

DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-2-8
ALABAMA BUSINESS PRIVILEGE TAX AND
CORPORATE SHARES TAX

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810-2-8-01 Taxable Income For Determining The Applicable
Privilege Tax Rate.

(1) For tax years beginning after December 31, 1999,
the taxable income used to compute the tax rate for the Alabama
Business Privilege Tax shall be determined as follows:

(a) C Corporations.

1. The taxable income used to determine the tax rate for the privilege tax shall be the federal taxable income before net operating loss and special deductions. This income shall be apportioned in accordance with §40-27-1, Code of Ala. 1975, and the accompanying rules. Deductions shall not be allowed for the federal income tax or the Alabama net operating loss in computing an income category for purposes of determining the rate for the privilege tax. C corporations filing as members of an Alabama consolidated group shall determine taxable income for the privilege tax on a separate company basis.

2. Corporations granted permission by the Alabama Department of Revenue to use separate accounting to determine Alabama taxable income shall compute the income based on Internal Revenue Service Form 1120. The taxable income before the deductions for the net operating loss and special deduction shall be used to determine the income category for purposes of determining the rate for the privilege tax.

3. Corporations granted permission by the Alabama Department of Revenue to use any other alternative methods to apportion income shall use these methods to determine the taxable income used to compute the tax rate for the privilege tax.

(b) S Corporations.

1. The taxable income used to determine the tax rate for the privilege tax shall be the federal ordinary income or (loss) from trade or business activities plus any items of income or applicable deductions passed through to the shareholders that were determined pursuant to 26 U. S. C. §1366. This income shall be apportioned in accordance with §40-27-1, Code of Ala. 1975, and the accompanying rules. Deductions shall not be allowed for the federal income tax or the Alabama net operating loss in computing an income category for purposes of determining the rate for the privilege tax.

2. S Corporations granted permission by the Alabama Department of Revenue to use separate accounting to determine Alabama taxable income shall compute the income based on the Internal Revenue Service Form 1120S. Any Alabama income or expenses passed through to the shareholders shall be added to or subtracted from the Alabama taxable income to arrive at the taxable income used to determine the rate for the privilege tax.

3. S Corporations granted permission by the Alabama Department of Revenue to use any other alternative methods to apportion income shall use these methods to determine the taxable income used to compute the tax rate for the privilege tax.

(c) Limited Liability Entities.

1. The taxable income used to determine the tax rate for the privilege tax shall be the federal ordinary income or (loss) from trade or business activities plus any items of income or expenses passed through to the shareholders that were determined pursuant to 26 U. S. C. §702. This income shall be apportioned in accordance with §40-27-1, Code of Ala. 1975, and the accompanying rules.

2. Limited Liability Entities granted permission by the Alabama Department of Revenue to use separate accounting to determine Alabama taxable income shall compute the income based on Internal Revenue Service Form 1065. Any Alabama income or expenses passed through to the shareholders shall be added to or subtracted from Alabama taxable income to arrive at the taxable income used to determine the rate for the privilege tax.

3. Limited Liability Entities granted permission by the Alabama Department of Revenue to use any other alternative methods to apportion income shall use these methods to determine the taxable income used to compute the tax rate for the privilege tax.

(d) Real Estate Investment Trusts.

1. The taxable income used to determine the tax rate for the privilege tax shall be the federal income before the net operating loss deduction, the total deduction for dividends paid, and the 26 U. S. C. §857(b)(2)(E) deduction. This income shall be apportioned in accordance with §40-27-1, Code of Ala. 1975, and the accompanying rules.

2. Real Estate Investment Trusts granted permission by the Alabama Department of Revenue to use separate accounting to determine Alabama taxable income, shall compute the income based on Internal Revenue Service Form 1120-REIT.

3. Real Estate Investment Trusts granted permission by the Alabama Department of Revenue to use any other alternative methods to apportion income shall use these methods

to determine the taxable income used to compute the tax rate for the privilege tax.

(e) Disregarded Entities.

1. The taxable income used to determine the tax rate for the privilege tax shall be the federal ordinary income or (loss) from trade or business activities plus any items of income or expenses passed through to the shareholders that were determined pursuant to 26 U. S. C. §1361 or 26 U. S. C. §61. This income shall be apportioned in accordance with §40-27-1, Code of Ala. 1975, and the accompanying rules.

