

Issues Concerning the Preparation of the 2010 Alabama S Corporation Income Tax Return

Qualifying Employers Deduction for Employee Health Insurance.

The Alabama Legislature passed Act Number 2008-559 during the 2008 legislative session. The new law allows qualifying employers to deduct fifty percent (50%) of the amount paid as health insurance premiums on qualifying employees in connection with an employer-provided health insurance plan.

Qualifying employers are defined in the law as employers with less than 25 employees. Qualifying employees are defined in the law as those employees that are Alabama residents, earn no more than \$50,000 of wages, and report no more than \$75,000 of Alabama Adjusted Gross Income (\$150,000 if married filing jointly). The new deduction should be claimed on the Alabama S corporation income tax return on Schedule K, Line 10.

See §40-18-15.3, *Code of Alabama 1975*, for additional information. Alabama Department of Revenue Regulation Number 810-3-15.3-.01, Deductions for Small Business Health Insurance Premiums, is available on the Department's website.

Decoupling from the Federal Depreciation and Section 179 Expense Deduction Rules.

The Alabama Legislature decoupled Alabama Income Tax Law from the bonus depreciation and additional Section 179 expense deductions for the Federal Economic Stimulus Act of 2008. In tax years subsequent to TY 2008, taxpayers will be allowed a deduction based on the amount of Alabama-allowed depreciation on Schedule A, Line 8. If in a subsequent tax year the qualifying property is disposed of and the item is not fully depreciated for both federal and Alabama income tax purposes, the federal and Alabama tax basis for the qualifying property will differ. As a result, the federal gain or loss resulting from the disposition will differ. This amount is also reported on Schedule A, Line 8.

General Instructions

REQUIRED ATTACHMENTS. To be considered a complete return and not subject to treatment as a delinquent return due to improper preparation, the following must be attached:

1. A complete copy of Federal Form 1120S including all Federal K-1s, statements, and attachments. Voluminous schedules may be omitted; however, a list of all omitted schedules must be attached and provided if requested.
2. Completed Alabama Schedule K-1 for each person or tax entity that was a shareholder at any time during the taxable year.

INTERNET AVAILABILITY OF LAWS, REGULATIONS, AND FORMS.

The Alabama Department of Revenue's website (www.revenue.alabama.gov) has additional information concerning the Alabama income tax laws and regulations that apply to Alabama S corporations. Current and prior year forms and instructions, as well as frequently asked questions, are also available on the website.

ALABAMA S CORPORATIONS. The income tax computation and reporting requirements for Alabama S corporations are based on federal S corporation requirements. Section 40-18-160(b), *Code of Alabama 1975*, establishes the requirement for an Alabama S corporation. The section states:

"...an Alabama S corporation" is a corporation:

- (1) With respect to which an election under 26 U.S.C. §1362 is in effect; or
- (2)a. With respect to which there is in effect an election under 26 U.S.C. §1361(b)(3) to treat such corporation as a qualified subchapter S subsidiary; and

b. All the stock of which is owned by an S corporation qualifying as an "Alabama S corporation" under subdivision (b)(1).

No corporation shall be an Alabama S corporation for any portion of a tax-

able year of the corporation during which an election under 26 U.S.C. §1362 or §1361(b)(3), whichever is applicable, is not in effect for federal income tax purposes. No corporation shall be an Alabama S corporation if it is a financial institution, as defined in Section 40-16-1..."

Qualified Subchapter S Subsidiaries. Alabama income tax law also provides for qualified subchapter S subsidiaries in Section 40-18-160(d), which states: "... (d) With respect to a qualified subchapter S subsidiary for which there is in effect an election under 26 U.S.C. §1361 (b)(3), all of its assets, liabilities, and items of income, deductions, and credit shall be treated as assets, liabilities, and such items, as the case may be, of the Alabama S corporation owning the stock of the qualified subchapter S subsidiary..."

LIABILITY FOR FILING RETURNS. Alabama Form 20S is to be used only by corporations doing business in Alabama that have elected to be treated as an S corporation for federal income tax purposes. For Alabama S corporation qualification requirements and for the requirements for computing Alabama S corporation income, loss, deductions, and credits, see Alabama Department of Revenue regulation numbers 810-3-160 through 810-3-173.

MULTISTATE ALABAMA S CORPORATIONS. Section 40-18-22, *Code of Alabama 1975*, requires Alabama S corporations that are doing business both within and without the State of Alabama to allocate and apportion their income in accordance with Chapter 27, Title 40, *Code of Alabama 1975*, (also known as the Multistate Tax Compact).

Note: The use of separate or direct method of accounting must be approved by the Commissioner.

WHO MUST SIGN. The Alabama Form 20S is not considered a complete return unless it is signed by an officer of the corporation. When a return is made for an Alabama S corporation by a receiver, trustee or assignee, the fiduciary must sign the return. The title of the person signing the return must be entered on the appropriate line on page 4.

PAID PREPARER AUTHORIZATION. Above the return signature area, on page 4 of the form, is a check box which can be used to authorize the Alabama Department of Revenue to discuss the Alabama Form 20S and its attachments with the paid preparer. Checking the box can facilitate the process of resolving a problem when information on the return is missing or incomplete.

PAID PREPARER INFORMATION. Anyone who is paid to prepare the Alabama Form 20S for an Alabama S corporation must sign and provide the information required in the Paid Preparer's Use Only section of the Form 20S. The signature can be made in hand, by rubber stamp, by mechanical device, or a computer software program. Paid preparers must provide the Alabama S corporation with a copy of the prepared return.

TIME AND PLACE FOR FILING. The Alabama Form 20S is due by the 15th day of the 3rd month after the end of the tax year.

Returns or payments bearing a U.S. Postal Service cancellation no later than midnight of the due date will be considered timely filed.

