

**TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION**

Control 810 Department or Agency REVENUE

Rule Nos. 810-3-24.1-.01

Rule Title: Composite Returns of Subchapter K Entities

New;  Amend;  Repeal;  Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

\*\*\*\*\*

Does the proposed rule have any economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

\*\*\*\*\*

**Certification of Authorized Official**

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer 

Date 3/20/15

APA-6  
10/96

**ECONOMIC IMPACT STATEMENT  
FOR APA RULE  
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-3-24.1-.01

Rule Title: Composite Returns of Subchapter K Entities

           New            Amend       X       Repeal            Adopt by Reference

NO  
 YES

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:
  
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
  
3. EFFECT OF THIS RULE ON COMPETITION:
  
4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
  
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:
  
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:
  
7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:
  
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND

**BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE  
BENEFITS AND BURDEN COMPARISON:**

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
11. OTHER COMMENTS:

APA-2  
11/96

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

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE**

810-3-75-.01                      Withholding Statement Furnished Employees

**INTENDED ACTION:**        Amend rule

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to amend the above rule to remove obsolete language and add FEIN requirement on employee wage and tax statement.

**RULE NO. & TITLE**

810-3-75-.04                      Voluntary Withholding

**INTENDED ACTION:**        Amend rule

**SUBSTANCE OF PROPOSED ACTION:** The department proposes amend the above rule to remove obsolete verbiage and to provide that the new due date for the W2's is January rather than February.

**RULE NO. & TITLE**

810-3-75-.05                      Third Party Reporting Requirements

**INTENDED ACTION:**        Amend rule

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to amend the above rule to provide that the new due date for W2's is January rather than February.

**RULE NO. & TITLE**

810-3-78-.01                      Credit for Tax Withheld

**INTENDED ACTION:**        Amend rule

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to amend the above rule to remove obsolete references to Form A-2 and Form 99.

**RULE NO. & TITLE**

810-3-74-.01                      Withholding Returns and Payments

**INTENDED ACTION:**        Amend rule

**SUBSTANCE OF PROPOSED ACTION:** The purpose of this action is to clarify that employers making payments of \$750 or more to the Department must do so electronically and that employers electronically filing must submit their W2's electronically to the Department as well.

**RULE NO. & TITLE**

810-3-75-.03                      Annual Returns of Withholding Tax Information

**INTENDED ACTION:**        Amend rule

**SUBSTANCE OF PROPOSED ACTION:** The purpose of this action is to require employers who currently file withholding tax returns and payments electronically to also file their W2's electronically.

**RULE NO. & TITLE**

810-3-24.1-.01                    Composite Returns of Subchapter K Entities

**INTENDED ACTION:**        Repeal rule

**SUBSTANCE OF PROPOSED ACTION:** The purpose of this action is to repeal the above rule due to the fact that it was superseded by Rule 810-3-24.2-.01. The former rule was applicable when the filing of a composite return was optional for partnerships with Nonresident partners, and is no longer applicable because of law changes. The latter rule correctly reflects today's law regarding composite returns/payments. As outlined in Ala. Code Section 40-18-24.2, partnerships with nonresident partners are required to file a composite return and remit payment on the income that is distributed to such partners.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** A public hearing will be held at **1:30 p.m. on Wednesday, May 13, 2015, 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://revenue.alabama.gov/analysis/upcoming-rule-hearings.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 during the thirty-five (35) day period following publication of the notice or by appearing at the hearing.

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

Wednesday, May 13, 2015

**CONTACT PERSON AT AGENCY:**

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



---

Michael D. Gamble, Secretary  
Alabama Department of Revenue

0956APC.INT

810-3-24.1-.01 Composite Returns of Subchapter K Entities. (REPEALED)

(1) Definitions:

(a) Subchapter K Entity. The meaning ascribed by Section 40-18-1(17).

(b) Composite Return. An information return similar to the federal Schedule K-1 which contains information concerning one or more owner's distributive share of income, deductions, and losses.

(c) Composite payment. A payment of estimated income tax by the subchapter K entity on behalf of the owners described in the accompanying composite return. The payment shall be considered a loan from the entity to the owner, payable on demand, bearing interest from the date of the loan to the date of its payment at the minimum applicable federal rate with respect to demand instruments as provided under 26 U.S.C. § 7872.

(d) Consent Agreement. An agreement signed by a nonresident owner that subjects the owner to Alabama jurisdiction for Alabama tax purposes.

(2) Procedure:

(a) A subchapter K entity may file a composite return and make composite payments on behalf of its owners if there are one or more nonresident owners at any time during the taxable year or if required to do so by federal law for all owners.

(b) The composite return may be filed on behalf of some or all nonresident owners.

