

810-3-24.2-.02 Qualified Investment Partnerships. **(NEW RULE)**

(1) Definitions.

(a) Qualified Investment Partnership (QIP). A partnership or other entity classified as a subchapter K entity, or a business trust as defined in §40-18-1, Code of Alabama 1975, that for a tax period which begins on or after January 1, 2009, meets the gross income and asset requirements for a Qualified Investment Partnership as required by §40-18-24.2; and, for which an authorized officer, partner, member or manager of the entity has certified for the tax period that the entity meets the gross income and asset requirements. The proper form of the QIP certification and the due date for filing the certification are explained in this regulation.

1. The following restrictions apply concerning entities eligible to be a QIP:

(i) An entity cannot be a QIP for a tax period when more than 50 percent of its ownership interest or voting interest is owned or controlled, directly or indirectly, by one owner or member, at any time during the tax period. For purposes of this definition, own or control means to own or control directly, indirectly, beneficially, or constructively more than fifty percent (50%) of the voting power or value of an entity. The attribution rules of 26 U.S.C. §318 and the constructive ownership rules of 26 U.S.C §267 will apply in determining ownership and control.

(ii) An entity that, at any time during a tax period, holds or derives gross income from any qualifying investment security in which it is a dealer shall not qualify as a QIP for that tax period. An entity is a dealer in qualifying investment securities if it regularly purchases qualifying investment securities from or sells securities to customers in the ordinary course of a trade or business or regularly offers to enter into, assume, offset, assign or otherwise terminate positions in qualifying investment securities with customers in the ordinary course of a trade or business. The definition provided in 26 U.S.C. §475(c) can also be relied upon to determine if an entity is a dealer in qualifying investment securities.

(iii) An entity that is a publicly traded partnership that is taxed as a corporation for Alabama income tax purposes at any time during the tax period cannot be a QIP for that tax period.

(iv) An entity that, at any time during a tax period, has as an owner or member a person who is other than a United States Person, as defined in 26 U.S.C. §7701, cannot be a QIP for that tax period.

(v) A small investment club or qualified investment club, as those terms are used in 26 U.S.C., cannot be a QIP.

(vi) A common trust fund, as defined in 26 U.S.C. §584, cannot be a QIP.

(vii) An unincorporated entity that has elected out of the provisions of Subchapter K of 26 U.S.C., in accordance with 26 U.S.C. §761, at any time during a tax period, cannot be a QIP for that tax period.

(b) Qualifying Investment Securities (QIS). Financial investments as defined by §40-18-24.2, Code of Alabama 1975, that must be owned by an entity; and must make up a specified percentage of the entity's total assets; in order for the entity to qualify as a QIP, in accordance with §40-18-24.2.

1. The term "qualifying investment securities" does not include:

(i) An investment in a captive REIT, as defined by §40-18-1.

(ii) An interest in a partnership unless the partnership is a Qualified Investment Partnership, as defined in §40-24.2.

(iii) Loans, other than loan participations and repurchase agreements that are characterized as loans.

(iv) Deposits with a financial institution or bank that are not insured by the United States government, or by any other political subdivision thereof.

(c) Tax Period. Same definition as "taxable year" as defined in §40-18-1.

(2) QIP Requirements.

(a) All of the following requirements must be met for a tax period in order for an entity to qualify as a QIP for the tax period:

1. Asset Test. No less than 90% of the cost of the total assets owned by the entity consists of qualifying assets: qualifying investment securities; office facilities; and, tangible personal property reasonably necessary to carry on the activities of the entity as an investment partnership in the State of Alabama.

2. Gross Income Test. No less than 90% of the gross income of the entity consists of qualifying gross income: interest; dividends; distributions; management fees paid by owners of the entity; and gains or losses from the sale or exchange of qualifying investment securities (QIS).

3. Certification. An authorized officer, partner, member, or manager of the entity certifies that for the tax period the entity meets the Asset Test and the Gross Income Test, in the proper form and by the proper time as specified in this regulation. The certification must be filed as a part of the annual Alabama partnership income tax return for the entity, on Alabama Schedule QIP-C, by the due date of the Alabama partnership income tax return for the entity. Filing a certification with a composite return for an entity is not a proper filing of the QIP certification.

(b) Required QIP Filings.

1. A QIP must file an annual Alabama partnership income tax return, properly reporting the required K-1 information for each resident member and each nonresident member, which held an interest in the QIP, at any time during the tax period.

2. A QIP must file an annual composite income tax return, as required by §40-18-24.2., if the QIP is required to make a composite payment for a nonresident member.

(c) Application of the Asset Test.

1. For purposes of applying the Asset Test, the cost of an asset shall be determined for Alabama income tax purposes without regard to depreciation or amortization of the asset, except that the cost of an asset shall include any accrued interest or discount, and shall be reduced by any premium amortization, that has been recognized in the computation of Alabama taxable income of the entity and that is included on the entity's balance sheet as of the date the asset cost is determined.

2. The Asset Test is applied for each tax period, and is computed using the ratio of the entity's cost of qualifying assets to its total assets, expressed as a percentage; as of the beginning of the tax period and as of the end of each month of the tax period. The average of the percentages is then computed. The average is referred to as the Average Qualifying Asset Percentage for the Tax Period.

(d) Application of the Gross Income Test.

1. The Gross Income Test is applied for each tax period, and is computed using the ratio of the entity's qualifying gross income to its total gross income, expressed as a percentage. The ratio is referred to as the Qualifying Gross Income Percentage.

2. Calculations for the Gross Income Test are to be based on information from the Alabama partnership income tax return filed by the entity for the tax period.

3. Gross income means income minus costs of sales or basis in an asset sold or traded, but without reduction for any other expenses or deductions.

4. Gross income does not include any item of income that is excluded in computing the Alabama taxable income for the entity.

5. The Gross Income Test is calculated using the method of accounting used for Alabama income tax purposes for the tax period.

6. Gross income derived from an investment in a qualifying investment partnership, subchapter S corporation, trust or estate shall be characterized as if the entity received the income directly.

7. Gross income derived from a qualifying investment partnership, subchapter S corporation, trust or estate for purposes of the Gross Income Test shall be net of related expenses and computed in accordance with Alabama income tax law.

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

History: