

APA-1

Transmittal Sheet For
Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-3-24.2-.01

Rule Title: Composite Returns of Pass-through Entities

New; Amended; Repealed; Adopt by Reference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 result from the absence of the proposed rule? N/A


Are all the 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 09/13/2016

APA-6
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-3-24.2-01

Rule Title: Composite Returns of Pass-through Entities

 New X Amend Repeal Adopt by Reference

- NO This rule has no economic impact.
 YES 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:

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

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-3-24.2-.01 Composite Returns of Pass-through Entities

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to outline instances in which subchapter K entities may be relieved from making a composite payment on behalf of its nonresident members. Additionally, the amended rule provides guidance regarding tiered structures and the composite payment, as well as the proper forms that must be submitted to properly obtain relief.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 2:00 p.m. on Wednesday, November 9, 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:

Wednesday, November 9, 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

810-3-24.2-.01 Composite Returns of Pass-through Entities.

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

(a) Subchapter K Entity. An entity meeting the definition contained in **§Section** 40-18-1, Code of Alabama 1975, which does not include a single member limited liability company.

(b) Composite Return. A return on a form prescribed by the Department which contains information concerning the distributive share of income for each of the nonresident members and which reports the amount of composite payment made on behalf of each nonresident member.

(c) Composite Payment. A payment of Alabama income tax made by the pass-through entity on behalf of its nonresident members; calculated on the nonresident member's distributive share of the pass-through entity's income, computed in accordance with **§Section** 40-18-24, Code of Alabama 1975, and paid in the manner prescribed by the Department.

(d) Pass-through Entity. A partnership or other entity classified as a Subchapter K entity under **§Section** 40-18-1, Code of Alabama 1975. Neither estates nor trusts, including business trusts, are included in this definition or are subject to **§Section** 40-18-24.2, Code of Alabama 1975, except in their capacity as a nonresident member of a pass-through entity or lower-tier pass-through entity.

(e) Affordable Rental Housing Development. A housing development operated in the form of a Subchapter K entity which has rents restricted pursuant to a federal, state or local government agency requirement, and includes without limitation one or more commonly-managed residential units, generally treated by the owner as comprising a single development, subject to a declaration of land use restrictive covenants or similar recorded written agreement, enforceable against the owner of such development or the property within the development by an agency or instrumentality of the United States, the State of Alabama, or a political subdivision of the State of Alabama, which restricts the rental rates of at least 20% of the residential units in such development or imposes income limits on a portion of the residents.

(2) Requirements for a Composite Return and a Composite Payment.

(a) Effective for taxable years beginning after December 31, 2008, a pass-through entity is required to file a composite return and make composite payments on behalf of its nonresident members if there are one or more nonresident members at any time during the taxable year.

1. Transition Rule. For tax years beginning after December 31, 2008 through December 31, 2009, a pass-through entity may elect, at the time of filing the composite

return, to reduce the required composite payment by the amount due on behalf of a nonresident member which makes its required Alabama income tax payments and which files its required Alabama income tax return for the tax year. If a nonresident member fails to make its required Alabama income tax payments or fails to file its Alabama income tax return for the tax year, the pass-through entity shall be liable for the portion of the composite payment due on the non-compliant member's distributive share of the pass-through entity's income. A pass-through entity electing to reduce the composite payment under this transition rule shall indicate "Composite Payment Reduction" in bold lettering, on the front of the tax return.

2. Documentation of any composite payment reduction, elected in accordance with 1 above, must be provided as an attachment to the applicable composite return. The required documentation for each such nonresident member shall include the name, federal tax identification number, distributive share of applicable income items, and any other information needed to reconcile the actual composite payment to the amount otherwise required to be made.

(b) The allocation and apportionment requirements established by the Multistate Tax Compact, codified in Chapter 27, Title 40, Code of Alabama 1975, and all rules pertaining to the Multistate Tax Compact are applicable to composite returns required to be filed by pass-through entities.

(c) In computing the amount of the composite payment, the pass-through entity shall apply the maximum tax rate provided in **§Section 40-18-5**, Code of Alabama 1975, to each nonresident member's distributive share of income, to include both separately stated income and nonseparately stated income (loss). The nonresident member's distributive share of separately stated expenses, deductions, and losses should not be considered in computing the amount of the composite payment. The nonresident member's distributive share of income shall be computed in accordance with **§Section 40-18-24**, Code of Alabama 1975.

(d) Tax-exempt Entities. A pass-through entity is not generally required to remit a composite payment on behalf of a nonresident member that is an entity exempt from Alabama income taxation, in accordance with **§Section 40-18-32**, Code of Alabama 1975. The pass-through entity is required to disclose the tax-exempt entity's name, taxpayer identification number and distributive share of income items on the composite return filed for the taxable year, as is required for all nonresident members. The amount of the composite payment due with respect to the tax-exempt entity would be zero, unless the income is considered unrelated business taxable income in accordance with 26 U.S.C. §512 or the income is otherwise specifically subject to the composite payment requirement of **§Section 40-18-24.2**, Code of Alabama 1975.

1. A tax-exempt entity may be excluded from the composite payment requirement by completion of Form NRC-EXEMPT. Form NRC-EXEMPT must be attached to the entity's return in which the exemption is being claimed.

