

810-3-24.2-.02 Qualified Investment Partnerships.

(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 tests for a Qualified Investment Partnership as prescribed by §40-18-24.2, Code of Alabama 1975; 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 tests. 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) There is a rebuttable presumption that an entity is disqualified as a QIP as abusive when fifty percent (50%) or more of the ownership interest or voting interest of an entity is owned or controlled, directly or indirectly, by a corporation, as defined in §40-18-1, Code of Alabama 1975, or a controlled group of corporations, as defined in 26 U.S.C. §1563, 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 fifty percent (50%) or more of the voting power or value of an entity. The Department will review written applications or requests to the Commissioner that this presumption not be applied to a particular entity's situation on a case-by-case basis. If the entity establishes that the distributive shares of the income attributed to and owned by the corporate partner are being reported to Alabama for income tax purposes by each of the owners having such interests, the presumption of abuse in this section will have been rebutted.

(ii) An entity that is classified as a dealer in qualifying investment security at any time during a tax period, 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 qualifying investment 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 shall be classified as 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) A common trust fund, as defined in 26 U.S.C. §584, cannot be a QIP.

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

(vi) Any entity meeting the definition of a Financial Institution under Section 40-16-1, Code of Alabama 1975, cannot be a QIP.

(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, Code of Alabama 1975.

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

(i) An investment in a captive REIT, as defined by §40-18-1, Code of Alabama 1975.

(ii) An interest in a partnership unless the partnership is a Qualified Investment Partnership, as defined in §40-18-24.2, Code of Alabama 1975.

(iii) Loans that are not debt securities.

(iv) Deposits with a bank or other financial institution that is not regulated by the United States government, a state, a governmental agency or by any 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 (QIS); 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 time specified in this regulation. The certification must be filed as part of the annual Alabama partnership income tax return for the entity, on Alabama Schedule QIP-C, by the due date (including extensions) 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.

(i) If the QIP holds an investment in another Subchapter K entity or business trust which is not subject to tax by the State of Alabama, but which qualifies as a QIP under both the Asset Test and the Gross Income Test, the annual certification as to its qualification as a QIP may instead be filed by an authorized officer, partner, member or manager of the QIP, in a manner prescribed by the Department.

(b) Required QIP Filings.

1. A QIP must file an annual Alabama partnership income tax return, properly reporting the required Schedule K-1 information for each resident member and each nonresident member, that 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, Code of Alabama 1975, if the QIP is required to make a composite payment for one or more nonresident members.

(c) Application of the Asset Test.

1. For purposes of applying the Asset Test, the cost of an asset will generally be the entity's basis, computed in accordance with Alabama income tax law (See §§ 40-18-24 and 40-18-6, Code of Alabama 1975). For office facilities, other tangible personal property, any assets subject to amortization and any assets subject to depletion; the cost to be used will be the entity's basis before any reductions for depreciation, amortization or depletion. The cost of qualifying investment securities 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's cost was determined.

2. The Asset Test is applied for each tax period, and is computed using the ratio of the entity's cost of its qualifying assets to the entity's cost of 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 of 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 reduced by related expenses and computed in accordance with Alabama income tax law.

Authors: Dennice Hillard

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

History: New rule: Filed January 11, 2010, effective February 15, 2010.

Amended: Filed July 27, 2010, effective August 31, 2010.

Amended: Filed August 27, 2014, effective October 1, 2014.