

New Issues Concerning the Preparation of the 2009 Alabama Form PTE-C

New Composite Payment and Return Requirements for Partnerships. The Entertainment Industry Incentive Act of 2009, Alabama Act Number 2009-144 passed during the 2009 legislative session, created new composite payment and return requirements for Subchapter K entities, effective for tax years beginning on or after January 1, 2009.

Under the new law, a partnership, or other entity classified as a Subchapter K entity, is required to file a composite return and make composite payments on behalf of its nonresident owners or members if there are one or more nonresident owners or members at any time during the taxable year.

The law specifically exempts estates, trusts, and business trusts from the requirement to make a composite payment and file a composite return. The law generally exempts Alabama QIPs from the composite payment and return requirement.

An annual composite return is due for a publicly-traded partnership that is treated as a partnership in accordance with 26 U.S.C. §7704(c). If a composite return is not timely and properly filed by the publicly-traded partnership for a taxable year, then a composite payment is due for the tax year from the partnership in accordance with §40-18-24.2, *Code of Alabama 1975*.

Special considerations such as short years and changes of ownership will be addressed on a case-by-case basis. Requests for relief should be submitted to the Department describing the circumstances and type of relief sought.

The new law made no changes to the composite payment and composite return requirements for S corporations. Regulations to implement the new law were being drafted at the time this document was finalized.

Qualified Production Company Rebates. The Entertainment Industry Incentive Act of 2009, Alabama Act Number 2009-144 passed during the 2009 legislative session, created a rebate available to Qualified Production Companies, as that term is defined in the law. The amount of the rebate is equal to 25 percent of the Production Expenditures (adjusted as specified in the law) of a State-Certified Production. The rebate may be applied to any income tax liability applicable to the Qualified Production Company. If the rebate exceeds the income tax liability of the Qualified Production Company, the excess shall be rebated to the Qualified Production Company. Line 5d of the 2009 Form PTE-C has been added for the Qualified Production Company to claim the rebate allowed by the new law.

Qualified Investment Partnerships. The Entertainment Industry Incentive Act of 2009 created §40-18-24.2, *Code of Alabama 1975*, which establishes an entity referred to as a Qualified Investment Partnership (QIP). The law generally defines a QIP as a partnership or other entity classified as a subchapter K entity, or a business trust as defined in §40-18-1, *Code of Alabama 1975*, that for a tax period meets the gross income and asset requirements for a Qualified Investment Partnership as required by §40-18-24.2; and, for which an authorized officer, partner, member or manager of the entity has certified

for the tax period that the entity meets the gross income and asset requirements. Proper certification of a QIP requires the completion of Alabama Schedule QIP-C, Qualified Investment Partnership Certification, which must be filed with the Alabama partnership income tax return for the tax period, and is due by the due date of the Alabama partnership income tax return. An Alabama QIP certification cannot be properly filed with an Alabama Form PTE-C.

An annual composite return is due for a Qualified Investment Partnership (QIP), only if the QIP is required to remit a composite payment for a nonresident member.

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

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. 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.

A financial institution, as defined in §40-16-1, 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 financial institution has income from Alabama sources.

A corporation, as defined in §40-18-1, 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.

Regulations to implement the new law were being drafted at the time this document was finalized.

Composite Payment and Return Requirements for Subchapter K Entities and S Corporations

The Alabama composite return must not be filed as an attachment to the Alabama income tax return for the entity.

Every Subchapter K entity and every S corporation that is credited with a composite payment on a composite return must also file a composite return to properly report the composite payment.

The allocation and apportionment requirements established by the Multistate Tax Compact, codified in Chapter 27, Title 40, *Code of Alabama 1975*, and all rules pertaining to the Multistate Tax Compact are

applicable to composite returns required to be filed by Subchapter K entities and S corporations.

In computing the amount of the composite payment, the entity shall apply the maximum tax rate provided in §40-18-5 (5%) to each nonresident owner's distributive share of income, to include both separately stated income and nonseparately stated income.

The nonresident owner's distributive share of income shall be computed in accordance with §40-18-24, *Code of Alabama 1975*, for Subchapter K entities. The nonresident shareholder's distributive share of income shall be computed in accordance with §40-18-162, *Code of Alabama 1975*, for S corporations.

In computing the amount of the composite payment, an entity may not offset the income or gain of a nonresident owner/shareholder with the loss of another owner/shareholder.

In computing the amount of the composite payment, a net operating loss carryforward may not be used to offset income or gain.

Every nonresident owner or shareholder whose income is reported on a composite return 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, unless the nonresident owner or shareholder is a non-resident individual who has no other Alabama source income. In order for a nonresident individual to have the benefit of any net operating losses generated by a partnership or S corporation, the nonresident individual must establish those losses by filing an Alabama individual income tax return.