EXTENSIONS. A six month extension of time for filing Form 20S is granted automatically. However, the extension of time for filing the return is not an extension of time for payment of tax. The amount of tax due must be paid on or before the due date of the return without regard to the extension of time to file the return.

Make check payable to Alabama Department of Revenue and enclose completed Form BIT-V only if you are making a payment with the return. Do not attach Form PTE-C or the Form PTE-C payment to the Form 20S.

Mail returns with payments to:

Alabama Department of Revenue
Pass Through Entity
P.O. Box 327444
Montgomery, AL 36132-7444

Mail returns without payments to:

Alabama Department of Revenue
Pass Through Entity
P.O. Box 327441
Montgomery, AL 36132-7441

ESTIMATE/EXTENSION/INFORMATIONAL REQUIREMENTS:

FORM BIT-V. The Business Income Tax Voucher (BIT-V) must accompany all payments. To obtain a BIT-V, visit our website at www.revenue.alabama.gov.

ESTIMATES. A corporation, which will have an Alabama income tax liability of \$500.00, must pay estimated tax based on the current year's liability. The first payment is due by the 15th day of the 4th month of the taxable year. The 2nd, 3rd, and 4th filings and payments are due by the 15th day of the 6th, 9th, and 12th months, respectively. Estimate payments are made by filing a Form BIT-V and checking the Estimate box as the payment type. To obtain a BIT-V, visit our website at www.revenue.alabama.gov.

OTHER PENALTIES.

Civil Liability. Any person failing to file a return as required by Alabama law or filing a willfully false or fraudulent return will be assessed by the Alabama Department of Revenue on the basis of the best information obtainable by the Department with respect to the income of such taxpayer. In the case of failure or neglect to file any list or return, the Department shall add to the amount of tax due a penalty of 10% of such tax or \$50, whichever is greater. In the case of a willfully false or fraudulent return having been filed, the Department shall add a penalty of not more than 50% of such tax. In addition, interest shall be added on any additional tax due.

If any person is delinquent in payment of income tax for more than 30 days after the due date for filing the return, the Department shall add a penalty of 1% per month or fraction thereof, up to 25%, on any such tax which remains unpaid.

Criminal Liability. §40-29-112, *Code of Alabama 1975*, as amended, provides for a more severe penalty for not filing tax returns. Any person required to file a return under this title and who willfully fails to make such return shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 or imprisoned not more than 1 year, or both. §40-29-110 provides that any person who willfully attempts to evade any tax imposed by this title or the payment thereof shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 or imprisoned not more than 5 years, or both. These penalties are in addition to any other penalties provided for by Alabama law.

INFORMATION AT THE SOURCE. Every corporation, association, or agent making payments of salaries and wages or similar compensation during a calendar year must file **Alabama Form A-2 or Federal Form W-2** on or before the last day of February of the following calendar year. Also, every corporation, association, or agent not filing Form A-2 and making payments of interest, rents, salaries, wages, premiums, annuities, compensations, remuneration, emoluments or other fixed or determinable gains, profits and income of \$1,500 or more, or payment of dividends of \$500 or more to any person, partnership or fiduciary (a resident of Alabama) during the taxable year is required to file an information return on **Forms 96 and 99** showing the amounts of such payments and the name and address of each recipient. These forms are due on or before March 15th of the following calendar year.

Specific Instructions

SCHEDULE A – Computation of Separately Stated and Nonseparately Stated Income/Tax

The Alabama Department of Revenue's website (www.revenue.alabama.gov) has available Alabama S corporation tax laws, regulations, forms and instructions.

Line 1. Enter the ordinary business income (loss) from page 1 of the federal Form 1120S, U.S. Income Tax Return for an S corporation. Attach a copy of the complete federal Form 1120S.

Reconciliation to Alabama Basis – Lines 2 through 10

Line 2. Enter the net amount of short-term and long-term capital gains

(losses). See also the instructions for Line 16 (Portfolio Income Less Expenses).

Line 3. Enter as a negative amount the amount that salaries and wages were reduced on the federal return because of the different federal employment credits claimed on the federal return.

Line 4. Enter the amount of state and local income taxes paid. Enter the amount of any state and local income tax refunds as a negative amount.

Line 5. Enter the net amount of income or (loss) from rental real estate activities.

Line 6. Enter the net amount of income or (loss) from other rental activities.

Line 7. Enter the net amount of Internal Revenue Code Section 1231 gain or (loss), but do not include any amount for casualty losses.

Line 8. Enter net adjustments due to the Federal Economic Stimulus Act. Schedule of adjustments must be attached to receive deductions.

Line 9. Enter the total amount of other items required to reconcile the federal ordinary income (loss) to income on an Alabama basis. Attach a schedule clearly explaining the nature and amounts of the reconciling items.

(Do not include Small Business Health Insurance Premiums)

Line 10. Net Reconciling Items. Enter the sum of Lines 2 through 9.

Line 11. Net Alabama Nonseparately Stated Income or (Loss). Enter the sum of Line 1 and Line 10. This amount is carried to Line 1, Schedule E.

Separately Stated Items (Related to Business Income)

Line 12. Contributions. Enter as a negative amount the amount of contributions. Enter the same amount on Line 2, Schedule K, in the Federal Amount column.

Line 13. Oil and Gas Depletion. Enter as a negative amount the amount of oil and gas depletion. Enter the same amount on Line 3, Schedule K, in the Federal Amount column. The amount of oil and gas depletion claimed must be computed in accordance with Section 40-18-16(b), which states: "... (2) Amount. In the case of oil and gas wells, the allowance for depletion shall be 12 percent of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect to the property. Such amounts shall not exceed 50 percent of the net income of the taxpayer, computed without allowance for depletion, from the property, except that in no case shall the depletion allowance be less than the amount allowable under federal income tax law. In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and the lessee..."

Line 14. IRC §179 Expense Deduction. Act Number 2008-549, passed by the Alabama Legislature during the first 2008 Special Session, decoupled Alabama income tax laws from the bonus depreciation and additional Section 179 provisions of the federal Economic Stimulus Act of 2008. The Alabama Section 179 expense deduction to be entered on Line 14 is computed on Lines 4a, 4b, and 4c on Schedule K. Enter on Line 14, as a negative amount, the amount entered in Schedule K, Line 4c (Amount to be Apportioned), under the Federal Amount Column.

Line 15. Casualty Losses. Enter as a negative amount the amount of casualty losses. Enter the same amount on Line 5, Schedule K, in the Federal Amount column.

Line 16. Portfolio Income or (Loss) Less Expenses. Enter the net amount of income or (loss) resulting from reducing portfolio income by the related expenses. Complete Schedule K by entering the gross amount of portfolio income on Line 6 (in the Federal Amount column); the interest expense related to the portfolio income on Line 7 (in the Federal Amount column); and, the remaining expenses related to the portfolio income on Line 8 (in the Federal Amount column). Please provide an explanation of the nature and amounts for the total amount entered on Schedule K, Line 8. Also, please note, for Alabama Form 20S reporting purposes net capital gains and losses are not treated as portfolio income, but are added to the federal ordinary income or loss from trade or business activities in computing the net Alabama nonseparately stated income or (loss).

Line 17. Other Separately Stated Items. Enter the net amount of other separately stated business items. Attach a statement providing the type and

amount of each different separately stated item. Also enter the amount from Line 17 on Line 9, Schedule K, in the Federal Amount column.

(Do not include Small Business Health Insurance Premiums)

Line 18. Net Separately Stated Items. Enter the sum of Line 12 through Line 17.

Line 19. Total Separately Stated and Nonseparately Stated Items. Enter the sum of Line 11 and Line 18.

Line 20. Nonseparately Stated Income Allocated and Apportioned to Alabama. Enter the amount from Schedule E, Line 7. See also Schedule K, Line 1 (Alabama Amount column).

TAX DUE, PAYMENTS, AND CREDITS

Line 21. DO NOT compute based on the amount shown on Line 11.

Any amount on this line should include only the following:

a. LIFO Recapture Tax. If the corporation became an Alabama S corporation after December 31, 1989 and inventoried goods under the LIFO method during its last year as an Alabama C corporation, it may be liable for LIFO recapture and resultant tax thereon. The LIFO recapture tax is figured for the last tax year the corporation was an Alabama C corporation. The LIFO tax is paid in four equal installments. The first installment must be paid no later than the due date (without extension) for filing the corporate return for the last taxable year as a C corporation. The three succeeding installments must be paid not later than the due date (without extension) for the succeeding three years. See §40-18-161, *Code of Alabama 1975*, as amended. Attach computation schedule. For tax years beginning prior to January 1, 2001, a C corporation, which converts to an Alabama S corporation, shall pay tax equal to 5% of its LIFO recapture amount. For tax years beginning after December 31, 2000, a C corporation, which converts to an Alabama S corporation, shall pay tax equal to 6-1/2% of its LIFO recapture amount.

b. Built-in Gains Tax. Corporations which became S corporations after December 31, 1989 may be liable for this tax. The tax is computed by multiplying the net recognized built-in gain of the Alabama S corporation for the taxable year by 5%. Section 40-18-174 defines "net recognized built-in gain," with respect to any taxable year in the 10-year recognition period as the lesser of (i) the amount which would be taxable income of the Alabama S corporation for such taxable year if (except as provided in subsection (b)(2)) only recognized built-in gains and recognized built-in losses were taken into account, or (ii) such corporation's taxable income for such taxable year (determined as provided in subsection (b)(1) of Section 40-18-175). A net operating loss carryforward that arose in a taxable year for which the corporation was not an Alabama S corporation is allowed as a deduction against the net recognized built-in gain of the Alabama S corporation for the taxable year. The amount of net recognized built-in gain for a taxable year cannot exceed the excess (if any) of the net unrealized built-in gain over the net recognized built-in gain for prior taxable years beginning in the recognition period. "Net unrealized built-in gain" means the amount (if any) by which the fair market value of the assets of the corporation exceeds the aggregate basis of such assets as of the beginning of the first taxable year for which the corporation is treated as an Alabama S corporation. This tax does not apply if a corporation has had an S corporation status under Internal Revenue Code for each of its taxable years except as explained below.

The tax can apply to a corporation that has always been an Alabama S corporation in any case where the S corporation acquires an asset and the basis of the asset in the hands of the Alabama S corporation is determined in whole or in part by reference to the basis of the asset in the hands of the Alabama C corporation. See §40-18-174. Attach computation schedule.

c. Excess Net Passive Income Tax. If an S corporation has subchapter C earnings and subchapter C earnings and profits, has passive investment income in excess of 25% of gross receipts, and has taxable income at year end, it must pay a tax on the excess net passive income. The tax is computed by multiplying the excess net passive income by 5% percent. "Excess net passive income" means an amount which bears the same ratio to the net passive income for the taxable year as (i) the amount by which the passive investment income for the taxable year exceeds 25% of the gross receipts for the taxable year, bears to (ii) the passive investment income for the taxable year. The

amount of excess net passive income shall not exceed the S corporation's income for the year as determined under §40-18-161. The term "net passive income" means passive investment income reduced by deductions allowed under Chapter 18, Title 40, *Code of Alabama 1975*. The terms "passive investment income" and "gross receipts" have the same meanings as when used in 26 U.S.C. §1362(d)(3). However, the amount of passive investment income shall be determined without using any recognized built-in gain or loss of the Alabama S corporation for any taxable year in the 10 year recognition period. See §40-18-175. Attach computation schedule.

NOTE: You are required to submit a computation schedule. Failure to submit the schedule may result in the assessment of penalties and additional filing requirements.

Line 22. Tax Payments, Credits, and Deferrals

a. Enter the amount of tax carried over from last year plus any estimated tax payments made with Form BIT-V (attach schedule).

b. Enter the amount of tax paid prior to filing Form 20S.

c. This line is only to be used if a taxpayer is filing an AMENDED RETURN. The amount shown should be any payments made with the original return and/or any payments made because of adjustments to the return by the Alabama Department of Revenue.

d. Tax Credits. Enter the amount from Schedule G, Line 3.

e. Enter total payment and credits (add Lines 22a, 22b, 22c, and 22d).

Line 23. Subtract Line 22e from Line 21. Enter as either a positive or negative number.

Line 24. Calculation of any reductions of refund or additions to tax.

a. If this return is not filed on or before the due date (with extension), enter a failure to timely file penalty of 10% of the tax due on Line 21 or \$50 whichever is greater. This penalty is due even if the return calculations indicate a refund or zero balance. Tax amounts not paid by the due date will be subject to a failure to timely pay penalty of 1% per month up to a maximum of 25%.

Estimated taxes not paid by each due date will be subject to an underpayment of estimated tax penalty in an amount determined by applying the underpayment rate established under 26 U.S.C. §6621, as provided in §40-2A-11.

b. Enter the amount of interest due on the balance of tax due. This is to be computed from the due date (without extension) of this return to the date paid. The Alabama interest rate is the same as provided in 26 U.S.C. §6621.

c. Enter the amount of the overpayment you wish to apply to next year's estimated tax.

d. Enter the total of Lines 24a, 24b and 24c.

Line 25 and 26. Add Line 23 to Line 24d, if the result is a positive number, this is the amount you owe and it should be entered on Line 26. If the result is a negative number, this is the amount of your refund which should be entered on Line 25. If paying by check or money order, Form BIT-V MUST ACCOMPANY PAYMENT.

a. If the amount due is \$750 or greater, it must be remitted by electronic funds transfer. Section 41-1-20, *Code of Alabama 1975* requires the use of Electronic Funds Transfer (EFT) for all single tax payments of \$750 or more. Taxpayers must register to use EFT and substantial penalties can be assessed for noncompliance. Call the Alabama Department of Revenue EFT Hotline at (334) 242-1819 or 1-800-322-4106 for further information. Form BIT-V is not required if payment is made by EFT. If amount due has been paid via electronic funds please check the indicator box.

SCHEDULE B – Allocation of Nonbusiness Income, Loss, and Expense

The purpose of Schedule B is to report nonbusiness income, nonbusiness losses, and nonbusiness expenses, as defined by Section 40-27-1, *Code of Alabama 1975*, and as required by Section 40-18-22, *Code of Alabama 1975*. Nonbusiness items can be both nonseparately stated items and separately stated items. Nonbusiness items are not subject to the multistate apportionment requirements of Chapter 27, Title 40, *Code of Alabama 1975*, but are allocated directly to Alabama or another state, in accordance with the Multistate Tax Compact (Chapter 27, Title 40, *Code of Alabama 1975*).

Do not complete Schedule B if entity operates exclusively in Alabama.

Enter under the Nonseparately Stated Items heading on Line 1a, Line 1b, and Line 1c a description of each nonseparately stated item.

For each nonseparately stated item entered on Line 1a, Line 1b and Line 1c:

1. Enter on Column A the total gross income (from all states – everywhere) from the item.
2. Enter on Column B only the Alabama gross income from the item.
3. Enter on Column C the expenses related to the gross income (everywhere) entered in Column A.
4. Enter on Column D only the expenses related to the Alabama gross income entered in Column B.
5. Enter on Column E the amount resulting from subtracting the expense amount in Column C from the gross income (everywhere) amount in Column A.
6. Enter on Column F the amount resulting from subtracting the Alabama expense amount in Column D from the Alabama gross income amount in Column B.

Enter on Column E, Line 1d, the sum of the amounts entered in Column E on Line 1a, Line 1b, and Line 1c. The amount entered in Column E, Line 1d is the net amount of nonseparately stated nonbusiness income items for all states (everywhere). The amount entered in Column E, Line 1d is also entered in Schedule E, Line 2. Please note that when an amount is entered in Schedule E, Line 2, income is entered as a negative amount and losses are entered as a positive amount.

Enter on Column F, Line 1d, the sum of the amounts entered in Column F on Line 1a, Line 1b, and Line 1c. The amount entered in Column F, Line 1d is the net amount of nonseparately stated nonbusiness income items to be allocated only to Alabama. The amount entered in Column F, Line 1d is also entered in Schedule E, Line 6.

Enter under the Separately Stated Items heading on Line 1e, Line 1f, and Line 1g a description of each separately stated item.

For each separately stated item entered on Line 1e, Line 1f and Line 1g:

1. Enter on Column A the total gross income (from all states – everywhere) from the item.
2. Enter on Column B only the Alabama gross income from the item.
3. Enter on Column C the expenses related to the gross income (everywhere) entered in Column A.
4. Enter on Column D only the expenses related to the Alabama gross income entered in Column B.
5. Enter on Column E the amount resulting from subtracting the expense amount in Column C from the gross income (everywhere) amount in Column A.
6. Enter on Column F the amount resulting from subtracting the Alabama expense amount in Column D from the Alabama gross income amount in Column B.

Enter on Column E, Line 1h, the sum of the amounts entered in Column E on Line 1e, Line 1f, and Line 1g. The amount entered in Column E, Line 1h is the net amount of separately stated nonbusiness income items for all states (everywhere). The amount entered in Column E, Line 1h is also entered in Schedule K, Line 11 (Federal Amount column).

