

810-3-39-.03 Consolidated Filing.

(1) Making the Election. The election is made by the common parent of the Alabama affiliated group properly completing and filing Form 20C-CRE (Election to File Consolidated Corporate Income Tax Return), Form 20C-AS (Affiliations Schedule), and the Alabama consolidated return, Form 20C, with the annual fee by the due date (including extensions). If the election is not filed timely with payment of the annual fee, the election is invalid.

(2) Liability. Each corporation included in the Alabama consolidated return will be jointly and severally liable for the Alabama income tax liability of the Alabama affiliated group. If a corporation is a member of the Alabama affiliated group for only part of the tax year, then the corporation will be liable for only the portion of the Alabama consolidated tax liability attributed to that portion of the year that the corporation was a member of the Alabama affiliated group prorated on a daily basis. The tax liability of the Alabama affiliated group will be the Alabama tax rate specified in § 40-18-31 applied to the taxable income of the Alabama affiliated group.

(a) Part-year members. If an eligible corporation becomes a member of an Alabama affiliated group after the beginning of the Alabama consolidated return year or ceases to be a member of the Alabama affiliated group during the consolidated return year, two tax returns will be due for that taxable year. The Alabama consolidated return shall include amounts attributable to such corporation for the part of the year in which it was a member of the Alabama affiliated group. A separate return shall be filed and include (or if a member of a different Alabama affiliated group, such group's Alabama consolidated return shall include) amounts attributable to such corporation for the remainder of the taxable year. The method used to determine the federal taxable income of that member will be used to attribute amounts of taxable income or loss, modifications, business income or loss, apportionment factors, nonbusiness or partnership income or loss, and credits to the different portions of the taxable year.

(b) Ineligible members. If a part-year member is a taxpayer that is ineligible to be a member of an Alabama affiliated group it shall file a separate tax return for the respective period(s) using the accounting method used in determining federal taxable income of such member.

(c) Liability of corporation after withdrawal. If a corporation has ceased to be a member of an Alabama affiliated group and if such cessation resulted from a bona fide sale or exchange of its stock for fair value and occurred prior to the date upon which any deficiency is assessed, the Commissioner may, if the Department determines that the assessment or collection of the balance of the deficiency will not be jeopardized, make assessment and collection of such deficiency from such former member in an amount not exceeding the portion of such deficiency which the Commissioner may determine to be allocable to it. If the Commissioner makes assessment and collection of any part of a deficiency from such former member, then

for purposes of any credit or refund of the amount collected from such former member, the agency of the common parent will not apply.

(d) Effect of intercompany agreements. No agreement entered into by one or more members of the Alabama affiliated group with any other member of the group or with any other person will in any case have the effect of reducing the liability prescribed pursuant to § 40-18-39.

(3) Consolidated estimated tax.

(a) Generally. If an Alabama affiliated group files an Alabama consolidated return for two consecutive taxable years, it must make payments of estimated tax on a consolidated basis for each subsequent taxable year, until such time as separate returns are properly filed. Until such time, the Alabama affiliated group is treated as a single corporation for purposes of § 40-18-82 (relating to payment of estimated tax by corporations). If separate returns are filed by the members of an Alabama affiliated group for a taxable year, the amount of any estimated tax payments made with respect to a consolidated payment of estimated tax for such year will be credited against the separate tax liabilities of the members in any manner designated by the common parent which is reasonably satisfactory to the Department. For example, the manner of allocation will be satisfactory to the Department if it does not jeopardize the collection of any income tax liability.

(b) First two consolidated return years. For the first two years for which an Alabama affiliated group files a federal and a Alabama consolidated return, it may make payments of estimated tax on either a consolidated or separate basis. If a consolidated return is filed for such year, the amount of any estimated tax payments made for such year by any member will be credited against the tax liability of the Alabama affiliated group. The amount of any separate estimated tax payments made for such year will be credited against the combined income tax liability for the Alabama affiliated group.

(c) Example. Corporations P and S-1 file a federal and an Alabama consolidated return for the first time for calendar year 1999. Corporations P and S-1 also file Alabama consolidated returns for calendar years 2000 and 2001. For calendar years 1999 and 2000, Corporations P and S-1 may make payments of estimated Alabama income tax on either a separate or consolidated basis. For calendar year 2001, however, the Alabama affiliated group must pay its estimated tax on a consolidated basis.

(4) Records. In accordance with § 40-2A-7, taxpayers must maintain records to allow the Department to determine the correct amount of tax including support for deviations from federal to Alabama income, gain computations, elimination entries, etc.

(5) Federal statutes. For interpretation of federal statutes adopted by the Alabama Legislature, see Rule 810-3-1.1-.01, Operating Rules.

(6) Effective date. This rule is effective for tax periods beginning after December 31, 1998.

Author: Joe Garrett, Cathy McCary, Melody Moncrief, and Michael Mason, CPA
Authority: §§ 40-2A-7(a)(5) and 40-18-39, Code of Alabama 1975.
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