

810-3-160-.01 Qualification Requirements for S Corporations.

(1) (a) For tax years beginning before January 1, 1990, to qualify as an Alabama S corporation, the criteria to be met for each year of the election are -

1. a valid election must be in effect under I.R.C. §1362, and

2. all non-resident shareholders who held any stock interest in the electing corporation during any part of the tax year of the corporation must execute a consent agreement to report their share of the Alabama S corporation Alabama income to this State and pay any tax due thereon.

(2) (a) The election will be made by filing Form 20S, together with the required consent agreements of all non-resident shareholders (if any), and any other required attachments; not later than the due date (with extensions) of the corporation return.

(b) Once made, the election to be an Alabama S corporation for a taxable year may not be revoked or cancelled.

(c) An "Alabama C corporation" means any corporation other than an Alabama S corporation.

(3) (a) If the corporation ceases to qualify under I.R.C. §1362, part-year S and C returns will be required as provided in I.R.C. §1362(e). Such returns will be due not later than the fifteenth day of the third month after the close of the corporation's tax year, plus any extensions of time to file that may be granted.

(b) An "S return" means Form 20S to be filed by qualified Alabama S corporations. A "C return" means Form 20C for domestic and foreign corporations.

(4) (a) The consent agreement (Schedule NRA) to be executed by all non-resident shareholders shall contain the following information:

1. the name, address and social security number of the shareholder, and

2. a recitation of the agreement to report and pay tax to Alabama on the shareholder's share of the Alabama S corporation income in exchange for the benefits of allowing the corporation to file an Alabama S Corporation return, and

3. an agreement appointing the Alabama resident agent of the corporation and any agent or officer of the corporation present in Alabama as agent of the shareholder for service of process in any matter before the Department relating to the income tax returns of the shareholder and/or the corporation, and

4. be notarized or otherwise authenticated before some officer authorized to administer oaths.

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

(c) Each non-resident shareholder 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 (a) 3. above.

(d) Any non-resident shareholder may, by power-of-attorney, authorize anyone to execute the required consent agreement on behalf of the shareholder. 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 authenticated in the manner prescribed in subparagraph (a)4. above.

(e) 1. A non-resident 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 non-resident will be determined as of the date of any distribution or deemed distribution.

(5) (a) During all years (beginning on or after January 1, 1985 and before January 1, 1990) for which the corporation qualifies as an Alabama S corporation, the corporation will not be subject to income tax as a corporation under §40-18-31. There are no provisions of Alabama law similar to Federal law (such as I.R.C. § 1374) imposing an income tax on the corporation for certain types of non-qualifying income or for excess investment income.

(b) The corporation will file a return on Form 20S for each year it qualifies as an Alabama S corporation. The S return will be due at the same time as other Alabama corporation income tax returns are due. An Alabama Schedule K-1 must be attached for each shareholder who held any stock interest in the Alabama S corporation during the taxable year, showing the shareholder's legal place of residence, and detailing the shareholder's pro-rata share of the corporation's separately stated and non-separately stated income and deductions attributed to Alabama (see Reg. 810-3-31-.02. for attribution of income to Alabama). The provisions of Reg. 810-3-39-.02 relating to extensions of time to file corporation returns are equally applicable to an Alabama S corporation.

(6) For tax years beginning after December 31, 1989 and before January 1, 1997, an "Alabama S corporation" means any corporation doing business or qualified to do business in Alabama which has in effect a valid election under I.R.C. §1362. (For tax years beginning after December 31, 1989 see Reg. 810-3-176-.01 regarding composite returns for non-residents).

(7) (a) For tax years beginning after December 31, 1996, an Alabama S corporation means:

1. any corporation which has a valid election under I.R.C. §1362 and the income, loss, deductions or credits or items of income, loss, deductions or credits of which affect the liability of any shareholder of the corporation for the income tax imposed by this chapter, either by reason of business done in Alabama by the corporation or the ownership of shares by an Alabama resident; or,

2. any corporation which has a valid election under I.R.C. §1361(b)(3) to be treated as a qualified subchapter S subsidiary and all of its stock is owned by an Alabama S corporation.

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