

810-3-24.2-.01 Composite Returns of Pass-through Entities. **(NEW RULE)**

(1) Definitions. The following terms shall have the following meanings for purpose of these regulations.

(a) Subchapter K Entity. The meaning defined in §40-18-1, Code of Alabama 1975, which does not include a single member limited liability company.

(b) Composite Return. A return on a form prescribed by the Department which contains information concerning the distributive share of income for each of the nonresident members and which reports the amount of composite payment made on behalf of each nonresident member.

(c) Composite Payment. A payment of Alabama income tax made by the pass-through entity on behalf of its nonresident members; calculated on the nonresident member's distributive share of the pass-through entity's income, computed in accordance with §40-18-24; and, paid in the manner prescribed by the Department.

(d) Pass-through Entity. A partnership or other entity classified as a Subchapter K entity under §40-18-1. Neither estates nor trusts, including business trusts, are included in this definition or are subject to §40-18-24.2, except in their capacity as a nonresident member of a pass-through entity or lower-tier pass-through entity.

(2) Requirements for a Composite Return and a Composite Payment.

(a) Effective for taxable years beginning on or after January 1, 2009, a pass-through entity is required to file a composite return and make composite payments on behalf of its nonresident owners or members if there are one or more nonresident owners or members at any time during the taxable year.

(b) The allocation and apportionment requirements established by the Multistate Tax Compact, codified in Chapter 27, Title 40, Code of Alabama 1975, and all rules pertaining to the Multistate Tax Compact are applicable to composite returns required to be filed by pass-through entities.

(c) In computing the amount of the composite payment, the pass-through entity shall apply the maximum tax rate provided in §40-18-5 to each nonresident member's distributive share of income, to include both separately stated income and nonseparately stated income. The nonresident member's distributive share of separately stated expenses, deductions, and losses should not be considered in computing the amount of the composite payment. The nonresident member's distributive share of income shall be computed in accordance with §40-18-24.

(d) In computing the amount of the composite payment, a pass-through entity may not offset the income or gain of a nonresident owner or member with the loss of another owner or member.

(e) In computing the amount of the composite payment, a net operating loss carryforward may not be used to offset income or gain.

(f) Composite returns and composite payments are due on the fifteenth day of the fourth month following the close of the pass-through entity's taxable year.

1. The entity is granted an automatic five month extension of time for filing the composite return.

2. 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.

3. An extension of time granted to file the return is not an extension of time for payment of tax. The amount of tax due must be paid on or before the original due date of the return without regard to the extension to file the composite return.

(g) Payment of the tax shall be made in accordance with the payment procedures established by the Alabama Department of Revenue, which requires the use of electronic funds transfer for payments in excess of certain amounts.

(h) Penalties for underpayment of tax and applicable interest will be imposed as provided by Alabama income tax law.

(i) Amended composite returns reporting an overpayment of tax or an additional tax due for a taxable year may be filed by the extended due date for filing the Alabama partnership income tax return for the same taxable year.

(j) Any refund request claimed after the extended due date for filing the composite return and any additional payment determined due after the extended due date for filing the composite return must be reported on the Alabama income tax return of the nonresident owner or member.

(k) Every pass-through entity that is credited with a composite payment on a composite return must also file a composite return to properly report the composite payment.

(l) An annual composite return is due for a Qualified Investment Partnership (QIP), only if the QIP is required to remit a composite payment for a nonresident member.

(m) An annual composite return is due for a publicly-traded partnership that is treated as a partnership in accordance with 26 U.S.C. §7704(c). If a composite return is not timely and properly filed by the publicly-traded partnership for a taxable year, then a composite payment is due for the tax year from the partnership in accordance with §40-18-24.2, Code of Alabama 1975.

(n) Special considerations such as short years and changes of ownership will be addressed on a case-by-case basis. Requests for relief should be submitted to the Department describing the circumstances and type of relief sought.

(o) Any consent agreements filed by a subchapter K entity, as defined in §40-18-1, Code of Alabama 1975, for its nonresident members prior to the passage of the Entertainment Industry Incentive Act of 2009 (Act 2009-144) by the Alabama Legislature are void, effective for tax years beginning after December 31, 2008.

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Authority: Sections 40-2A-7(a)(5) and 40-18-24.3, Code of Alabama 1975

History: