

APA-2

**ALABAMA DEPARTMENT OF REVENUE  
Individual and Corporate Tax Division**

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE**

810-3-28-.01 Partnership Returns

**INTENDED ACTION:** Amend rule

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to amend the above rule to conform to the federal due date for such partnership returns and to eliminate language regarding the computation of Alabama net partnership income. The computation language is outdated and will no longer reflect the way we compute Alabama partnership income beginning with form year 2016.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** A public hearing will be held at 2:00 p.m. on Thursday, October 6, 2016, Room 1203, First Floor, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/analysis/rules.cfm>.

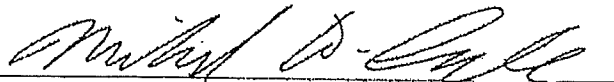
All interested parties may present their views in writing to the Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132 at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also appear at the hearing to present their views.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Thursday, October 6, 2016

**CONTACT PERSON AT AGENCY:**

Timothy Sanders  
Alabama Department of Revenue  
4131 Gordon Persons Building  
Montgomery, Alabama 36132  
(334) 242-1380



Michael D. Gamble, Secretary  
Alabama Department of Revenue

810-3-28-.01 Partnership Returns.

(1) (a) ~~Each subchapter K entity, and every single member limited liability company having income from property owned or business conducted in this state shall file Form 65, "Partnership Return of Income," on or before the fifteenth day of the fourth month following the close of the taxable year. All partnerships having "substantial nexus" from property owned or business conducted in this state shall file the Alabama Form 65 on or before the due date, including extension. All single member limited liability entities having "substantial nexus" from property owned or business conducted in this state shall file the appropriate Alabama income tax return. The appropriate income tax return will be determined based on the entity's classification for federal purposes, found in IRC Section 7701. Returns for both partnerships and single member limited liability entities, whether filing as a separate entity or as a disregarded entity, as a division of its owner, are required to be filed on or before the date the taxpayer's corresponding federal tax return is due. If no federal tax return is required, the due date is the date in which the taxpayer would be required to file if the federal return was required.~~

(b) ~~The entity will be granted an automatic five month extension of time for filing the Form 65. A business has "substantial nexus" in Alabama when factor presence thresholds are met or exceed the thresholds established pursuant to Section 40-18-31.2, Code of Alabama 1975 and rules promulgated thereunder.~~

(c) Any extension of time to file an income tax return allowed for by federal income tax purposes will be recognized for Alabama purposes.

1. ~~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. A taxpayer is not required to file a separate extension to extend the filing deadline in Alabama.~~

2. ~~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. Taxpayers must meet all federal requirements for additional extensions.~~

~~(c)~~(d) An Alabama Schedule K-1 must be prepared for each person who held an interest in the subchapter K entity or single member limited liability company during the taxable year showing each partner's or member's name, address, social security or federal employers identification number, distributive share of the income (or loss) of the partnership and distributive share of charitable contributions made by the partnership.

1. For an Alabama resident partner or member, the K-1 for tax years beginning after December 31, 1996 and before January 1, 2011 shall include:

(i) For multi-state subchapter K entities doing business within and without the State of Alabama, only that income which is required to be allocated and apportioned to Alabama under the rules of Section 40-18-22. (If the multi-state subchapter K entity is not doing business in Alabama, no income is reportable to Alabama from that subchapter K entity.)

(ii) For a subchapter K entity doing business in only one state, whether the state of Alabama or another state, the distributive share of the entire income from that subchapter K entity.

2. For a nonresident partner or member, the K-1 shall include:

(i) For multi-state subchapter K entities doing business within and without the State of Alabama, only that income which is required to be allocated and apportioned to Alabama under the rules of Section 40-18-22.

(ii) For a subchapter K entity doing business in Alabama exclusively, the distributive share of the entire income from that subchapter K entity.

3. For an Alabama resident partner or member, the K-1 for tax years beginning after December 31, 2010 shall include amounts determined in accordance with subchapter K of the Internal Revenue Code, 26 U.S.C. §§ 701-761, Code of Ala. 1975, Sections §§40-18-24 and 40-18-4, Code of Alabama 1975, and without regard to 1. above. Likewise, Alabama resident partners or members of sub-chapter K entities are entitled to a credit computed in accordance with Code of Ala. 1975 § Section 40-18-21(a), Code of Alabama 1975, for taxes paid by (or on behalf of) the resident partner or member (including composite return and withholding payments) to other states where the sub-chapter K entity does business and is treated as a sub-chapter K entity.

~~(2)(a)(d) Form 65 is designed as a "cover sheet" to the federal Form 1065 "U.S. Partnership Return of Income". The computation of Alabama net partnership income on Form 65 begins with the federal ordinary income as shown on Form 1065. Adjustments must be made to conform federal income to the Alabama law for any items of income or expense, except contributions, which are passed directly through to the partners or members on the federal return and for items which are treated differently under Alabama law than federal law. The computation of Alabama ordinary income is determined by combining the items necessary to arrive at federal ordinary business income (loss) and making adjustments for items which are treated differently under Alabama law than the treatment under federal law.~~ These adjustments include, but are not limited to, the following:

~~1. long term capital gains (or losses) which are passed through directly to partners or members on the federal return are added to federal ordinary income, and~~

~~2. additional depreciation is allowed for assets which have a reduced federal basis due to investment tax credits or which have been expensed under I.R.C. § 179, and~~

~~3. depletion on oil and gas properties which is passed through directly to the partners or members in the federal return are subtracted from federal ordinary income using the rates allowed by §§ 40-18-16 or 40-18-15, and~~

~~4. percentage depletion in excess of cost on minerals other than oil and gas are added to federal ordinary income.~~

~~5. interest expense passed through directly to partners or members on Form 1065 is subtracted from federal ordinary income.~~

~~6. any other items of income, expense or deduction which are passed directly through to partners or members and not included in federal ordinary income.~~

1. Related members interest or intangible expenses and costs required to be added back if such expenses were deducted in calculating federal ordinary business income, pursuant to Section 40-18-25(b), Code of Alabama 1975

2. Other reconciling items required to be added back to federal ordinary business income to arrive at Alabama ordinary income, like Federal depreciation that may be in excess of the allowable depreciation for Alabama purposes. Amounts like these would be required to be added back in determining Alabama ordinary income under Section 40-18-35, Code of Alabama 1975.

3. Expenses not deductible in computing federal ordinary business income due to a taxpayer's election to claim a federal tax credit would be allowed as a deduction on the Alabama return in computing Alabama ordinary income.

4. Other reconciling items allowed to be deducted from federal ordinary business income to arrive at Alabama ordinary income.

~~(e) (b)~~ Federal Form 1065 and accompanying schedules must be attached to Form 65 when filed.

~~(f) (c)~~ The return must be signed by one partner or member and the person who prepared the return, and must contain a printed declaration that it is made under the penalties of perjury.

~~(2) See Reg. 810-3-24-.01, et seq., for computation of distributive income for subchapter K entity or single member limited liability company and the distributive share for each partner or member.~~

~~(3) Partnership returns shall be made on or before the fifteenth day of the fourth month following the close of the calendar or fiscal year, whichever taxable year is used by the subchapter K entity or single member limited liability company.~~

~~(4) With the exception noted below, the amendments to this regulation which were filed with the Legislative Reference Service on March 21, 2011 are effective for tax years beginning after December 31, 2010. The Department of Revenue will not enforce these regulatory changes for tax periods ending prior to January 1, 2011, or for gains associated with the taxable disposition of all or any portion of a taxpayer's assets or Subchapter K interests where the parties to the transaction can document that negotiations began prior to January 1, 2011 and continued with regularity until the transaction was completed in 2011. These amendments are consistent with the Administrative Law Division's Ruling, *McNees v. Department of Revenue*, DOCKET NO. 06-523, entered December 12, 2006.~~

~~(5) The Department will not rely on the amendments to this regulation which were filed with the Legislative Reference Service on March 21, 2011 for tax periods beginning after December 31, 2011. For tax periods beginning after December 31, 2011, the Department will issue new regulatory language addressing the issues to which these amendments pertain.~~

Author: Nancy Butler, Angela Cumbie, Holly Coon Ann F. Winborne, CPA, Individual and Corporate Tax Division, and Joe Garrett, ~~Tax Policy Administrator.~~

Authority: Sections 40-2A-7(a)(5) and 40-18-28, Code of Alabama 1975.

History: Adopted: September 30, 1982.

Amended: February 8, 1989, filed March 20, 1989.

Amended: Filed March 26, 1998, effective April 30, 1998.

Amended: Filed November 26, 2008, effective December 31, 2008.

Amended: Filed August 3, 2011, effective September 7, 2011.