Should you have any additional questions, please call the Pass-through Entity Section at (334) 242-1033.

Form PTE-C and other information are available on our Web site at www.revenue.alabama.gov.

Transition Rule

For tax years beginning after December 31, 2008 through December 31, 2009, a pass-through entity may elect, at the time of filing the composite return, to reduce the required composite payment by the amount due on behalf of a nonresident member which makes its required Alabama income tax payments and which files its required Alabama income tax return for the tax year. If a nonresident member fails to make its required Alabama income tax payments or fails to file its Alabama income tax return for the tax year, the pass-through entity shall be liable for the portion of the composite payment due on the non-compliant member's distributive share of the pass-through entity's income. A pass-through entity electing to reduce the composite payment under this transition rule shall indicate "Composite Payment Reduction" in bold lettering, on the front of the tax return and shall file a return even if the net tax due is zero.

Nonresident Agreements (Schedule NRA)

An Alabama S corporation may file the agreement of each nonresident shareholder of the entity (1) to file a return and make timely payments of all taxes imposed on the shareholder with respect to the income of the Alabama S corporation, and (2) to be subject to personal jurisdiction in this State for the purpose of the collection of unpaid income tax, together with related interest and penalties, from the nonresident shareholder. A S corporation is not required to make a composite payment for any nonresident shareholder that certifies in writing, under penalty of perjury, to the entity prior to the original due date of the entity's income tax return that the nonresident shareholder has fully paid its Alabama income tax attributable to its distributive share of the entity's net taxable income allocated and apportioned to Alabama with respect to its taxable year.

Failure of Nonresident Owner in S Corporation to Timely File

If the nonresident shareholder that has filed a NRA does not pay the tax due at the required time, the S corporation shall make the required payment of income tax due within 60 days after notice and demand from the Department. The tax due is the total of each owner's distributive share of the entity's net taxable income allocated and apportioned to Alabama multiplied by 5% for all nonresident owners.

General Instructions

Period Covered

File the 2009 return for calendar year 2009 and fiscal years that begin in 2009 and end in 2010.

Original Due Date

The calendar year return is due on or before April 15, 2010 for Subchapter K entities. The calendar year return is due on or before March 15, 2010 for S corporations. For fiscal year or short year taxpayers, the return is due on or before the 15th day of the 4th month following the close of the tax period for Subchapter K entities. For fiscal year or short year taxpayers, the return is due on or before the 15th day of the 3rd month following the close of the tax period for S corporations. If the 15th falls on Saturday, Sunday, or a state holiday then the due date will be considered the following business day.

Any changes must be made on an amended Form PTE-C no later than the extended due date of the Subchapter K entity's/S corporation's return. If an amended Form PTE-C results in overpayment of tax, the overpayment may be refunded or credited to the next year's filing. Any changes in income affecting the owner's/shareholder's tax after the extended due date, must be made on the owner's/shareholder's applicable tax return. (Individual – Form 40NR, C corporation – Form 20C, S corporation – Form 20S, or Fiduciary – Form 41.)

Extension

A six month extension of time for filing Form PTE-C 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 regards to the extension of time to file the return.

Estimates

Estimate payments are not required by Alabama law. If you wish to make voluntary estimated payments, your payment should be submitted with Form BIT-V and payment type PTE-C should be checked.

NOTE: *Form PTE-C is no longer required to be submitted with an estimated payment.*

Payment of Tax

The total tax liability on the calendar year composite return is due on or before April 15, 2010 for Subchapter K entities. The total tax liability on the calendar year composite return is due on or before March 15, 2010 for S corporations. For fiscal year or short year taxpayers, the return is due on or before the 15th day of the 4th month following the close of the tax period for Subchapter K entities. For fiscal year or short year taxpayers, the return is due on or before the 15th day of the 3rd month following the close of the tax period for S corporations. Payments made after the original due date will be subject to interest and penalty charges. Make check or money order payable to: Alabama

Department of Revenue. Write the Subchapter K entity's/S corporation's Federal Employer Identification Number (FEIN), Form PTE-C, and the tax year on the payment and enclose Form BIT-V when payment is mailed.

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) 242-0192 or 1-800-322-4106, option 7 for further information. Form BIT-V is not required when payment is made by EFT.

CAUTION: Do not attach the Form PTE-C or the Form PTE-C payment to the Form 65/Form 20S or vice versa.

Signature

The return must be signed by an authorized officer of the Subchapter K entity/S corporation. Enter the date signed and the officer's title. If the return is prepared by someone other than an employee of the Subchapter K entity/S corporation, enter the signature and identification information of the preparer.

