810-3-24.2-.03 Other Qualified Investment Partnership Matters.

(1) Every nonresident member of a Qualified Investment Partnership (QIP) that has Alabama source income must file an Alabama income tax return and report the Alabama source income even if the income earned in Alabama is included on a composite return filed by the QIP, unless the member is a nonresident individual who has no other Alabama source income. For a nonresident individual to ~~have~~ **claim** the benefit of any net operating losses generated by a QIP, the nonresident individual must establish those losses by filing an Alabama individual income tax return.

(2) The QIP Alabama income tax reporting requirements do not change the Alabama income tax return filing requirements for business entities.

(3) In accordance with §40-18-24.3, Code of Alabama 1975, a nonresident member of a QIP will be exempt from Alabama income tax on its distributive share of QIP income unless the nonresident member actively participates in the day-to-day management of the QIP or the QIP invests in the qualifying investment securities of an entity that is majority owned by the nonresident member.

(a) The term "majority owned" is defined in §40-18-24.3, **Code of Alabama 1975,** and ~~references~~ **includes** the attribution rules of 26 U.S.C. §318.

(b) Income from a QIP is taxable to a nonresident member of the QIP if the income is from investment activity that is interrelated with an Alabama trade or business in which the nonresident member owns an interest even if the primary activities of the trade or business are separate and distinct from the acts of acquiring, managing, or disposing of qualified investment securities.

(c) Income from a QIP is taxable to a nonresident member of the QIP if any part of the qualifying investment securities of the QIP are acquired with the working capital of an Alabama trade or business in which the nonresident member owns an interest.

(d) A financial institution, as defined in §40-16-1, Code of Alabama 1975, **if a nonresident member of a QIP,** is taxed on its distributive share of income from ~~a~~ **the** QIP if it participates in the management of the investment activities of the QIP; if it is engaged in a unitary business with another taxpayer that participates in managing the investment activities of the QIP; or, if the financial institution has income from Alabama sources.

(e) A corporation, as defined in §40-18-1, Code of Alabama 1975, **if a nonresident member of a QIP,** is taxed on its distributive share of income from a QIP if it participates in the management of the investment activities of the QIP; if it is engaged in a unitary business with another taxpayer that participates in managing the investment activities of the QIP; or, if the corporation has income from Alabama sources.

(4) The allocation and apportionment requirements set out in the ~~Multi-state~~ Multistate Tax Compact, codified in Chapter 27, Title 40, Code of Alabama 1975, and all rules pertaining to such laws are applicable to Alabama income tax returns and composite returns required to be filed by pass-through entities, including those required to be filed by Qualified Investment Partnerships.

(5) Business Trust. The term "business trust" is defined in §40-18-1, Code of Alabama 1975.

(a) For federal income tax purposes, a business trust is classified as a business entity, not as a business trust. A~~The~~ business ~~entities~~ trust ~~that a business trust~~ may ~~be~~ only be classified ~~include only:~~as a disregarded entity~~;~~, a partnership~~;~~, or~~,~~ a corporation.

1. A business trust that has made a federal election to be treated as a corporation, at any time during the tax period, cannot qualify as a QIP for the tax period.

2. A business trust that is treated as a disregarded entity for federal income tax purposes, at any time during the tax period, cannot qualify as a QIP for the tax period.

3. A business trust that is treated as a partnership for federal income tax purposes can qualify as a QIP, if the entity satisfies the requirements of Section 40-18-24.2, Code of Alabama 1975, and the rules promulgated thereunder~~Alabama Regulation Number 810-3-24.2-.02, Qualified Investment Partnerships~~.

(6) In order to correct the effect and result of a tax-avoidance or a tax abusive arrangement, or series of transactions, the Commissioner of Revenue shall have the authority to distribute, apportion, or allocate the gross income of any pass-through entity, QIP, or pass-through entity member in order to clearly, fairly, and equitably reflect the income of any entity, pass-through entity, QIP, or QIP member, whose income may have been significantly distorted by the application of the tax-avoidance or tax abusive arrangement, or series of transactions. The Commissioner of Revenue may recast QIP transactions if it is determined the transactions do not have a substantial business purpose or it is determined that the form of the transactions yield results that have the substance of tax-avoidance or tax abuse.

(7) The Commissioner of Revenue may revoke an entity's QIP status for one or more tax periods if it is determined that the entity did not meet the QIP requirements for that or those tax periods.

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Authority: Sections 40-2A-7(a)(5) and 40-18-24.3, Code of Alabama 1975
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