Enter on Column F, Line 1h, the sum of the amounts entered in Column F on Line 1e, Line 1f, and Line 1g. The amount entered in Column F, Line 1h is the net amount of separately stated nonbusiness income items to be allocated only to Alabama. The amount entered in Column F, Line 1h is also entered in Schedule K, Line 11 (Alabama Amount column). The amount entered in Column F, Line 1h is also entered on Schedule D, Line 4.

SCHEDULE C — Apportionment Factor Schedule

The Alabama business activity of a multi-state Alabama S corporation is represented by its Alabama apportionment factor. With the exception of those special cases referred to in Alabama Department of Revenue regulation number 810-27-1-4-.18, the Alabama apportionment factor generally consists of the average of: the Alabama property factor; the Alabama payroll factor; and, the Alabama gross receipts factor. If any factor is not utilized in the production

of business income, it shall be eliminated and the denominator reduced accordingly.

Alabama Department of Revenue regulation number 810-27-1-14-.09 generally explains the Alabama apportionment factor. Regulation numbers 810-27-1-14-.10 through .12 generally explain the Alabama property factor. Regulation numbers 810-27-1-14-.13 and .14 generally explain the Alabama payroll factor, and regulation numbers 810-27-1-4-.15 through .17 generally explain the Alabama sales (gross receipts) factor.

Do not complete Schedule C if entity operates exclusively in Alabama. Enter 100% on Schedule C, Line 26.

PROPERTY FACTOR

In the appropriate columns, enter the amounts (at cost, unless stated otherwise) of property available for use in the production of business (apportionable) income.

Line 1. Inventories

Line 2. Land

Line 3. Furniture and fixtures

Line 4. Machinery and equipment

Line 5. Buildings and leasehold improvements

Line 6. Property financed through industrial development boards or by industrial revenue bonds issued by municipalities. **All Industrial Development Board property utilized by the taxpayer will be included at its original cost basis.**

Line 7. Government Property. **All government property (whether local, state, or federal), when such property is made available for use by the taxpayer, will be reported at its current fair market value.**

Line 8. Any other real or tangible personal property used in production of business income.

Line 9. Less construction in progress (if included in the amounts on Lines 1 through 8).

Line 10. Enter in each column the totals of Lines 1 through 9.

Line 11. Enter in the appropriate column the average value of property in Alabama and Everywhere. See Alabama Department of Revenue regulation number 810-27-1-4-.12 for rules regarding computations other than beginning and end of year values.

Line 12. In the Beginning of Year columns, enter the amount of expense for the rental of real or tangible personal property used in the production of business income in Alabama and Everywhere. Annualize for short-period returns. Multiply the annual rent expense by 8, and enter the result in the End of Year column. This is the capitalized rental value.

Line 13a. Add the amounts on Lines 11 and 12 in the End of Year column for Alabama.

Line 13b. Add the amounts on Lines 11 and 12 in the End of Year column for Everywhere.

Line 14. Divide the amount on Line 13a by the amount on Line 13b. Compute the percentage to at least 4 decimal places, for example, 12.3456%, and enter the percentage on Line 15. This percentage entered on Line 15 is the ALABAMA PROPERTY FACTOR.

PAYROLL FACTOR

Line 15a. Enter the amount of wages or other compensation paid to employees for the production of business income in Alabama. NOTE: Only amounts paid directly to employees are included in the payroll factor computations for Line 15a and Line 15b.

Line 15b. Enter the amount of wages or other compensation paid to employees for the production of business income everywhere. (Include officers' salaries.)

Line 15c. Divide the amount on Line 15a by the amount on Line 15b, and enter the number on Line 15c as a four decimal place percentage. The percentage entered on Line 15c is the ALABAMA PAYROLL FACTOR.

SALES FACTOR

Amounts entered in this schedule can not be negative.

Line 16. Enter gross receipts from Alabama destination sales except sales to the U.S. government. This includes total gross receipts from sales of tangible property shipped to Alabama from locations both within and without Ala-

bama (See Alabama Department of Revenue regulation number 810-27-1-4-.16).

Line 17. Enter the amount of sales shipped from an Alabama origin to any state or foreign country where this company is not taxable. Also enter total sales to the U.S. government shipped from Alabama (See Alabama Department of Revenue regulation number 810-27-1-4-.16).

Line 18. In the Alabama column enter the total of Lines 16 and 17. In the Everywhere column enter total sales for everywhere. If this amount does not correspond with Line 1 of federal Form 1120S, attach an explanation and reconciliation.

Line 19. Enter in the appropriate columns gross business dividends.

Line 20. Enter in the appropriate columns the gross business interest income.

Line 21. Enter in the appropriate columns the gross business income from rents.

Line 22. Enter in the appropriate columns gross business income from royalties.

Line 23. Enter in the appropriate columns the gross receipts from the sale or disposition of assets used in the business. See Alabama Department of Revenue regulation number 810-27-1-4-.15 for exclusion of amounts which would distort the factor.

Line 24. Enter in the appropriate columns the amounts of other business gross receipts, and identify the nature of such receipts and their location on the federal return.

Line 25a. Total the Alabama column for Lines 18 through 24.

Line 25b. Total the Everywhere columns for Lines 18 through 24.

Line 25c. Divide the amount on Line 25a by the amount on Line 25b, and enter the percentage on Line 25c, as a four decimal place percentage. The percentage entered on Line 25c is the ALABAMA GROSS RECEIPTS FACTOR.

Line 26. Add Lines 14, 15c, and 25c. Divide by 3 (except as noted below). Enter here and on Line 3b, Schedule D and on Line 4, Schedule E.

Note: If any factor is not utilized in the production of income (there is a zero amount in both Alabama and Everywhere columns), it shall be eliminated and the denominator reduced accordingly.

