

810-3-39-.03 Consolidated Filing.

(1) Election to file an Alabama consolidated return. In lieu of filing separate entity returns in Alabama, a group of related corporations may elect to be treated as an Alabama affiliated group filing a consolidated corporate income tax return. Such election may be made by submitting items (a) through (c) below to the Department by the due date or extended due date of the return:

(a) Submit a completed Form 20C-CRE (Election to File Consolidated Corporate Income Tax Return). This form must be filed by the common parent of the Alabama affiliated group. If the common parent is not a member of the Alabama affiliated group, the members of the Alabama affiliated group must designate the member that will serve in this role.

(b) Submit a Form 20C-C (Alabama Consolidated Return) for the Alabama affiliated group and include all pertinent schedules, including Schedule AS (Affiliation Schedule) and a proforma Form 20C for each member. The Alabama consolidated return must be signed by one of the officers of the common parent listed in Alabama Rule 810-3-39-.01(1)(a) on behalf of the Alabama affiliated group.

(c) Pay the annual fee for the privilege of filing an Alabama consolidated return. The annual fee is a graduated fee based upon the aggregate amount of total assets and is determined by Section 40-18-39(b)(8), Code of Alabama 1975. "Aggregate amount of total assets" means, for purposes of this rule, the aggregate of all member's total assets as determined on a proforma separate entity basis.

(2) Nexus. Only corporations having substantial nexus with Alabama may be included as part of the Alabama affiliated group. A corporation has substantial nexus with Alabama if certain thresholds are exceeded pursuant to Section 40-18-31.2, Code of Alabama 1975.

(3) Liability. Each corporation included in the Alabama consolidated return will be jointly and severally liable for the Alabama income tax liability of the Alabama affiliated group. If a corporation is a member of the Alabama affiliated group for only part of the tax year, then the corporation will be liable for only the portion of the Alabama consolidated tax liability attributed to that portion of the year that the corporation was a member of the Alabama affiliated group prorated on a daily basis. The tax liability of the Alabama affiliated group will be the Alabama tax rate specified in Section 40-18-31, Code of Alabama 1975 applied to the taxable income of the Alabama affiliated group.

(a) Part-year members. If an eligible corporation becomes a member of an Alabama affiliated group after the beginning of the Alabama consolidated return year or ceases to be a member of the Alabama affiliated group during the consolidated return year, two tax returns will be due for that taxable year. The Alabama consolidated return

shall include amounts attributable to such corporation for the part of the year in which it was a member of the Alabama affiliated group. A separate return shall be filed and include (or if a member of a different Alabama affiliated group, such group's Alabama consolidated return shall include) amounts attributable to such corporation for the remainder of the taxable year. The method used to determine the federal taxable income of that member will be used to attribute amounts of taxable income or loss, modifications, business income or loss, apportionment factors, nonbusiness or partnership income or loss, and credits to the different portions of the taxable year.

(b) Ineligible members. If a part-year member is a taxpayer that is ineligible to be a member of an Alabama affiliated group, it shall file a separate tax return for the respective period(s) using the accounting method used in determining federal taxable income of such member.

(c) Liability of corporation after withdrawal. If a corporation has ceased to be a member of an Alabama affiliated group and if such cessation resulted from a bona fide sale or exchange of its stock for fair value and occurred prior to the date upon which any deficiency is assessed, the Commissioner may, if the Department determines that the assessment or collection of the balance of the deficiency will not be jeopardized, make assessment and collection of such deficiency from such former member in an amount not exceeding the portion of such deficiency which the Commissioner may determine to be allocable to it. If the Commissioner makes assessment and collection of any part of a deficiency from such former member, then for purposes of any credit or refund of the amount collected from such former member, the agency of the common parent will not apply.

(4) Computation of consolidated income. Each member of an Alabama affiliated group must separately calculate its Alabama taxable income or loss (Form 20C) in accordance with Title 40, Code of Alabama 1975. The members will then combine such incomes and losses on a single return (Form 20C-C). Transactions between members of an Alabama affiliated group are not eliminated in determining the member's Alabama taxable income.

(5) Net Operating Losses. A net operating loss ("NOL") earned by one member of an Alabama affiliated group may offset income earned by another member in the year in which it was earned. To the extent the Alabama affiliated group, as a whole, earns a NOL for a tax year, such loss may be carried forward to offset taxable income earned by the Alabama affiliated group in subsequent tax years pursuant to Section 40-18-35.1, Code of Alabama 1975.

(a) Addition of a new member to the Alabama affiliated group. Pursuant to Section 40-18-39(h), Code of Alabama 1975, NOLs earned by a corporation before it was part of the Alabama affiliated group are deductible only to the extent the corporation reports separate company income and such deduction should be shown on the member's proforma Form 20C in the tax year in which the NOL was utilized.

(b) Assignment of NOL to a departing member. When a member departs an Alabama affiliated group, any unutilized NOL earned in a previous tax year must be evaluated to determine if any portion of such loss should be assigned to the departing member. Such NOLs are assigned to the members of the Alabama affiliated group based on the percentage in which the members contributed to the loss in the tax year in which the net operating loss was earned.

Example: Company A, Company B, and Company C elected to file an Alabama Consolidated return in 2013. The Alabama affiliated group earned a (\$40,000,000) NOL in tax year 2015. The members separate Alabama taxable income for tax year 2015 were as follows: Company A: (\$20,000,000), Company B: \$10,000,000, Company C: (\$30,000,000). The Alabama affiliated group utilized \$20,000,000 of the 2015 NOL in tax year 2016. On the last day of the 2016 tax year, Company C left the Alabama affiliated group. The unutilized 2015 tax year NOL of (\$20,000,000) (\$40,000,000 - \$20,000,000) must be analyzed to determine if a portion should be assigned to Company C. Only Company A and Company C contributed to the 2015 NOL earning a total negative taxable income of (\$50,000,000) (20,000,000 + 30,000,000). Company A is assigned 40% (20,000,000/50,000,000) of the NOL generated in tax year 2015 while Company C is assigned 60% (30,000,000/50,000,000). The Alabama affiliated group may carryforward \$8,000,000 of the remaining 2015 NOL while Company C may carryforward \$12,000,000.

(6) Income Tax Credits. Members of an affiliated group that have been approved for various income tax credits allowed by Alabama law must calculate those credits on a separate entity basis. Such credits may offset only the income tax liability of the specific member authorized to use the credit. Income tax credits earned by one member may not offset the income tax liability of another member. Credits may not be used to reduce the Alabama affiliated group's consolidated filing fee.

(7) Consolidated Estimated Tax. If an election has been made to file an Alabama consolidated return, estimated tax payments must be submitted for the Alabama affiliated group in the name of the common parent or its designee.

(8) Records. In accordance with Section 40-2A-7 Code of Alabama 1975, taxpayers must maintain records to allow the Department to determine the correct amount of tax including support for deviations from federal to Alabama income, gain computations, elimination entries, etc.

(9) Federal statutes. For interpretation of federal statutes adopted by the Alabama Legislature, see Alabama Rule 810-3-1.1-.01, Operating Rules.

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Authority: Section 40-2A-7(a)(5), 40-18-31.2, 40-18-35.1, and 40-18-39, Code of Alabama 1975.  
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