Specific Instructions

At the top, right-hand corner, check the appropriate box indicating calendar year, fiscal year, or short-year. Fill in the blanks indicating the beginning and ending dates of the tax period if the return is for a fiscal year or short period. Check the appropriate box indicating a Subchapter K entity or S corporation. Check the Qualified Investment Partnership box if the return is being filed for a Qualified Investment Partnership. Check the box if this return serves as an amendment. Enter the Federal Employer Identification Number (FEIN), Federal Business Code, name mailing address (with complete ZIP code) of the Subchapter K entity/S corporation. Enter the number of owners/shareholders, and number of nonresident owners/shareholders included in composite return. Check the box if the address of the entity has changed since the last filing.

LINE 1 – Enter the total amount of tax due from Schedule PTE-CK1, page 3 of PTE-C for every owner/shareholder

LINE 2 – If payment is being remitted after the original due date of the return, compute interest on the late payment in accordance with Section 40-1-44, *Code of Alabama 1975*, and enter the interest amounts in the applicable columns.

LINE 3 – If the return is not filed on or before the due date, enter a failure to timely file penalty (the greater of 10% of the amount of net tax due or \$50). The tax due and not paid by the original due date of the return will be subject to a failure to timely pay penalty of 1% per month (for a maximum of 25%), which should be entered on line 3.

LINE 4 – Total amount of tax, interest, and penalty due. (Add lines 1 through 3)

LINE 5a – Enter the amount of overpayment as shown on the Form PTE-C return for the previous tax year.

LINE 5b – Enter the total amount of estimated tax payments and automatic extension payments made for the tax year.

LINE 5c – Enter the amount of composite payments made on behalf of the entity for the tax year. Please provide the name and FEIN of the entity making the composite payment(s) – if multiple payers please attach a listing to the return.

LINE 5d – Act Number 2009-144, passed by the Alabama Legislature allows a rebate to Qualified Production Companies for Production Expenditures related to a State-Certified production. See the Alabama Department of Revenue Web site for additional information.

LINE 5e – Enter the total amount of all payments/credits. (Add lines 5a through 5d.)

LINE 6 – Amount to be Remitted or (Overpayment)

Enter the amount to be remitted or overpayment by subtracting line 5d from line 4. A positive amount represents an amount due. A negative amount represents an overpayment.

Form BIT-V must accompany the payment unless the payment is made electronically. Complete the indicator on the return if the payment is made electronically.

LINE 7a – Enter the amount of overpayment to be credited to the following tax year.

LINE 7b – Enter the amount of overpayment to be refunded.

PAGE 2 – Provide the requested information concerning the entity filing the composite return.

SCHEDULE PTE-CK1, LINES 1-11.

Schedule PTE-CK1 serves as the third page of Alabama Form PTE-C, and summarizes the requested information concerning nonresident shareholders and owners. Give complete information regarding each nonresident owner/shareholder as requested in columns (A), (B), (C), (D), (E), (F), (G), and (H). Column (C) should indicate one of the following: I = individual; T = trust; P = partnership, Ltd, LLC, LLP; S = S corporation, E = Exempt Entity or C = C corporation.

Column (E) should include the amount of each nonresident owner's/shareholder's pro rata share of nonseparately stated income plus portfolio income allocated and apportioned to Alabama as reported on Schedule K-1, Line M and Line Q. Column (E) should not include separately stated items of loss, deduction or expense which are subject to other limitations on the individual's return. The pro rata share of these items can only be taken on the nonresident tax form. If a nonresident owner/shareholder has a loss, do not include him/her on Form PTE-C unless the loss is used to offset guaranteed payment(s).

Column (F) should include the amount of each Subchapter K owner's guaranteed payments allocated and apportioned to Alabama. Column (G) should be the total of Columns (E) and (F). Column (H) should be the amount from Column (G) multiplied by 5%.

If this report covers more than eleven (11) nonresident owners, attach additional pages providing the same information as requested on Schedule PTE-CK1. The totals from the additional pages of Schedule PTE-CK1 should be combined and reported on line 13 of Schedule PTE-CK1.

LINE 12 – Enter the totals from Page 3, columns (E) through (H).

LINE 13 – Enter the total from any additional pages of PTE-CK1, columns (E) through (H).

LINE 14 – Enter the totals columns (E) through (G), (lines 12 + 13).

LINE 14H – Add lines 12 and 13, column H and enter here and on Page 1, line 1.

Unless Schedule PTE-CK1 is attached, this return is considered incomplete.

Note: For entities needing additional information about transitional year relief and for composite filing requirements for Affordable Rental Housing Developments please refer to www.revenue.alabama.gov/incometax/ICcurrenttaxissues.htm.