama Schedule K-1 must be prepared for each person who held an interest in the subchapter K entity or single member limited liability company during the taxable year showing each partner's or member's name, address, social security or federal employers identification number, distributive share of the income (or loss) of the partnership and distributive share of charitable contributions made by the partnership.

1. For an Alabama resident partner or member, the K-1 for tax years beginning after December 31, 1996 and before January 1, 2011 shall include:

(i) For multi-state subchapter K entities doing business within and without the State of Alabama, only that income which is required to be allocated and apportioned to Alabama under the rules of Section 40-18-22. (If the multi-state subchapter K entity is not doing business in Alabama, no income is reportable to Alabama from that subchapter K entity.)

(ii) For a subchapter K entity doing business in only one state, whether the state of Alabama or another state, the distributive share of the entire income from that subchapter K entity.

2. For a nonresident partner or member, the K-1 shall include:

(i) For multi-state subchapter K entities doing business within and without the State of Alabama, only that income which is required to be allocated and apportioned to Alabama under the rules of Section 40-18-22.

(ii) For a subchapter K entity doing business in Alabama exclusively, the distributive share of the entire income from that subchapter K entity.

3. For an Alabama resident partner or member, the K-1 for tax years beginning after December 31, 2010 shall include amounts determined in accordance with subchapter K of the Internal Revenue Code, 26 U.S.C. §§ 701-761, Alabama Code §§ 40-18-24 and 40-18-14 (1975) and without regard to 1. above. Likewise, Alabama resident partners or members of sub-chapter K entities are entitled to a credit computed in accordance with Ala. Code § 40-18-21(a) (1975) for taxes paid by (or on behalf of) the resident partner or member (including composite return and withholding payments) to other states where the sub-chapter K entity does business and is treated as a sub-chapter K entity.

(d) Form 65 is designed as a "cover sheet" to the federal Form 1065 "U.S. Partnership Return of Income". The computation of Alabama net partnership income on Form 65 begins with the federal ordinary income as shown on Form 1065. Adjustments must be made to conform federal income to the Alabama law for any items of income or expense, except contributions, which are passed directly through to the partners or members on the federal return and for items which are treated differently under Alabama law than federal law. These adjustments include, but are not limited to, the following:

1. long-term capital gains (or losses) which are passed through directly to partners or members on the federal return are added to federal ordinary income, and

2. additional depreciation is allowed for assets which have a reduced federal basis due to investment tax credits or which have been expensed under I.R.C. § 179, and

3. depletion on oil and gas properties which is passed through directly to the partners or members in the federal return are subtracted from federal ordinary income using the rates allowed by §§ 40-18-16 or 40-18-15, and

4. percentage depletion in excess of cost on minerals other than oil and gas are added to federal ordinary income.

5. interest expense passed through directly to partners or members on Form 1065 is subtracted from federal ordinary income.

6. any other items of income, expense or deduction which are passed directly through to partners or members and not included in federal ordinary income.

(e) Federal Form 1065 and accompanying schedules must be attached to Form 65 when filed.

(f) The return must be signed by one partner or member and the person who prepared the return, and must contain a printed declaration that it is made under the penalties of perjury.

(2) See Reg. 810-3-24-.01, et seq., for computation of distributive income for subchapter K entity or single member limited liability company and the distributive share for each partner or member.

(3) Partnership returns shall be made on or before the fifteenth day of the fourth month following the close of the calendar or fiscal year, whichever taxable year is used by the subchapter K entity or single member limited liability company.

(4) With the exception noted below, the amendments to this regulation which were filed with the Legislative Reference Service on March 21, 2011 are effective for tax years beginning after December 31, 2010. The Department of Revenue will not enforce these regulatory changes for tax periods ending prior to January 1, 2011, or for gains associated with the taxable disposition of all or any portion of a taxpayer's assets or Subchapter K interests where the parties to the transaction can document that negotiations began prior to January 1, 2011 and continued with regularity until the transaction was completed in 2011. These amendments are consistent with the Administrative Law Division's Ruling, *McNees v. Department of Revenue*, DOCKET NO. 06-523, entered December 12, 2006.

