

ALABAMA DEPARTMENT OF REVENUE
Instructions For The Preparation of
Fiduciary Income Tax Return**2005****What is the Purpose of the Alabama Form 41, Fiduciary Income Tax Return?**

Section 40-18-2, *Code of Alabama 1975*, imposes an income tax on estates and trusts. The Alabama Form 41 is used to report the gross income of estates and trusts in addition to reporting the deductions, exemptions and credits allowed the estates and trust by Alabama income tax law in determining the net income and taxable income of the estates and trusts. According to Alabama income tax law, the estates and trusts are considered the taxpayer, and the fiduciary is responsible for filing the Alabama Form 41, and paying any tax due on the return - acting on behalf of the taxpayer.

Alabama Income Tax Law Concerning Estates and Trusts

Available on the Alabama Department of Revenue's web site are the Alabama tax laws and regulations, including the following concerning estates and trusts:

Laws

Section 40-18-25, *Code of Alabama 1975*, Estates and Trusts

Section 40-18-29, *Code of Alabama 1975*, Fiduciary Returns

Regulations

810-3-25-.01	Taxable Income of Estates and Trusts
810-3-25-.02	(REPEALED, EFFECTIVE MAY 5, 2000)
810-3-25-.03	(REPEALED, EFFECTIVE MAY 5, 2000)
810-3-25-.04	Estates and Trusts Tax Computation
810-3-25-.05	Estates and Trusts Beneficiary Taxable Income
810-3-25-.06	Trusts Exempt from Taxation
810-3-25-.07	Estates and Trusts, Miscellaneous Information
810-3-25-.08	Trusts and Estates Net Operating Loss
810-3-25-.09	Reporting of Roth IRA Conversions for Part-Year Residents

Differences in Alabama Income Tax Law and Federal Income Tax Law Concerning Estates and Trusts

Alabama income tax law concerning estates and trusts differs, sometimes significantly, from federal income tax law!

Grantor Trusts. A common area of noncompliance concerns Grantor Trusts – for most income tax purposes federal income tax law disregards the separate existence of a grantor trust – Alabama income tax law does not provide similar treatment. Under Alabama law no distinction is made between a “grantor trust” and other trusts. Because Alabama treats grantor trusts as taxpayers separate and apart from their owners, trust income passes through to beneficiaries subject to the standard trust / beneficiary rules and losses do not pass through to the trust grantors or beneficiaries.

Oil and Gas Percentage Depletion. The amount of any oil and gas depletion claimed must be computed in accordance with Section 40-18-16(b) Code of Alabama 1975, 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 with-

out 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...”

Who Must File an Alabama Form 41?

The annual return filing requirement for fiduciaries to file an Alabama Form 41 on behalf of an estate or trust is established by Section 40-18-29(a), *Code of Alabama 1975*. The filing requirement does not apply to receivers which are appointed by authority of law and are in possession of only a part of the property of a taxpayer.

Returns for Two Trusts. If two or more trusts, the income of which is taxable to the same beneficiaries, were created by the same persons and are administered by the same trustee, the trustee shall file a separate Alabama Form 41 for each of such trusts. If a trustee holds trusts created by different persons for the benefit of the same beneficiary, he shall file a separate return on Form 41 for each trust.

Due Date for the Alabama Form 41

Calendar year returns are due on or before the 15th day of April following the close of the calendar year. Fiscal year returns are due on or before the 15th day of the fourth month following the close of the fiscal year. If the due date falls on a Saturday or a Sunday, the return is due on the following Monday.

Mailing Address for the Alabama Form 41

Mail returns with payment to:

Alabama Department of Revenue
Individual and Corporate Tax Division
Alabama Form 41
P. O. Box 327444
Montgomery, AL 36132-7444

Returns without payment must be mailed to:

Alabama Department of Revenue
Individual and Corporate Tax Division
Alabama Form 41
P. O. Box 327440
Montgomery, AL 36132-7440

Application for Extension - Form 4868A

If the Alabama Form 41 cannot be filed by the due date, Alabama Form 4868A, **Application for Extension to File Alabama Income Tax Return**, must be filed. The application for extension can be filed electronically at www.alabamainteractive.org/taxextension/.