(e) Certain Affordable Rental Housing Developments. Pass-through entities that are engaged solely in the business of operating one or more affordable rental housing developments are exempt from the composite payment requirements of **§Section** 40-18-24.2, Code of Alabama 1975, if making the composite payment would cause the pass-through entity to be in violation of a Federal or Alabama law, or a regulation, requirement, regulatory agreement or directive concerning the disbursement of funds, issued by the U.S. Department of Housing and Urban Development (HUD) or any other governmental agency having regulatory authority over the development; provided the pass-through entity files and maintains consent agreements signed by each of its nonresident owners, subjecting them to Alabama jurisdiction for income tax purposes, in a manner prescribed by the Department. Pass-through entities that wish to take advantage of this exemption must initially file a complete explanation as to why the exemption applies to the pass-through entity, and must annually certify, in a manner prescribed by the Department, that the exemption continues to apply. If any nonresident member fails to make its required Alabama income tax payments or fails to file its Alabama income tax return for a tax year, the Affordable Rental Housing Development will be liable for the portion of the composite payment due on the non-compliant member's distributive share of the entity's income. The Department may then notify the entity that it will no longer be exempt from the composite payment requirements, and if so notified, the Affordable Rental Housing Development must file composite returns and make composite payments for future periods.

(f) In computing the amount of the composite payment, a pass-through entity may not offset the income or gain of a nonresident member with the loss of another member.

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

(h) Composite returns and composite payments are due on the fifteenth day of the ~~fourth~~third month following the close of the pass-through entity's taxable year.

1. The entity is granted an automatic ~~five~~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 for the previous year. The request also must state that the entity has no delinquent liabilities owed to the Department.~~

32. An extension of time granted to file the composite 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 composite return.

(i) Payment of the tax shall be made in accordance with the payment procedures established by the Alabama Department of Revenue, which requires the use of electronic funds transfer for payments in excess of certain amounts.

(j) Penalties for underpayment of tax and applicable interest will be imposed as provided by Alabama income tax law.

(k) An amended composite return reporting an overpayment of tax or an additional tax due for a taxable year may be filed by the extended due date for filing the Alabama partnership income tax return for the same taxable year.

(l) No refund may be requested by a pass through entity after the extended due date for filing the composite return. Any refund after the extended due date must be requested on the Alabama income tax return of the nonresident member. Any additional composite payment determined to be due after the filing of the initial composite return shall be made by the pass-through entity.

(m) Every pass-through entity that is a member of another pass-through entity and is credited with a composite payment on a composite return must also file a composite return to properly report the composite payment.

(n) An annual composite return is due for a Qualified Investment Partnership (QIP), only if the QIP is required to remit a composite payment for one or more nonresident members.

(o) A publicly traded partnership as defined by 26 U.S.C. §7704(b) doing business in Alabama that is treated as a partnership for federal income tax purposes shall provide the Department with a list of the names of each of its owners or unitholders together with their addresses, taxpayer identification numbers, and each owner or unitholder's distributive share of Alabama source income during the tax year. The information shall be provided in lieu of the composite return in an electronic format that can be sorted and that is approved by the Department. A publicly traded partnership that fails to file a report timely with the Department is presumed to have established reasonable cause for the waiver of the failure to timely file penalty to the extent that the penalty assessed exceeds or would exceed \$500 per day of delinquency up to a maximum of \$25,000.

(p) Special situations and circumstances such as short years; changes in ownership; and, unforeseen taxpayer-specific complications resulting from the first year of implementing the new composite payment requirements may be addressed on a case-by-case basis. Requests for relief should be submitted to the Department describing the circumstances and type of relief sought **on Form PTE-R. All requests for relief on the Form PTE-R must be received at least 30 days before the original filing date for the composite return.**

1. Tiered Structure Indirect Owner Exception: A pass through entity may claim a composite payment exemption for an indirect owner (an owner of another pass through entity that is itself an owner of the pass through entity subject to the composite payment requirement) but only with the pre-approval of the Department. To request approval the pass through entity must submit a Form NRC-Exempt executed by the indirect owner along with Form PTE-R and documentation adequate to show the portion of the pass through entity's income flowing through to the indirect owner.

(g) Certain situations may provide additional exemptions from the composite payment without requiring pre-approval.

1. A pass through entity generally subject to the composite payment requirement may claim an exemption for the portion of the composite payment attributable to the following nonresident owners:

(i). Real Estate Investment Trusts that are not captive REITS as defined by Section 40-18-1(5), Code of Alabama 1975, and that has no Alabama sourced income as a result of the dividends paid deduction;

(ii). Nonresidents whose only Alabama sourced income is derived from a capital credit project and the nonresident's capital credit is expected to fully offset any potential tax liability pursuant to Section 810-2-7-.04(4)(f), Code of Alabama 1975.

(iii). Insurance companies that are subject to the Alabama premiums tax and are exempt from income tax as outlined in Section 40-18-32(5), Code of Alabama 1975.

(iv). A C-Corporation that has been in a loss position for the three most recent tax years and expects to be in a loss position for the current year.

2. To claim such exemption, the pass through entity shall include with its return Form NRC-EXEMPT executed by the nonresident owner.

3. Failure to attach form NRC-EXEMPT to the return shall cause the pass through entity to remit payment due as originally required.

4. All other exemption requests must be requested by utilizing Form PTE-R.

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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.