

Qualified Investment Partnerships (QIP) and the Rebuttable Presumption Concerning Corporate Ownership of Fifty Percent or More

Interim Guidance – Written Applications and Requests for Review

Issued by:
Alabama Department of Revenue
Individual and Corporate Tax Division
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I. Rebuttable Presumption of Tax Abusiveness. Alabama Income Tax Regulation Number 810-3-24.2-.02, Qualified Investment Partnerships, as currently proposed, generally states that there is a rebuttable presumption that an entity is disqualified as a QIP, as tax abusive, when 50 percent or more of its ownership interest or voting interest is owned or controlled, directly or indirectly, by a corporation or a controlled group of corporations.

II. Written Applications or Requests for Review. The proposed amendment to the regulation indicates that the entity may submit written applications or requests to the Commissioner of Revenue asking that the presumption of tax abusiveness not be applied to the particular entity's situation for the applicable tax year.

III. QIP Certification. Alabama Income Tax Regulation Number 810-3-24.2-.02, Qualified Investment Partnerships, provides the proper form and due date for filing the annual QIP certification. The QIP certification is required by Section 40-18-24.2, Code of Alabama 1975.

IV. Submission of the Written Application or Request for Review Prior to Filing the Annual Income Tax Return and Annual QIP Certification. The written applications or requests concerning the rebuttable presumption of tax abuse may be submitted to the Commissioner of Revenue, in advance of filing the QIP certification, by mailing the applications or requests to the following address:

Mr. Tim Russell, Commissioner of Revenue
Alabama Department of Revenue
Attention: Tax Policy Administrator
Room 4112
50 North Ripley Street
Montgomery, AL 36132

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V. Submission of Written Applications or Requests for Review with the Annual Income Tax Return and Annual QIP Certification. Written applications or requests for review concerning the rebuttable presumption of abuse may be submitted to the Commissioner of Revenue as an attachment to the Alabama Schedule QIP-C. Alabama Schedule QIP-C is the annual QIP certification that must be filed by the entity with the Alabama Form 65 return for the applicable tax year in accordance with Alabama Income Tax Regulation Number 810-3-24.2-.02, Qualified Investment Partnerships. Please boldly mark the face of the return indicating that a written application or request for review is attached to the return. Please firmly affix to the QIP certification the written application or request along with any related documents.

Forms for future tax years will have checkbox-type indicators for preparers to identify those Alabama Form 65 returns filed by an entity which include both a QIP certification and a written application or request for review.

If the Alabama Form 65 return filed is an electronic return, please include the written application or request for review in the same binary attachment as the Schedule QIP. Additional information concerning electronically filed Alabama Form 65 returns is available on the ADOR web site (www.revenue.alabama.gov).

VI. Refuting or Rebutting the Presumption of Abuse. The proposed amendment to Alabama Income Tax Regulation Number 810-3-24.2-.02 provides that if the entity establishes that the distributive shares of the income attributed to and owned by the corporate member are being reported to Alabama for income tax purposes by each of the owners having such interests, the presumption of abuse will have been rebutted.

In order to establish that the income attributable to corporate ownership is fully reported to Alabama for income tax purposes, please provide the following with the Alabama Form 65 return as an attachment to the QIP certification for each tax year:

1. Identify the corporations or controlled group of corporations that had a direct or indirect ownership interest in the entity, identify the ownership interest, and identify how the income from the corporations or controlled group of corporations was reported as income on an Alabama income tax return.
2. Identify the corporations or controlled group of corporations that had a direct or indirect voting interest in the entity, identify the voting interest, and identify how the income from the corporations or controlled group of corporations was reported as income on an Alabama income tax return.

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VI. Rebutting or Refuting the Presumption of Abuse (continued)

3. Identify the corporations or controlled group of corporations that had direct or indirect control over the entity, identify the control, and identify how the income from the corporations or controlled group of corporations was reported as income on an Alabama income tax return.

4. For each of the items provided in accordance with paragraphs 1 through 3, above, please identify for each of the prior three tax years: the amount of income reported on the Alabama income tax return; the taxpayer's name as shown on the Alabama income tax return; and, the taxpayer's identification number as shown on the Alabama income tax return. If any income from the corporations or controlled group of corporations was reported to Alabama through a subchapter K entity, a subchapter S entity, a REIT, or a trust, please clearly explain how the income was reported to Alabama.