Except in cases where taxpayers are abroad, no extension will be granted for more than 6 months. Applications for extension must be filed before the original due date of the return. An approved extension means only that an extension has been granted to file the return, the payment is still due by the original due date of the return. Interest on the additional tax due from the due date of the return and any penalties will be assessed if applicable to the return.

Note: *The Federal form 4868 “Automatic Extension of Time to File Your Federal Return” will not be accepted in lieu of Alabama Form 4868A “Application for Extension of time to file Your Alabama Return.”*

Interest

If the return is not filed by the due date and additional tax is owed, interest must be added from the original due date of the return to the date of payment. Alabama income tax law requires the same rate of interest on underpayments as is currently required by the Internal Revenue Service.

Penalties

Civil Liability. Any person failing to file a return as required by Alabama law or any person willfully filing a 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 must file **Alabama Form A-2** or **Federal Form W-2** on or before the last day of February. 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 may be obtained from the Alabama Department of Revenue, Montgomery, Alabama, upon request and shall be filed with the Alabama Department of Revenue, Individual and Corporate Tax Division, P.O. Box 327489, Montgomery, AL 36132-7489, on or before March 15, 2006.

Instructions for Completing Page 1

Line 1 – Total Income. Enter the amount from page 2, Part I, line 23, Total Income or (Loss).

Line 2 – Total Deductions. Enter the amount from page 2, Part III, line 5, Total Deductions.

Line 3 – Net Income Subject to Distribution. Subtract the amount on line 2 (Total Deductions) from the amount on line 1 (Total Income), and enter the difference on this line. If the amount on line 3 is a negative figure, the taxpayer may have incurred a net operating loss, which can be carried back or carried forward to another tax year – see the Net Operating Loss section in the later part of this document.

Line 4 – Amount Distributable to Beneficiaries. Enter on line 4 the total amount distributable to beneficiaries. The deduction is allowed to the

estate or trust in accordance with Section 40-18-25, *Code of Alabama 1975*. The deduction for amounts distributable to beneficiaries should include the amount of the net income of the estate or trust for the tax year that was distributed to the beneficiaries during the tax year in addition to the amount of the net income for the tax year that was distributable to the beneficiaries at the end of the tax year.

Enter on lines (a) through (f), in the Beneficiaries' Share of Income area, the name, address, and social security number of beneficiaries to whom distributions of net income were made during the tax year in addition to those whom a distribution was owed at the end of the tax year. Enter in Column B the taxable income of the beneficiary. For nonresident beneficiaries, enter in Column A income which is not taxable to the non-resident beneficiary, in accordance with Section 40-18-25(c) – a complete explanation must be attached for any amount entered in Column A. The sum of Columns A and B should total the amount shown on line 4 (Amount Distributable to Beneficiaries). Attach additional statements or schedules, as needed.

Line 5 – Net Income to Fiduciary. Subtract the amount on line 4 (Amount Distributable to Beneficiaries) from the amount on line 3 (Net Income Subject to Distribution), and enter the difference on line 5.

Line 6 – Exemption Credit. Enter \$1,500, the amount of personal exemption the estate or trust is allowed, in accordance Section 40-18-25, *Code of Alabama 1975*.

Line 7 – Amount Taxable. Subtract the amount on line 6 (Exemption Credit) from the amount on line 5 (Net Income to Fiduciary), and enter the difference on line 7.

If a net operating loss is being brought forward from a previous year, a completed Form NOL-F85A must be attached, and the indicator block on line 7 must be checked. See the Net Operating Loss section in the later part of these instructions.

Lines 8 through 10. Computation of Tax. The computation of the income tax for estates and trusts is established by Section 40-18-25(c), *Code of Alabama 1975*, which references the income tax rates for single individuals stated in Section 40-18-5(1), *Code of Alabama 1975*.

Line 8 – Enter 2% of the first \$500 of taxable income.

Line 9 – Enter 4% of the taxable income in excess of \$500, but not in excess of \$2,500.

Line 10 – Enter 5% of the taxable income in excess of \$3,000.

Line 11 – Total Tax Due. Add the amounts on lines 8, 9, and 10, and enter the total on line 11.

