

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 07-001

This document may not be used or cited as precedent. Ala. Code, §40-2A-5(a).

TO: LLC

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: October 15, 2007

RE: Whether, pursuant to the authority of Ala. Code, §40-18-24.1, a subchapter K entity is permitted to file one Alabama aggregate composite return on behalf of all nonresident partners/owners of the entity, including corporations and other flow-through entities, as well as “upper tier owner” individuals and entities.

FACTS

The facts as represented by Limited Liability company (“LLC”) are:
LLC is the second largest company of its type in the United States with more than 1.3 million customers. It is registered to conduct business and has a tax filing obligation in all fifty states. LLC is headquartered in another state and has equipment and employees in various states.

As the result of a reorganization, on January 1, 2007, LLC became owned by a multi-tiered partnership structure. The company is treated as a partnership for federal income tax purposes. LLC is owned by five tiers of owners, as detailed below. The individual and corporate owners of LLC are nonresidents of Alabama. In addition, the flow-through entities in the ownership structure are not legally or commercially domiciled in Alabama. Business operations are only conducted at the LLC level.

The following identifies the tiered structure and its respective owners.

TIER I – LLC

- Individual A
- Individual B
- Limited Partnership (“LP”)

TIER II - L.P.

- Single Member Limited Liability Companies (“SMLLC”):
 - LLC A
 - LLC B
- Individuals:
 - Individual C

- Individual D
- Individual E
- Individual F
- Individual G
- Limited Partnerships:
 - LP A
 - LP B
 - LP C
 - LP D
 - LP E
- C Corporations:
 - A Corp
 - B Corp.
 - C Corp.
 - D Corp.

TIER III – V – Upper Tier Partners

L.P. and each tier beyond the L.P. level exists primarily for investment purposes and only contains individuals, trusts, and other flow-through entities. These entities' distributive share of state taxable income is expected to be minimal.

LLC anticipates filing an aggregate personal income tax composite return for the 2007 tax year due April 15, 2008. LLC's composite return will include its nonresident direct owners and nonresident indirect (upper tier) individuals, flow-through entity, and nonresident trust owners. However, the composite will exclude the four C corporations, as they will file separate corporate income tax returns on their own behalf. All nonresident individual and corporate partners included in the composite filing do not have other source income taxable in the state. LLC will also file Schedule NRA-Alabama Pass – Through Entity Nonresident Agreement with Alabama.

ISSUE

Whether LLC is permitted to file one Alabama aggregate composite return on behalf of all of its nonresident partners/owners, including corporations and flow-through entities as well as “upper tier owner” individuals and entities.

ANALYSIS

Ala. Code, §40-18-24.1(a) authorizes a subchapter K entity with income apportioned to Alabama to file a composite income tax (informational) return and make a composite payment of tax on behalf of some or all of its nonresident owners. Ala. Code, §40-18-24.1(a) states, in part:

The Department of Revenue shall permit a subchapter K entity which has income apportioned to Alabama in accordance with Section 40-18-22 to file a composite return and to make a composite payment on behalf of

some or all of its nonresident owners if there are one or more nonresident owners during any part of the taxable year.

For the purpose of the statute, a “nonresident owner” is defined as

... a partner (with respect to a partnership) or a member (with respect to a limited liability company) who, in the case of an individual, is not a resident of Alabama during such taxable year, or which, in the case of an owner other than an individual, is not legally or commercially domiciled in Alabama during such taxable year....

§40-18-24.1(a).

A plain reading of the statute indicates that all nonresident owners of a subchapter K entity, including corporations, may be included in a composite tax return. The statute clearly defines a nonresident owner to include an “owner other than an individual”. §40-18-24.1(a). Accordingly, a nonresident corporation can be included in a subchapter K entity’s composite return along with nonresident individuals and other nonresident “pass-through entities”.

Further, §40-18-24.1(a) does not distinguish between a nonresident owner’s “direct” ownership or “indirect” ownership of an entity as a condition for filing a composite return. The statute simple authorizes the submission of a composite return for a subchapter K entity on behalf of “some or all of its nonresident owners”, regardless of whether the nonresident owner is a first tier, second tier or multiple tier owner of the entity. §40-18-24.1(a). Accordingly, an “indirect” nonresident owner of a subchapter K entity can be included in the entity’s composite return.

CONCLUSION

Based on the facts and analysis discussed above, LLC may file one Alabama aggregate composite income tax return with the Department of Revenue on behalf of all of its nonresident “direct” owners and nonresident “indirect” “upper tiers I-V” owners, including both individuals and flow-through entities (e.g. partnerships, limited liability companies, trusts, etc.).

Cynthia Underwood, Acting Commissioner
Alabama Department of Revenue