

810-3-34-.01 Gross Income of Corporations. **(REPEAL)**

(1) The gross income of a corporation which files or is required to file a separate return and is subject to tax in this state and another state is computed pursuant to §40-18-14, Code of Alabama 1975, and classified as either business or nonbusiness income pursuant to §40-27-1. Rules pursuant to these sections should be consulted in determining the gross income of a corporation. For a discussion of corporations subject to the tax, see Rule 810-3-2-.02.

(2) The gross income of a corporation subject to the tax imposed by §40-18-31, and which has elected to file an Alabama consolidated income tax return, is computed pursuant to §40-18-14 and classified as either business or nonbusiness income pursuant to §§40-27-1 and 40-18-39. Rules pursuant to these sections should be consulted in determining the gross income of a corporation.

(3) The gross income of a corporation which files or is required to file a separate return and is subject to tax only in this state is computed pursuant to §40-18-14. For a discussion of corporations subject to the tax, see Rule 810-3-2-.02.

(4) Mutual marine insurance companies shall include in gross income the gross premiums collected less amounts paid for re-insurance.

(5) Gross income does include deemed dividends from a Domestic International Sales Corporation (DISC) in the same manner as required by I.R.C. § 995, except for deemed dividends from an "interest charge DISC" after December 31, 1984.

(a) For shareholders of a DISC prior to and including December 31, 1984, gross income of the shareholder for the tax year which includes December 31, 1984, also includes the amounts of income deferred into the DISC which have not been previously taxed either as deemed dividends or as actual distributions.

1. In the case of a foreign corporation, the amount to be included in Alabama taxable income for the tax year which includes December 31, 1984, will be the sum of the results of:

(i) the amount of income deferred into the DISC each year which was not previously taxed -

(ii) multiplied by the apportionment factor for each such year.

(6) For tax years beginning before January 1, 1985, if a corporation adopts a plan of complete liquidation, and within the 12-month period beginning

on the date of the adoption of such plan, all of the assets of the corporation are distributed in complete liquidation, less assets retained to meet claims, no gain or loss shall be recognized to the corporation from the sale or exchange by it of property within the twelve-month period. The taxable year must end after January 1, 1976.

(a) The 12-month period shall begin on the date of the adoption of the plan and no extension of such period can be granted. The date of adoption of the plan of liquidation is the date on which occurs the first step in the plan, but not later than the date of adoption of the resolution by the shareholders authorizing the distribution of the corporate assets in redemption of all the stock pursuant to which the corporation is liquidated. Unusual sales of property might be a factor in determining the date of adoption of the plan.

(b) All assets (less assets retained to meet claims), both tangible and intangible, must be distributed within the 12-month period. If assets are held to meet claims, they must be specifically set apart and must be reasonable in amount.

(c) For the purposes of this regulation only the term "property" does not include:

1. Inventories, or other property, held by the corporation primarily for sale to customers in the ordinary course of its business. However, if this property is sold to one person in one transaction, the property and any installment obligations acquired in the sale do meet the definition of "property."

2. Installment obligations acquired in the sale of inventories or other property.

3. Installment obligations acquired from the sale of property other than described in subparagraphs 1. and 2. and acquired before the adoption of the plan of liquidation.

(d) Provided the other conditions of this section are met, sales or exchanges which occur on or after the date on which the plan of complete liquidation is adopted and within the 12-month period thereafter are subject to the provisions of such section. The date on which a sale occurs depends primarily upon the intent of the parties to be gathered from the terms of the contract and the surrounding circumstances. In ascertaining whether a sale or exchange occurs on or after the date on which the plan of complete liquidation is adopted, the fact that negotiations for sale may have been commenced, either by the corporation or its shareholders, or both, shall be disregarded. Ordinarily, a sale has not occurred when a contract to sell has been entered into but title and possession of the property have not been transferred and the obligation of the seller to sell or the buyer to buy is conditional.

(e) It is not necessary that only one distribution be made to each stockholder, partial distributions may be made so long as they are made within the twelve-month period and total the complete amount to be distributed.

(7) For tax years beginning after December 31, 1984, gross income does not include gains or losses which are not recognized under the provisions of § 40-18-8.

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