Line 12a – Credit for Income Tax Paid to Another State. Resident estates or trusts are allowed a credit toward Alabama income tax in the amount of income tax paid to other states on Alabama taxable income – provided the income was also subject to tax by the other state. The credit is allowed in accordance with Section 40-18-21, *Code of Alabama 1975*. The credit is limited to the lesser of: (1) the income tax paid to the other state, (2) the tax on the taxable income in the other state using Alabama rates, or (3) the total tax due Alabama. A copy of the return as filed with the other state must be attached for the credit to be considered properly substantiated.

Line 12b – The Capital Credit. In accordance with Section 40-18-194, *Code of Alabama 1975*, the Capital Credit is available to each investing company, its shareholders, partners, members, owners, or beneficiaries involved in a joint venture for a project undertaken by certain new businesses to be located in the state and certain expansions of certain existing businesses. In order to qualify, the investing company must file a statement of intent to invest in a qualifying project and must execute an accounting practices agreement with the Commissioner's Office of the

Alabama Department of Revenue, and the project must be approved by the Alabama Department of Revenue. Each recipient will be allowed a capital credit according to the distributive share, whether or not distributed, of the project's Alabama taxable apportionable income.

The Capital Credit is limited in amount to the actual income tax liability resulting from the qualifying project, as stipulated by Section 40-18-194(5), *Code of Alabama 1975*, which states: "...(5) An investing company which is a trust or estate having income subject to taxation under Section 40-18-25(c) shall receive a credit against the income tax levied by Section 40-18-5 that otherwise would be owed to the state in any year by the investing company on the income generated by or arising out of the qualifying project...."

Form K-RCC must be attached to the Alabama Form 41 in order to receive 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 (www.revenue.alabama.gov), and look for the Tax Incentives page, or contact the Department at P.O. Box 327001, Montgomery, AL 36132-7001 or 334-242-1175.

Line 12c – Amount Paid with Form 4868A. Enter the amount paid with the application for extension, Form 4868A. Attach a copy of the extension with the Form 41.

Line 12d – Composite Payments. Enter the amount paid on behalf of the taxpayer on any Alabama composite return. Also provide on line 12d the payer and the payer's federal employer identification number. Attach a schedule showing the payments, payers, and payer's federal employer identification number, if more than one composite payment has been made for the taxpayer.

Line 13 – Total Credits. Add lines 12a, 12b, 12c, and 12d, and enter the total on this line.

Line 14 – Net Tax Due. Subtract line 13 (Total Credits) from line 11 (Total Tax Due), and enter the difference on line 14, if line 11 is larger than line 13. The amount on line 14 is the amount of tax owed by the fiduciary. The net tax due must be paid before the original due date of the return. If the return is filed late, interest must be included in addition to the tax due at the same rate as currently prescribed by the Internal Revenue Service. Penalties may also apply if the return is not timely filed. (See **Application for Extension, Interest, and Penalties** in these instructions for further information.)

Line 15 – Net Refund. If line 13 (Total Credits) is larger than line 11 (Total Tax Due), enter the difference on this line. The amount on line 15 is the requested amount to be refunded.

Instructions for Completing Part I, Income (page 2)

Line 1 – Dividend Income. Itemize, in the space provided, the names of dividend payers and the total amount of dividends received from each. **All** dividends, including liquidating dividends received, must be reported. Gain or (loss) on liquidating dividends must be reported. Dividends from savings and loan associations must be reported. Attach additional statements and schedules as needed. Enter the total of all dividends received on Part I, line 1 (Total Income from Dividends).

Line 2 – Interest Income. Itemize, in the space provided, all interest received or credited during the taxable year on bank deposits, notes, mortgages, bonds and other evidences of indebtedness, including bonds of the United States, and any state or territory and the political subdivisions thereof. All interest received is taxable except: (a) interest on obligations of the United States or its possessions, and (b) interest on obligations of the State of Alabama or any county, municipality, or other political subdivision thereof. Interest on bonds of other states and their political subdivisions and on refunds of taxes must be reported and is subject to

Alabama income tax. Interest from savings and loan associations must be reported. Attach additional statements and schedules as needed. Enter the total taxable interest on Part I, line 2 (Total Taxable Income from Interest).