SCHEDULE D – Apportionment of Federal Income Tax

Line 1. Enter the amount of federal income tax, if any, from the federal Form 1120S. Enter the same amount on Schedule K, Line 13 (Federal Amount column).

If the corporation operated only in Alabama, completion of the remainder of Schedule D is not required and the amount from Line 1 should also be entered on Schedule K, Line 13 (Alabama Amount column).

Line 2. Enter the amount of Nonseparately Stated Income Allocated and Apportioned to Alabama from Schedule E, Line 7.

Line 3a. Enter the amount of Net Separately Stated Items from Schedule A, Line 18.

Line 3b. Enter the Alabama Apportionment Factor from Schedule C, Line 26.

Line 3c. Multiply the amount on Line 3a by the percentage on Line 3b, and enter on Line 3c.

Line 4. Enter the amount of Separately Stated Items Allocated to Alabama from Schedule B, Line 1h., Column F.

Line 5. Enter the total of Line 2, Line 3c, and Line 4.

Line 6. Adjusted Total Income. Add the Total Separately Stated and Nonseparately Stated Items (Schedule A, Line 19) to the Net Amount of Separately Stated Nonbusiness Income Items for All States (Schedule B, Column E, Line 1h), and enter the total on Line 6.

Line 7. Federal Income Tax Apportionment Factor. Divide the amount on Line 5 by the Adjusted Total Income on Line 6, and enter the resulting amount as a percentage on Line 7. Enter the amount from Line 7 on Schedule K, Line 13 (Apportionment Factor column).

Line 8. Federal Income Tax Apportioned to Alabama. Multiply the amount of federal income tax on Line 1 by the Federal Income Tax Apportionment Fac-

tor on Line 7, and enter the resulting amount on Line 8. Enter the amount on Line 8 also on Schedule K, Line 13 (Alabama Amount column).

SCHEDULE E – Apportionment and Allocation of Income to Alabama

Line 1. Enter the Net Alabama Nonseparately Stated Income or (Loss) from Schedule A, Line 11.

Line 2. Enter the amount of Nonseparately Stated (Income) or Loss Treated as Nonbusiness Income from Schedule B, Column E, Line 1d. Enter a loss amount as a positive amount and an income amount as a negative amount.

Line 3. Enter the sum of the amounts entered in Line 1 and Line 2.

Line 4. Enter the apportionment factor from Schedule C, Line 26.

Line 5. Income or (Loss) Apportioned to Alabama. Multiply the amount in Line 3 by the percentage in Line 4.

Line 6. Nonseparately Stated Income or (Loss) Allocated to Alabama as Nonbusiness Income. Enter the amount from Schedule B, Column F, Line 1d.

Line 7. Nonseparately Stated Income Allocated and Apportioned to Alabama. Enter the sum of the amounts entered in Line 5 and Line 6. The amount in Line 7 should also be entered on Schedule A, Line 20; on Schedule D, Line 2; and, on Schedule K, Line 1 (Alabama Amount column).

SCHEDULE F – Alabama Accumulated Adjustments Account

This schedule computes the Accumulated Adjustments Account for Alabama (AAAA). The AAAA may not equal the Accumulated Adjustments Account of federal Form 1120S. Adjustments to the AAAA should include the entire earnings, profits, losses, gains and deductions of the S corporation. See also §40-18-166, *Code of Alabama 1975*.

SCHEDULE G – Tax Credits

Complete Schedule G only if any tax credit detailed below will be taken at the S corporation level. All credits detailed below are provided on a pass-through basis for all shareholders of eligible S corporations. If any credit will be passed through to the shareholders, follow instructions below.

1. Basic Skills Employer Education Tax Credit:

Sections 40-18-135 through 40-18-139, *Code of Alabama 1975*, provide for a tax credit of 20 percent of the actual cost of an employer provided or sponsored Approved Basic Skills Education Program. The program must be to enhance the basic skills of employees up to and including the twelfth grade functional level. The employees must be Alabama residents, work at least 24 hours per week for at least 16 weeks. The employer must receive written approval from the Alabama Department of Education. A detailed schedule of education expenses, employee names, and the hours each employee worked per week must be attached to return. For additional information about the program, contact Alabama Department of Education at 800-392-8086. The credit is available on a pass-through basis. For detailed information on how to compute the tax credit on a pass-through basis, contact Alabama Department of Revenue at 334-242-1175.

2. Coal Tax Credit

Section 40-18-220 provides for a tax credit for coal produced in Alabama after January 1, 1995. The credit will be \$1 per ton of increased coal production in Alabama over the previous year's coal production in Alabama. A detailed schedule of computations must be attached. Enter total coal credit for this tax year on Line 2. Balance not used for the year will be allowed as a flow-through credit to the shareholders.

PASS-THROUGH CREDITS

Capital Credit

Sections 40-18-190 through 40-18-203 provide for a tax credit against Alabama income tax with respect to income generated by or arising out of a qualifying project. A statement of intent to invest in a qualifying project must be filed prior to the qualifying project being placed in service and an accounting practices agreement must be executed prior to utilizing the credit. The capital credit is available on a pass-through basis for all shareholders of an S corporation that is eligible to receive the capital credit. Each shareholder's credit is the lesser of the shareholder's share of the capital credit available or the shareholder's tax liability generated by or arising out of the qualifying project and is applied **after all deductions, losses and other credits have been taken.**

The S corporation is required to complete and attach Form AR with the Form 20S return in order for the shareholders to be eligible to receive the capital credit on their respective income tax returns. Form AR must include a list of all recipients and their distributive share of the qualifying project. All shareholders of the investing company that are eligible for the capital credit must complete and attach Form K-RCC to their respective income tax returns to take the capital credit.

For further information regarding the capital credit and the necessary forms to claim the capital credit, visit the Alabama Department of Revenue's website at www.revenue.alabama.gov under the Tax Incentives page, or contact the Department at P.O. Box 327001, Montgomery, AL 36132-7001 or 334-242-1175.

