

810-3-162-.01 Income To Be Reported By Shareholders.

(1)(a) For taxpayers who are shareholders of an Alabama S corporation with a tax year which began after December 31, 1996 and before January 1, 2011, each shareholder of an Alabama S corporation shall include in his individual Alabama income tax return each year his pro rata share of the:

1. separately stated items of income, loss, deduction or credit attributed to Alabama by the Alabama S corporation for the corporation's taxable year which ends with or during the individual's tax year; and

2. nonseparately stated items of income, loss, deduction or credit attributed to Alabama by the Alabama S corporation for the corporation's taxable year which ends with or during the individual's tax year.

(b) For taxpayers who are shareholders of an Alabama S corporation with a tax year which began after December 31, 2010 -

1. Each resident shareholder shall include in his individual Alabama income tax return each year his pro rata share of the:

(i) separately stated items of income, loss, deduction or credit of the Alabama S corporation for the corporation's taxable year which ends with or during the individual's tax year;

(ii) nonseparately stated items of income, loss, deduction or credit of the Alabama S corporation for the corporation's taxable year which ends with or during the individual's tax year; and

(iii) the Alabama resident's inclusion of both the separately stated and nonseparately stated items shall be determined consistently with Code of Ala. 1975, §§40-18-162 and 40-18-14 and without regard to (a) above.

2. Each nonresident shareholder shall include in his individual Alabama income tax return each year his pro rata share of the:

(i) separately stated items of income, loss, deduction or credit attributed to Alabama by the Alabama S corporation for the corporation's taxable year which ends with or during the individual's tax year.

(ii) nonseparately stated items of income, loss, deduction or credit attributed to Alabama by the Alabama S

corporation for the corporation's taxable year which ends with or during the individual's tax year.

(2) Any item included in the shareholder's pro rata share shall retain the same character as if received directly by the shareholder from the source. For example, the shareholder's pro rata share of interest income earned by the Alabama S corporation from United States government obligations would be exempt to the shareholder as if received directly by that shareholder from the U.S. Government.

(3) If the sum of the separately stated and nonseparately stated items of income, loss and deduction is a net loss attributed to Alabama, that loss may be deducted on the individual return of the shareholder to the extent permitted below.

(a) The net loss to be deducted on the return may not exceed the shareholder's Alabama adjusted basis in the stock of the Alabama S corporation, plus the shareholder's Alabama adjusted basis in any indebtedness of the Alabama S corporation to the shareholder.

1. For each year, the limitation is the Alabama adjusted basis of the shareholder's stock as determined under Reg. 810-3-164-.01(1), plus the Alabama adjusted basis of any indebtedness due the shareholder as determined under Reg. 810-3-164-.01(2).

2. Any loss in excess of the Alabama adjusted basis of the stock and indebtedness may be carried forward to the next succeeding year.

3. The Alabama adjusted basis of the stock and/or any indebtedness due the taxpayer will not be less than zero.

(4) For taxpayers who are shareholders of an Alabama S corporation with a tax year which began after December 31, 1996 and before January 1, 2011 each shareholder shall include in gross income their deemed distributive share of the income or loss of the Alabama S corporation apportioned and allocated to Alabama. Therefore, no income from sources without Alabama is included and no credit or deduction is allowable to the shareholder or the Alabama S corporation for income taxes paid by the shareholder or the corporation to any other state, local or foreign government in connection with such income.

(5) For taxpayers who are shareholders of an Alabama S corporation with a tax year which began after December 31, 2010 -

(a) resident shareholders include in gross income their deemed distributive share of the entire income or loss of the Alabama S corporation. Therefore, resident shareholders are

allowed a credit, computed in accordance with Code of Ala. 1975, §40-18-21(a), for income taxes paid by or on behalf of the shareholder (including composite return and withholding payments) to any other state in which the corporation is treated as an S corporation.

(b) nonresident shareholders include in gross income their deemed distributive share of the income or loss of the Alabama S corporation apportioned and allocated to Alabama. Therefore, no income from sources without Alabama is included and no credit is allowable to the nonresident shareholder for income taxes paid by the shareholder to any other state in connection with such income.

(6) 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.

(7) 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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