Line 10 – Profit from Sale of Real Estate, Stocks, Bonds, Etc. Provide the required information for columns 3 through 8, and state the following facts:

- (a) for real estate, location and description of land and improvements;
- (b) for bonds or other evidence of indebtedness, name of issuing corporation, particular issue, denomination, and amount;
- (c) for stocks, name of corporation, class of stock, number of shares, and capital changes affecting basis (including nontaxable distributions).

If more space is required, use separate sheets with identical columnar headings, 3 through 8 inclusive.

All gains are fully taxable, and all losses are fully deductible in the year of sale or other disposition. Enter the totals on line 9, and enter the net gain or (loss) from all transactions on Part I, line 10 (Net Profit or Loss).

Line 17 – Income from Rents and Royalties. Enter the required information for columns 11 through 15, and enter the totals for the columns on line 16. The net profit or (loss) from rents and royalties should be entered on Part I, line 17 (Net Profit or Loss).

Line 18 – Income from Partnerships. Enter on Part I, line 18, the name, federal employer identification number, and income from investments in S-corporations, and other pass-through entities such as partnerships, limited liability companies, and joint ventures. Attach additional schedules as needed to provide all of the required information.

Line 19 – Income from Other Fiduciaries. Enter on Part I, line 19, the name, federal employer identification number, and income from other estates or trusts. Attach additional schedules as needed to provide all of the required information.

Line 20 – Business Income. If a business is conducted by the estate or trust, complete and attach a federal Schedule C. Enter the net amount of business income on line 20 (Business Income).

Line 21 – Farm Income. If a farm operation is conducted by the estate or trust complete a federal Schedule F and attach it to the return. Enter the net income or (loss) from farm operations on Part I, line 21 (Farm Income).

Line 22 – Income from Other Sources. Enter other income and the related allowed deductions, providing a complete explanation, and enter the net amount of such income on Part I, line 22 (Income from Other Sources).

Line 23 – Total Income or (Loss). Enter the sum of the amounts entered on lines 1, 2, 10, 17, 18, 19, 20, 21, and 22. The amount entered on line 23 must also be entered on page 1, line 1 (Total Income).

Instructions for Completing Part II (page 2)

Explanation of Deduction for Depreciation Claimed in Columns 6 and 13, Part I, Page 2. Complete and attach a federal Form 4562 (Depreciation and Amortization) summarizing the depreciation claimed for the tax year. Provide a reconciliation showing the total amount of depreciation claimed and to which income (reported in Part I, page 2) the depreciation relates.

Instructions for Completing Part III (page 2)

Do not include in Part III any deductions claimed in Part I, page 2.

Line 1 – Total Interest. Enter the amount of interest to be deducted on line 1 (Total Interest). Complete and attach Alabama Form 4952A if a

deduction is claimed for investment interest.

Line 2 – Total Taxes. Identify the amounts paid in taxes, providing an explanation for each different type of tax claimed as a deduction. Do not deduct Alabama income tax. Enter the total amount of taxes claimed on line 2 (Total Taxes).

Line 3a – Casualty and Theft Losses – Amount from Federal Form 4684. Complete and attach a federal Form 4684 (Casualties and Thefts). The casualty and theft loss is allowed the estate or trust by Section 40-18-15(a)(6), *Code of Alabama 1975*.

Line 3b – Exclusion. In computing the 10% floor for the casualty and theft loss deduction, the amount shown on line 1 (Total Income) of Form 41 must be used rather than federal income.

Line 3c – Allowable Loss. Enter the result of subtracting line 3b (Exclusion) from line 3a (Casualty and Theft Losses), but do not enter less than zero.

Line 4a – Other Deductions – Deductions Subject to 2% Limitation. Enter other deductions in accordance with Section 40-15-15(14), *Code of Alabama 1975* (which references Internal Revenue Code Section 212). Provide an explanation of the amounts claimed on line 4a.

Line 4b – 2% of Form 41, Line 1 (page 1). Enter the amount of the 2% limitation in accordance with Section 40-15-15(23), *Code of Alabama 1975*.