Enterprise Zone Credit (See §41-23-24): a tax credit is available to qualifying businesses which locate or expand within the designated enterprise zones. The credit is available on a pass-through basis for all shareholders of an S corporation that is eligible to receive the credit, and the credit will be distributed to each shareholder based on their distributive share. The company should advise each shareholder of the amount of his/her income subject to this credit. Any shareholder taking the credit is required to complete and attach Schedule EZ-K1 to their respective income tax return. Each S corporation is required to complete and attach Schedule EZ with the Form 20S return.

Business entities must apply for and be approved by the Alabama Department of Economic and Community Affairs (ADECA) to participate in the Enterprise Zone Program. Further, business entities must be certified by ADECA, on an annual basis, to be eligible to claim the Alabama Enterprise Zone Credit. For additional information regarding the Alabama Enterprise Zone Credit, contact ADECA at Technical Assistance Section, 401 Adams Avenue, P.O. Box 5690, Montgomery, AL 36103-5690, or call the office at (334) 242-5370. Questions pertaining to the application of the tax credit should be addressed to Alabama Department of Revenue, P.O. Box 327001, Montgomery, AL 36132-7001, or call the office at (334) 242-1175.

SCHEDULE H – Additional Information Required

All S corporations must complete Schedule H providing the required information.

SCHEDULE K – Distributive Share Items

Line 1. Alabama Nonseparately Stated Income. Enter on the Alabama Amount column the Nonseparately Stated Income or (Loss) Allocated and Apportioned to Alabama from Schedule E, Line 7.

Line 2. Contributions. Enter in the Federal Amount column (as a positive amount) the contributions entered on Schedule A, Line 12. Enter in the Apportionment Factor column the apportionment factor from Schedule C, Line 26. Enter in the Alabama Amount column the amount that results from multiplying the apportionment factor by the amount of contributions entered in the Federal Amount column.

Line 3. Oil and Gas Depletion. Enter in the Federal Amount column (as a positive amount) the oil and gas depletion entered on Schedule A, Line 13 (please also see the form instructions for Schedule A, Line 13). Enter in the Apportionment Factor column the apportionment factor from Schedule C, Line 26. Enter in the Alabama Amount column the amount that results from multiplying the apportionment factor by the amount of oil and gas depletion entered in the Federal Amount column.

Line 4. IRC §179 Expense Deduction. Line 4 – IRC §179 Expense Deduction. Act Number 2008-549, passed by the Alabama Legislature during the first 2008 Special Session, decoupled Alabama income tax laws from the bonus depreciation and additional Section 179 provisions of the federal Economic Stimulus Act of 2008. Alabama income tax laws will continue to be tied to the federal depreciation rules without consideration of the changes implemented by the Economic Stimulus Act of 2008. For purposes of these instructions, Alabama-allowed depreciation means depreciation computed in accordance with the federal depreciation rules without consideration of the changes made to Section 168 by the federal Economic Stimulus Act of 2008. The amount of §179 expense deduction for Alabama income tax purposes is computed on Schedule K, Lines 4a through 4c.

Line 4a. Amount Allowed on Federal Form 1120S. Enter on Line 4a, in the

Federal Amount Column, the total amount of §179 expense deduction claimed on the federal return. Nothing should be entered in the Apportionment Factor Column or the Alabama Amount Column for Line 4a.

Line 4b. Adjustments Required. Enter on Line 4b, the net amount of the following two items:

1. Enter as a negative amount, the federal Section 179 carryover amount resulting from Alabama's decoupling from the provisions of the 2008 federal Economic Stimulus Act.

2. Enter as a positive amount, the amount of Alabama Section 179 expense deduction carryover from TY 2008.

Attach the computations to the return.

Line 4c. Amount to be Apportioned. Enter as a positive amount on Line 4c, in the Federal Amount Column, the difference between the amounts entered on Line 4a and 4b in the Federal Amount Column. Nothing should be entered in the Apportionment Factor Column or the Alabama Amount Column for Line 4a or Line 4b. Enter in the Apportionment Factor Column for Line 4c the Alabama Apportionment Factor from Schedule C. Enter in the Alabama column for Line 4c the amount that results from multiplying the apportionment factor by the amount entered in the Federal Amount Column for Line 4c.

Line 5. Casualty Losses. Enter in the Federal Amount column (as a positive amount) the casualty losses entered on Schedule A, Line 15. Enter in the Apportionment Factor column the apportionment factor from Schedule C, Line 26. Enter in the Alabama Amount column the amount that results from multiplying the apportionment factor by the amount of casualty losses entered in the Federal Amount column.

Line 6. Portfolio Income. Enter in the Federal Amount column the gross amount of portfolio income related to the net amount entered on Schedule A, Line 16. Enter in the Apportionment Factor column the apportionment factor from Schedule C, Line 26. Enter in the Alabama Amount column the amount that results from multiplying the apportionment factor by the amount of portfolio income entered in the Federal Amount column.

Line 7. Interest Expense Related to Portfolio Income. Enter in the Federal Amount column the interest expense related to the portfolio income entered on Line 6. Enter in the Apportionment Factor column the apportionment factor from Schedule C, Line 26. Enter in the Alabama Amount column the amount that results from multiplying the apportionment factor by the amount of interest expense entered in the Federal Amount column.

Line 8. Other Expenses Related to Portfolio Income. Enter in the Federal Amount column the expenses (other than interest expense) related to the portfolio income entered on Line 6 – attach a statement identifying the nature and amounts of the other expenses. Enter in the Apportionment Factor column the apportionment factor from Schedule C, Line 26. Enter in the Alabama Amount column the amount that results from multiplying the apportionment factor by the amount of other expenses entered in the Federal Amount column.