(5) The Department will not rely on the amendments to this regulation which were filed with the Legislative Reference Service on March 21, 2011 for tax periods beginning after December 31, 2011. For tax periods beginning after December 31, 2011, the Department will issue new regulatory language addressing the issues to which these amendments pertain.

Author: Ann F. Winborne, CPA, Individual and Corporate Tax Division, and Joe Garrett, Tax Policy Administrator
Authority: Sections 40-2A-7(a)(5) and 40-18-28
Code of Alabama 1975
History: Adopted September 30, 1982.
Amended April 24, 1989.
Amended: March 26, 1998, effective date April 30, 1998.
Amended: Proposal to amend rule filed February 18, 2005 – rule was not certified.
Amended: Filed November 26, 2008, effective December 31, 2008.
Amended: Filed August 3, 2011, effective September 7, 2011.

810-3-28-.02 Participation in the Federal/State Electronic Filing Program.

(1) The Department will participate with the Internal Revenue Service in the Federal/State Electronic Filing Program for the joint electronic filing of partnership/LLC returns of income, effective for tax years beginning on or after January 1, 2006.

(2) The requirements of the Alabama Electronic Filing Program for software developers, electronic return originators and transmitters are stated in the Software Developers and Transmitters Guidelines and Schemas for Alabama Corporate Income Tax, S Corporation Income Tax and Partnership/LLC Returns (Publication AL4164), which is issued on an annual basis by the Department.

Author: Kathleen F. Abrams

Authority: Sections 40-2A-7(a) (5) and 40-30-4, Code of Alabama 1975

History: New Rule: Filed January 22, 2007, effective February 26, 2007.

810-3-28-.03 Requirements for the Alabama Electronic Partnership/LLC Return of Income.

(1) A complete Alabama electronic partnership/LLC return of income will consist of data and supporting binary documents (such as .pdf documents) transmitted electronically. A complete Alabama electronic return must contain the same Information as a comparable Alabama partnership/LLC return of income as if filed entirely on paper.

(2) The transmission date of an Alabama electronic partnership/LLC return of income will be used to determine timely filing of an electronic return in the same manner that the postmarked date is used to determine timely filing of a paper Alabama partnership/LLC return of income.

Author: Kathleen F. Abrams

Authority: Sections 40-2A-7(a) (5) and 40-30-5, Code of Alabama 1975

History: New Rule: Filed January 22, 2007, effective February 26, 2007.

810-3-28-.04 Requirements for the Partnership/LLC Return of Income Declaration for Electronic Filing.

(1) The Partnership/LLC Income Return of Income Declaration for Electronic Filing requires the following information:

- (a) The partnership/LLC's name.
 - (b) The partnership/LLC's Federal Employer Identification Number.
 - (c) The partnership/LLC's address.
 - (d) The non-separately stated income allocated and apportioned to Alabama as reported by the electronic return.
 - (e) The signature of an officer/partner of the partnership/LLC, their title and date of the signature.
 - (f) The signature of the electronic return originator and date of the signature.
 - (g) An indication whether the electronic return originator is self-employed.
 - (h) The firm name of the electronic return originator.
 - (i) The address, including the zip code, of the electronic return originator.
 - (j) The federal employer identification number of the electronic return originator.
 - (k) If the paid preparer is different from the electronic return originator, the following information is required:
 - 1. The signature of the paid preparer and date of the signature.
 - 2. An indication whether the paid preparer is self-employed.
 - 3. The firm name of the paid preparer.
 - 4. The address, including the zip code, of the paid preparer.
- (2) The signatures of the officer/partner, the electronic return originator, and the paid preparer (if the paid preparer is different from the electronic return originator) must be affixed to the Alabama Form AL8453-C - Corporate/Partnership Income Tax Declaration for Electronic Filing before the return is electronically transmitted.

(a) Members of the firm or designated employees may sign for the electronic return originator.

(b) If the taxpayer is unable to obtain the paid preparer's signature on the Alabama Form AL8453-C, in lieu of the paid preparer's signature the electronic return originator may attach to the Alabama Form AL8453-C a copy of the appropriate pages of the paper return with the paid preparer's signature.

(c) Electronic return originators and electronic return preparers are prohibited from allowing taxpayers to sign blank Alabama Forms AL8453-C.

(3) The completed and signed Alabama Form AL8453-C will serve as the filing declaration for the electronic Alabama partnership/LLC return of income.

(4) The completed and signed Alabama Form AL8453-C must be retained by the electronic return originator for a period of three years from the due date of the return or three years from the date the return was filed, whichever is later. The electronic return originator will provide the Department with the original Alabama Form AL8453-C within five business days of receiving a written request for the documents from the Department.

Author: Kathleen C. Abrams, Jo Ann Ledbetter, and Ann F. Winborne, CPA
Authority: Sections 40-2A-7(a) (5) and 40-30-5, Code of Alabama 1975
History: New Rule: Filed January 22, 2007, effective February 26, 2007.
Amended: Filed January 28, 2010, effective March 4, 2010.

810-3-28-.05 Requirements for Electronic Filing Software.

(1) XML Schemas (record layouts), specifications and business rules for a complete Alabama electronic partnership/LLC returns of income are issued annually by the Department in Software Developers and Transmitters Guidelines and Schemas for Alabama Corporate Income Tax, S Corporation Income Tax and Partnership/LLC Returns (Publication AL4164).

(2) Software developers are required to obtain prior approval from the Department by submitting for testing sample Alabama electronic partnership/LLC returns of income prepared by and transmitted by their software products.

(3) Software developer testing will occur in conjunction with IRS testing in accordance with IRS Publication 4505 Modernized e-File Test Package for Forms 1065/1065B.

(4) Alabama electronic partnership/LLC returns of income received by the Department which are prepared by software which has not completed the Department's software developer testing and which has not been approved by the Department will be rejected by the Department. Paper Alabama partnership/LLC return of income must then be submitted by the taxpayers.

Author: Kathleen F. Abrams

Authority: Sections 40-2A-7(a) (5) and 40-30-5, Code of Alabama 1975

History: New Rule: Filed January 22, 2007, effective February 26, 2007.

810-3-28-.06 Acceptance into the Alabama Electronic Filing Program, Monitoring, and Revocation of Acceptance into the Program.

(1) Electronic return originators and transmitters accepted by and in good standing with the Federal Electronic Filing Program are automatically accepted into the Alabama Electronic Filing Program.

(2) Electronic return originators and transmitters accepted into the Alabama Electronic Filing Program serve as agents of the Alabama Department of Revenue, and must comply with the requirements of the program as stated in the Software Developers and Transmitters Guidelines and Schemas for Alabama Corporate Income Tax, S Corporation Income Tax and Partnership/LLC Returns (Publication AL4164).

(3) The Alabama Department of Revenue will conduct random monitoring visits with Electronic Return Originators and Transmitters to verify that the requirements of the Alabama Electronic Filing Program are being met.

(4) The Alabama Department of Revenue reserves the right to revoke the acceptance of an electronic return originator or transmitter for cause. Failure to comply with the guidelines set forth in the Software Developers and Transmitters Guidelines and Schemas for Alabama Corporate Income Tax, S Corporation Income Tax and Partnership/LLC Returns (Publication AL4164) is considered just cause.

(5) Any of the following can result in the revocation of an electronic return originator's or transmitter's acceptance into the program:

(a) Conviction of a criminal offense under the revenue laws of any state or of any offense involving dishonesty, or breach of trust.

(b) Failure to file timely and accurate tax returns, both personal and business.

(c) Failure to pay personal tax liabilities or business tax liabilities.

(d) Failure or refusal to effect corrective action as required by the Alabama Department of Revenue.

(e) Other facts or conduct of a disreputable nature that would reflect adversely on the Alabama Electronic Filing Program.

(f) Unethical practices in return preparation.

(g) Suspension by IRS.

Author: Kathleen F. Abrams

Authority: Sections 40-2A-7(a) (5) and 40-30-6, Code of Alabama 1975

History: New Rule: Filed January 22, 2007, effective February 26, 2007.

810-3-28-.07 Alabama Requirements for Mandatory E-File of Original Partnership/Limited Liability Company Income Tax Returns.

(1) (a) If an income tax return preparer prepares 125 or more acceptable, original corporate/partnership income tax returns using tax preparation software in calendar year 2009, and 50 or more acceptable corporate/partnership income tax returns using tax preparation software in calendar year 2010, then for the calendar year 2010 all acceptable corporate/partnership income tax returns prepared by that income tax preparer must be filed using electronic technology, as defined in the "Electronic Tax Return Filing Act," as codified in Chapter 30 of Title 40, Code of Alabama 1975.

(b) If an income tax return preparer prepares 25 or more acceptable, original corporate/partnership income tax returns using tax preparation software in calendar year 2011, then for that calendar year and for each subsequent calendar year thereafter, all acceptable corporate/partnership income tax returns prepared by that income tax preparer must be filed using electronic technology, as defined in the "Electronic Tax Return Filing Act," as codified in Chapter 30 of Title 40, Code of Alabama 1975.

(2) For purposes of this rule, the following definitions apply:

(a) "Income tax preparer" means a person who meets both the following:

1. Any person who prepares an Alabama corporate/partnership income tax return in exchange for compensation.

2. Or any person who employs another person to prepare, in exchange for compensation, any current year Alabama corporate/partnership income tax return.

(b) "Original corporate/partnership income tax return" means any return that is required, to be filed with respect to the tax imposed as defined by Section 40-18-2, Code of Alabama 1975. For purposes of paragraphs (1)(a) and (1)(b) above, a "timely" original corporate/partnership tax return means any original corporate/partnership tax return that is filed, without regard to extensions, during the calendar year for which that tax return is required to be filed.

(c) "Acceptable corporate/partnership income tax return" means, for the purposes of the mandatory corporate/partnership income tax filing program, any original corporate/partnership tax return that is authorized by the Department to be filed solely using electronic technology as defined in Section 40-30-3(2), Code of Alabama 1975.

(d) "Tax preparation software" means any computer software program intended for accounting, tax return preparation, or tax compliance.

(3) Paragraph (1)(a) shall cease to apply to an income tax preparer if, during the 2009 calendar year, the income tax preparer prepared no more than 30 original corporate/partnership income tax returns and during the 2010 calendar year and all subsequent years, the income tax preparer prepared no more than 15 original corporate/partnership income tax returns.

(a) Paragraph (1)(a) of this rule, applies to acceptable corporate/partnership income tax returns required to be filed for taxable years beginning on and after January 1, 2009.

(b) Paragraph (1)(a) of this rule, may not be interpreted to require electronic filing of acceptable corporate/partnership income tax returns that are required to be filed on or before January 1, 2009.

(4) (a) For a Tax Year 2008 Corporation with assets of \$10 million or more, or partnerships with 100 or more partners mandated to e-file with the IRS are mandated to e-file Tax Year 2009 Alabama corporate/partnership income tax returns, and all subsequent tax years.

(b) For a Tax Year 2009 Corporation with assets of \$5 million or more, or partnerships with 50 or more partners are mandated to e-file Tax Year 2010 Alabama corporate/partnership income tax returns, and all subsequent tax years.

Author: Jo Ann Ledbetter, Richard Henninger, and Ann F. Winborne, CPA
Authority: Sections 40-2A-7(a)(5), 40-18-40, and 40-30-1 through 6, Code of Alabama 1975
History: New rule: Filed January 28, 2010, effective March 4, 2010.

810-3-28-.08 Alabama Requirements for Compliance with Administrative Rule 810-3-28-.07

(1) An income tax preparer may be subject to a random monitoring visit for not electronically filing returns.

(2) If it is shown that failure to electronically file corporate/partnership income tax return is due to willful neglect and not due to reasonable cause, then that tax preparer's acceptance in the Alabama e-file program shall be revoked, and that tax preparer shall be unable to electronically transmit corporate/partnership income tax returns to the Department.

(3) For purposes of this rule, reasonable cause includes, but is not limited to:

(a) Any electronically prepared original corporate/partnership income tax return that cannot be filed or transmitted electronically by the tax preparer, or any original corporate/partnership income tax return that cannot be accepted by the Department.

(4) Any original corporate/partnership income tax return prepared, including those not electronically filed due to "reasonable cause," will be included in the total mandate return count as defined in 810-3-28-.07.

Author: Jo Ann Ledbetter, Richard Henninger, and Ann F. Winborne, CPA

Authority: Sections 40-2A-7(a)(5), 40-18-40, and 40-30-1 through 6, Code of Alabama 1975

History: New rule: Filed January 28, 2010, effective March 4, 2010.