Line 4c – Balance (after 2% limitation). Enter the result of subtracting line 4b (2% Limitation) from line 4a (Other Deductions Subject to 2% Limitation).

Line 4d – Deductions Not Subject to 2% Limitation. Provide a complete explanation of the amounts claimed on line 4d.

Line 4e – Total Other Deductions. Enter the total of the amounts entered on line 4c (Balance after 2% limitation) and line 4d (Deductions Not Subject to 2% Limitation).

Line 5 – Total Deductions. Enter on line 5 the total of lines 1, 2, 3c, and 4e. Do not include any deductions claimed in Part I, page 2. Enter the amount on line 5 also on line 2, page 1 (Total Deductions).

Trust Income Exempt from Alabama Taxation

The income of the trusts listed below is exempt from Alabama income tax as described and limited under Section 40-18-25, *Code of Alabama 1975*, and the regulations thereunder.

(a) A trust created and forming part of a pension, profit sharing, or stock bonus plan that qualifies under Internal Revenue Code Section 401(a) is exempt.

(b) A custodial account and annuity contract, or a contract issued by an insurance company that qualifies under Internal Revenue Code Section 401(f) is exempt.

(c) An individual retirement account, an individual retirement annuity, or any custodial account that qualifies under Internal Revenue Code Section 408(e) is exempt.

(d) A retirement bond that qualifies under Internal Revenue Code Section 409 is exempt.

(e) Corporations which are organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning the entire amount thereof, less expenses, over to an organization which is exempt under this section are exempt.

(f) Voluntary employee's beneficiary associations as described in Internal Revenue Code Section 501(c) (9) are exempt.

(g) Local teachers' retirement fund associations as described in Internal Revenue Code Section 501(c) (11) are exempt.

(h) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits if they meet the requirements of Internal Revenue Code Section 501(c) (17) are exempt.

(i) An organization or trust created exclusively to form part of a qualified group legal services plan or plans meeting the requirements of Internal Revenue Code Section 501(c) (20) is exempt.

(j) A trust created exclusively to pay liability insurance premiums for, pay administrative and other expenses of, and pay claims for liability for disability or death due to pneumoconiosis (black lung) as described in Internal Revenue Code Section 501(c) (21) is exempt.

(k) A charitable remainder annuity trust or a charitable remainder trust as defined in Internal Revenue Code Section 664, as in effect January 1, 1982, is exempt to the extent provided in Internal Revenue Code Section 664.

Net Operating Loss

If the amount on line 3, page 1, is a negative figure, it may represent a net operating loss. A net operating loss is, simply stated, an amount that business deductions, after modifications, exceed business income. The most common reason for a net operating loss is a loss in operating a business; however, casualty and theft loss and a loss from the sale of business assets can also create a net operating loss. To determine if there is an allowable net operating loss Alabama Form NOL-F85 must be completed. Form NOL-F85 is available on the Alabama Department of Revenue's web site (www.revenue.alabama.gov). If it is determined that there is an allowable net operating loss, Form NOL-F85 must be attached to the tax return for the loss year to establish the loss.

A 2005 net operating loss may be carried back 2 years and forward 15 years. The loss **must** be carried to the **earliest** taxable year available. However, the entire carryback period may be relinquished with respect to a net operating loss, upon making an election to do so. Such election, once made, is irrevocable. This election must be made by the due date (including extensions) for filing the return. If an election is made to relinquish the carryback period, a statement to that effect must be attached to the loss year return.

If the election is made to carry a net operating loss back, Alabama Form 40X, the form to amend an individual income tax return, must be filed with Form NOL-F85A attached. Forms and additional instructions may be obtained by visiting the Department's website (www.revenue.alabama.gov).

Federal Employment Credits

The taxpayer may have been allowed a federal employment credit, which would have resulted in a reduction in the salaries and wages deducted on the federal income tax return. The amount those salaries and wages were reduced is an allowable deduction for Alabama income tax purposes.

Additional Information

If you have any questions or need assistance in preparing the Alabama Form 41, please contact:

Alabama Department of Revenue
Pass-Through Entity Unit
P. O. Box 327440
Montgomery, AL 36132-7440
Telephone (334) 242-1033