

**ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE
CHAPTER 810-3-36 Pass-Through
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810-3-36-.01 Electing Pass-Through Entity Returns

(NEW)

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

(a) Pass-Through Entity. A Pass-Through Entity is an S Corporation defined in §40-18-160, Code of Ala. 1975, or a Subchapter K Entity defined in §40-18-1, Code of Ala. 1975. Single member limited liability companies, estates, trusts, business trusts, and disregarded entities are not included in this definition except in the capacity as an owner, member, partner, or shareholder of the Pass-Through Entity.

(b) Taxable Income. The taxable income used to determine the tax for the Electing Pass-Through is the sum of nonseparately stated income (loss) and deductions plus separately stated income (loss) and deductions computed in accordance with §§40-18-24, 40-18-161, or 40-18-162. This income must be apportioned in accordance with §40-27-1, Code of Ala. 1975, and the accompanying rules.

(c) Electing Pass-Through Entity Payment. A payment of Alabama Income Tax made by the Pass-Through Entity on behalf of its owners, members, partners, or shareholders; calculated on the owner's, member's, partner's, or shareholder's pro rata or distributive share of the Pass-Through Entity's income, computed in accordance with §§40-18-24, 40-18-161, or 40-18-162, Code of Ala. 1975, and paid in the manner prescribed by the department.

(d) Required Annual Payment. The required annual payment is the lessor of 100 percent of the tax shown on the return for the taxable year or 100 percent of the tax shown on the return for the preceding tax year.

(2) Requirements for an Electing Pass Through Entity.

(a) Effective for taxable years beginning on or after January 1, 2021, a Pass-Through Entity may elect to be taxed as an Electing Pass-Through Entity.

(b) An entity must make the election on Form PTE-E, *Pass-Through Entity Election Form*, and submit it electronically to the department via My Alabama Taxes (MAT) on or before the fifteenth day of the third month following the close of the tax year for which the entity elects to be taxed as an Electing Pass-Through Entity.

(c) If the election form is not filed on Form PTE-E through MAT in a timely manner, the election to become an Electing Pass-Through Entity will be denied. The taxpayer may request the election for the subsequent tax year.

(d) This election is binding for the year in which it is approved and all subsequent tax years until a request to revoke the election is made. The Electing Pass-Through Entity may request revocation by submitting Form PTE-E through MAT on or before the fifteenth day of the third month following the close of that tax year for which the entity elects to no longer be taxed as an Electing Pass-Through Entity. If the entity ceases to qualify as a Pass-Through Entity, the election is automatically revoked.

1. An Electing Pass-Through Entity is exempt from the composite payment requirements of §40-18-24.2, Code of Ala. 1975.

(e) Each entity making the election must file Alabama Form EPT (*Electing Pass-Through Entity Payment Return*), in addition to a complete Form 20S (*S-Corporation Information/Tax Return*) or Form 65 (*Alabama Partnership/Limited Liability Company Return of Income*) for the applicable taxable year for which the election was made and all taxable years thereafter unless the election is terminated.

(f) In computing the amount of the Electing Pass-Through Entity tax liability:

1. The Pass-Through Entity must apply the maximum tax rate provided in § 40-18-5, Code of Ala. 1975, to taxable income.

2. A net operating loss (carryforward) may not be used to offset income or gain.

3. The Pass-Through Entity cannot eliminate or exempt any owner, member, partner, or shareholder's pro rata or distributive share of the Alabama taxable income.

(g) Electing Pass-Through Entity returns and payments are due on the fifteenth day of the third month following the close of the Pass-Through Entity's taxable year.

1. The entity is granted an automatic six-month extension of time for filing the Electing Pass-Through Entity return.

2. An extension of time granted to file the Electing Pass-Through Entity return is not an extension of time for payment of the 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 Electing Pass-Through Entity return.

(h) The owners, members, partners, or shareholders of an Electing Pass-Through Entity must file an Alabama return to report its pro rata or distributive share of the income of the entity in accordance with the provisions of §§40-16-4, 40-18-28, 40-18-29, or 40-18-39, as applicable. A refundable credit will be available to the owners, members, partners, or shareholders in an amount equal to its pro rata or distributive share of the Alabama income tax paid by the Electing Pass-Through Entity.

(i) The 2017 Alabama Historic Rehabilitation Tax Credit and the Railroad Modernization Act of 2019 Credit shall only be claimed at the Electing Pass-Through Entity level and will not be passed through to the owners, members, partners, or shareholders of

the entity. All other tax credits shall pass through to and may be claimed by an eligible taxpayer under the provisions applicable to that credit.

(3) Transition Rules. When an entity is transitioning to an Electing Pass-Through Entity the following applies:

1. The required estimated quarterly payments will be 25% of the required annual payment.

2. Once the election is made, the initial return's preceding tax year's computation is computed using the total of either Form 20S or Form 65's *Schedule K (Income (Loss) and Deductions)* column C (*Apportioned Amount*), multiplied by 5%.

3. If an electing S-Corporation reported a loss on Schedule K for the first taxable year, the transition rules will not apply.

(4) Payment of Tax.

(a) In accordance with §41-1-20, Code of Ala. 1975, payments of \$750 or greater are required to be made electronically through electronic funds transfer.

(b) An Electing Pass-Through Entity is required to make estimated tax payments in accordance with §40-18-80.1, Code of Ala. 1975.

1. A Pass-Through Entity which makes estimate payments but does not make the election to be taxed as an Electing Pass-Through Entity, or makes a timely request to revoke the election, may request a refund by submitting Form PTE-C.

(c) Penalties for underpayment of tax, underpayment of estimated taxes, and applicable interest will be imposed as provided by §40-2A-11, Code of Ala. 1975.

Author: Tommy Galloway and Christina Hall, CPA

Authority: §§ 40-2A-7(a)(5), 40-2A-11, 40-16-4, 40-18-1, 40-18-5, 41-1-20, 40-18-24, 40-18-28, 40-18-29, 40-18-39, 40-18-80.1, 40-18-160, 40-18-161, and 40-18-162, Code of Ala. 1975.

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