

810-3-175-.01 Passive Investment Income Tax.

(1) Definitions -

(a) "Passive investment income" means gross receipts from royalties, rents, dividends, interest (excluding installment sales to customers and income of lending and financing companies), annuities, and sales or exchanges of stock or securities to the extent of any gains therefrom.

1. For any tax year in the recognition period, passive investment income shall not include any recognized built-in gain or loss. See Section 40-18-174, Code of Alabama 1975.

(b) "Net passive income" means passive investment income less deductions directly connected with the production of such income.

(c) "Excess net passive income" means an amount which bears the same ratio to the net passive income as the amount by which the passive investment income exceeds 25 percent of the gross receipts bears to the passive investment income. Therefore,

$$\text{Excess npi} = \frac{\text{pii} - 25\%(\text{GR}) \times \text{npi}}{\text{pii}}$$

pii = passive investment income for the tax year

npi = net passive income for the tax year

GR = total gross receipts for the tax year

1. The amount of excess net passive income shall not exceed the S corporation's taxable income for the tax year as determined under Section 40-18-161, Code of Alabama 1975.

(2) The tax is imposed upon S corporations which have Alabama accumulated C corporation earnings and profits. If, for the taxable year, such S corporations have passive investment income which constitutes more than 25 percent of gross receipts, then a tax is imposed on the income of the S corporation for that taxable year.

(3) The tax is computed by multiplying 5 percent times the Alabama excess net passive income.

(4) Those corporations subject to the tax should complete the appropriate schedules of Form 20S, which is due on the fifteenth day of the third month following the end of the tax year. See Rule 810-3-42-.01. The tax is due at the same time as the return. An extension will be granted up to a maximum of six months to file the Alabama S corporation income tax return. An extension of time to file the return is not an extension of time for payment of the tax. The amount

of tax due must be paid on or before the due date of the return without regard to the extension to file the return. Interest and penalties are due on all taxes not paid on or before the unextended due date. See Rules 810-3-39-.02 and 810-3-42-.01.

(5) The department may waive the excess net passive income tax if the S corporation establishes that it made a good-faith determination at the close of the tax year that it had no C corporation earnings and profits and that it distributed such earnings and profits within a reasonable time after determining that they existed.

(a) A request for waiver of the passive investment income tax shall be made in writing to the department. The request must contain a description of how and on what date the S corporation determined that it had no C corporation earnings and profits at the end of the tax year, a description of how and on what date it was determined that the S corporation had C corporation earnings and profits at the end of the tax year, and a description (including dates) of any steps taken to distribute such earnings and profits.

(b) If the earnings and profits have not been distributed, the request must contain a timetable for distribution and an explanation of why such timetable is reasonable. Before the waiver may be granted, all subchapter C earnings and profits must have been distributed.

(6) In administering and interpreting this rule, the Department will consider administrative rulings and decisions in respect to the similar provisions of the Internal Revenue Code and Rules thereunder.

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