Line 9. Other Separately Stated Business Items. Enter in the Federal Amount column the amount entered on Schedule A, Line 17. Enter in the Apportionment Factor column the apportionment factor from Schedule C, Line 26. Enter in the Alabama Amount column the amount that results from multiplying the apportionment factor by the amount of other separately stated business items entered in the Federal Amount column.

Small business health insurance premiums should not be reported here but on Line 10.

Line 10. Small Business Health Insurance Premiums. Enter nothing in the Federal Amount column. Enter nothing in the Apportionment Factor column. Enter in the Alabama Amount column 50% of the health insurance premiums paid during the taxable year that qualify, under Act Number 2008-559, as health insurance premiums paid for qualifying employees in connection with an employer-provided health insurance plan. Attach a computation of the amount entered on Line 10 as an attachment to the return.

Line 11. Separately Stated Nonbusiness Items. Enter in the Federal Amount column the amount entered on Schedule B, Column E, Line 1h. Enter nothing in the Apportionment Factor column. Enter in the Alabama Amount column the amount entered on Schedule B, Column F, Line 1h. Attach a statement identifying the nature and amounts of the separately stated nonbusiness items.

Line 12. Composite Payment Made on Behalf of Owner. Enter nothing in the Federal Amount column and the Apportionment Factor column. Enter in the Alabama Amount column the amount of total composite payments made on behalf of the owners.

Line 13. U.S. Taxes Paid. Enter the amount of U.S. income taxes paid, from Schedule D, Line 1, in the Federal Amount column. Enter in the Apportionment Factor column the Federal Income Tax Apportionment Factor from Schedule D, Line 7 (enter 100% if the corporation operated only in Alabama). Enter in the Alabama Amount column the amount of Federal Income Tax Apportioned to Alabama from Schedule D, Line 8 (if the corporation operated only in Alabama enter the amount from the Federal Amount column).

Line 14. Alabama Exempt Income. Enter the total amount of Alabama exempt income in the Federal Amount column. Enter in the Apportionment Factor column the apportionment factor from Schedule C, Line 26. Enter in the Alabama Amount column the amount that results from multiplying the apportionment factor by the amount of Alabama exempt income entered in the Federal Amount column.

Line 15. Property Distributions to Owners. Enter in the Federal Amount column and the Alabama Amount column the amount of property distributed to owners. Enter 100% in the Apportionment Factor column.

ALABAMA SCHEDULE K-1 – Owner’s Share of Alabama Income, Deductions, Credits, etc.

To be considered a complete return, the Alabama Form 20S must be accompanied by a properly completed Alabama Schedule K-1 for each tax entity that was a shareholder of the Alabama S corporation at any time during the taxable year. Visit the Alabama Department of Revenue’s website (www.revenue.alabama.gov) to obtain a copy of the Alabama Schedule K-1 and the form preparation instructions for the Alabama Schedule K-1.

COMPOSITE FILING FOR NON-RESIDENT SHAREHOLDERS

S corporations may pay tax due on Alabama source income for non-resident shareholders by submitting a composite return, (Form PTE-C). Form PTE-C and payment is due by the 15th day of the 3rd month following the close of the business year. The Form PTE-C and payment must be accompanied by Schedule PTE-CK1.

Shareholders of S corporations can allow the S corporation to be relieved of the composite payment requirement by executing an Alabama Schedule NRA. By executing the Alabama Schedule NRA, the nonresident shareholder consents to the tax jurisdiction of the State of Alabama. The Schedule NRA is filed with the Alabama Form 20S for the Alabama S corporation. Failure to file an Alabama Schedule NRA for a nonresident shareholder will require the S corporation to remit a composite payment and file a composite return.

If the S corporation has no Alabama source income or a loss, a Form PTE-

C should not be filed unless there is a credit to be carried forward from the previous year. A composite S corporation return **cannot** be used to establish a net operating loss. The shareholders of the S corporation must file their respective tax returns to establish any loss that can be used to offset income in subsequent years.

Visit the Alabama Department of Revenue’s website (www.revenue.alabama.gov) to obtain a copy of Alabama Form PTE-C and the Alabama Schedule PTE-CK1, or to obtain the form preparation instructions for Form PTE-C.

Domestic Production Activities Deduction

Internal Revenue Code Section 199

Added by the American Jobs Creation Act of 2004 (P.L. 108-357), Internal Revenue Code Section 199 allows taxpayers the Domestic Production Activities Deduction – which is a deduction for income attributable to domestic production activities. The deduction is effective for tax years beginning in 2005 and thereafter. According to federal income tax law, a taxpayer engaged in a qualified production activity (QPA) may claim a deduction against gross income equal to the applicable percentage of its qualified production activities income, with certain limitations.

Alabama Income Tax Treatment (Issued: January 1, 2006)

Individuals:

Individual taxpayers subject to the Alabama individual income tax law are not allowed to claim the Domestic Production Activities Deduction in computing the taxpayer’s Alabama taxable income. The deduction is not allowed to individual taxpayers even if the individual taxpayer is an owner or shareholder of a pass-through entity which has gross receipts derived from qualifying production activities (QPA). Unlike Alabama’s corporate income tax, Alabama’s individual income tax is not directly tied to federal taxable income. A statutory change to Alabama’s individual income tax law would be required to conform to the federal deduction.

Pass-through Entities:

Alabama pass-through entities (S-corporations, subchapter K entities, and trusts) do not take the Domestic Production Activities Deduction, but rather report (as a separately stated item) the information required for computing the Domestic Production Activities Deduction to pass-through entity owners and shareholders.

Corporations:

Corporations subject to Alabama corporate income tax law are allowed the deduction. The computation of corporate taxable income according to Alabama income tax law is tied to federal taxable income (see Section 40-18-33, *Code of Alabama 1975*).