

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.

(b) The entity will be granted an automatic five month extension of time for filing the Form 65.

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.

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.

(c) 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, Alabama Code §§ 40-18-24 and 40-18-14 (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 Ala. Code § 40-18-21(a) (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.

(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. 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.

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

(f) 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.

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Code of Alabama 1975
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Amended April 24, 1989.
Amended: March 26, 1998, effective date April 30, 1998.
Amended: Proposal to amend rule filed February 18, 2005 – rule was not certified.
Amended: Filed November 26, 2008, effective December 31, 2008.
Amended: Filed August 3, 2011, effective September 7, 2011.