(c) The composite return must be filed on behalf of nonresident owners for whom a consent agreement has not been filed.

(d) Resident owners may be included in a composite return if so required by federal law.

(e) Subchapter K entities which choose to file composite returns or which are required to file composite returns must do so on the form prescribed by the Department. Composite payments must be made on the form prescribed by the Department.

(f) In computing the amount of the composite payment, the Subchapter K entity shall multiply each owner's distributive share of income attributed to Alabama by the maximum tax rate for the owner.

1. Each nonresident owner's distributive share of income is the sum of the owner's deemed distributive share of the Alabama portion of:

(i) Separately stated income, loss, deduction, or expense of the subchapter K entity; provided that no deduction will be allowed for items of loss, deduction, or expense which are subject to other limitations on the Alabama individual income tax return Form 40NR - including federal income tax, contributions, investment interest expense, and casualty losses; and

(ii) Nonseparately stated income, loss, deduction, or expense of the subchapter K entity.

2. In computing the amount of the composite payment, a loss for one nonresident owner may not be used to offset income or gain of any other nonresident owner.

3. In computing the amount of the composite payment, a net operating loss carryforward may not be used to offset income or gain.

(3) Composite returns and composite payments are due on the fifteenth day of the fourth month following the close of the subchapter K entity's taxable year.

(a) 1. The entity will be granted an automatic six month extension of time for filing the composite return.

2. 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. 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.

3. An extension of time granted to file the return pursuant to this section is not an extension of time for payment of tax. The amount of tax due must be paid on or before the due date of the return without regard to the extension to file the composite return.

(i) Payment of the tax shall be made via the paper voucher used for the Business Income Tax Payment or by Electronic Funds Transfer.



(ii) However, payment must be made via Electronic Funds Transfer if the payment exceeds \$750. Please refer to Regulations 810-13-1-.01 and 810-13-1-.03.

4. Underpayment of tax penalties plus any applicable interest will be imposed as provided by law without regard to any extension granted under this section.

(b) Amended composite returns for overpayment or additional tax due for a taxable year will be accepted up to the extended due date for filing the Alabama Form 65 return for the same taxable year.

(c) Refund requests or additional payments made after the extended due date for filing the return must be made on the Alabama income tax return of the nonresident owner(s).

(4) The subchapter K entity is required to file a consent agreement for each nonresident owner that does not participate in the composite filing.

(a) A consent agreement for each nonresident owner shall be due at the same time as the first subchapter K return is due.

(b) If, during any subsequent taxable year, the subchapter K entity has any nonresident owners for whom a consent agreement has not previously been filed, then a consent agreement is due for those nonresident owners at the same time as the annual return is due for that taxable year.

(c) The subchapter K entity shall include each owner for whom a consent agreement is not timely filed in a composite return and make a composite payment as specified in paragraphs (2) & (3) above.

(d) The consent agreement must be notarized or otherwise authenticated before some officer authorized to administer oaths and must contain the following information:

1. The name, address, and social security number of the owner,
2. A recitation of the agreement to report and pay tax to Alabama on the owner's share of the subchapter K entity's income in exchange for the benefits of allowing the entity to file an Alabama Form 65, and
3. An agreement appointing the Alabama resident agent of the entity and any agent or officer of the entity present in Alabama as agent of the owner for service of process in any matter before the Department relating to the income tax returns of the owner and/or the entity.

(e) If the ownership interest is held by multiple owners (such as joint owners), each owner must execute a separate consent agreement.

(f) Each nonresident owner may designate any other person or firm present in Alabama as agent for service of process, in addition to the agents required to be appointed in subparagraph (d) 3, above.

(g) Any nonresident owner may, by power-of-attorney, authorize anyone to execute the required consent agreement on behalf of the owner. Such power-of-attorney, to be effective, must be filed with the Department on or before the due date (with extensions) of the first return in which a consent agreement is being executed under the power-of-attorney. The power-of-attorney need be filed only once, and remains valid until the expiration date specified therein or until notice of revocation, cancellation, or modification is received by the Department. Such power-of-attorney may be in any form sufficient to indicate the intent of the parties, and must be notarized or otherwise authenticated before some officer authorized to administer oaths.

(h) 1. A nonresident is any person who is a legal resident of any state other than Alabama, or of any territory, possession, district, or foreign country.

2. The status as a resident or nonresident will be determined as of the date of any distribution or deemed distribution.

Authors: Nancy Butler; Ann F. Winborne, CPA; Ed Cutter, CPA; Richard H. Henninger; and Michael E. Mason, CPA

Authority: §§ 40-2A-7(a)(5) and 40-18-24.1, Code of Alabama 1975

History: New rule: Filed November 26, 2008, effective December 31, 2008.