2. Disregarded Entities granted permission by the Alabama Department of Revenue to use separate accounting to determine Alabama taxable income, shall compute the income based on either Internal Revenue Service Form 1065 or Form 1120S which ever is applicable. Any Alabama income or expenses passed through to the shareholders shall be added to or subtracted from Alabama taxable income to arrive at the taxable income used to determine the rate for the privilege tax.

3. Disregarded Entities granted permission by the Alabama Department of Revenue to use any other alternative methods to income shall use these methods to determine the taxable income used to compute the tax rate for the privilege tax.

(f) Financial Institutions.

1. For Financial Institutions filing as C corporations with the Internal Revenue Service, the taxable income used to determine the tax rate for the privilege tax shall be the federal taxable income before net operating loss and special deductions. For Financial Institutions filing as S Corporations with the Internal Revenue Service, the taxable income used to determine the tax rate for the privilege tax shall be the federal ordinary income or (loss) from trade or business activities plus any items of income or expenses passed through to the shareholders that were determined pursuant to 26 U. S. C. §1366. This income shall be apportioned in accordance with Chapter 16, Title 40, Code of Ala. 1975, and the accompanying rules. Deductions shall not be allowed for the federal income tax or the Alabama net operating loss in computing an income category for purposes of determining the rate for the privilege tax. Financial Institutions filing as members of an Alabama consolidated group shall determine taxable

income for the privilege tax on a separate company basis.
(Note: Financial Institutions are subject to the Financial Institution Excise Tax in Alabama and may not file as an Alabama C or S Corporation.)

2. Financial Institutions given permission by the Alabama Department of Revenue to use separate accounting to determine Alabama taxable income shall compute the income based on either the Internal Revenue Service Form 1120 or Form 1120S which ever is applicable. For Financial Institutions filing as S Corporations with the Internal Revenue Service, any Alabama income or expenses passed through to the shareholders shall be added to or subtracted from Alabama taxable income to arrive at the taxable income used to determine the rate for the privilege tax.

3. Financial Institutions granted permission by the Alabama Department of Revenue to use any other alternative methods to apportion income shall use these methods to determine the taxable income used to compute the tax rate for the privilege tax.

(g) Insurance Companies. For U. S. Life Insurance Company filing Internal Revenue Service Form 1120-L, federal taxable income shall be total taxable income less the dividends received deduction and the operations loss deduction. For U. S. Property and Casualty Insurance Companies filing Internal Revenue Service Form 1120-PC, federal taxable income shall be taxable income less the dividend received deduction and the net operating loss deduction. This income shall be apportioned in accordance with Title 27, Code of Ala. 1975, relating to insurance companies.

Author: Voncile Catledge

Statutory Authority: Code of Ala. 1975, §40-2A-7(a)(5), as amended.

History: New Rule: Filed July 26, 2000, effective August 30, 2000.

810-2-8-.02 Determination Of The Apportionment Factors For The Privilege Tax.

(1) For tax years beginning after December 31, 1999, taxpayers engaged in multistate operations will determine the Apportionment Factors used to compute Alabama net worth as follows:

(a) C Corporations, S Corporations, Limited Liability Entities, Real Estate Investment Trusts, and Disregarded Entities engaged in multistate operations shall apportion net worth computed under §40-14A-23, Code of Ala. 1975, in accordance with §40-27-1, Code of Ala. 1975, and the accompanying rules. During the determination period, the factors used to determine Alabama net worth shall be computed in the same manner as prescribed for purposes of the income tax levied by Chapter 18, Title 40, Code of Ala. 1975.

(b) Financial Institutions shall apportion net worth computed under §40-14A-23 in accordance with Chapter 16, Title 40, Code of Ala. 1975, and the accompanying rules. During the determination period, the factors used to determine Alabama net worth shall be computed in the same manner as prescribed for purposes of the financial institution excise tax.

(c) Insurance companies subject to the insurance premium tax levied by Chapter 4A of Title 27, Code of Ala. 1975, shall apportion income based on the ratio of the insurer's Alabama premium income to its nationwide total direct premiums. The information used to determine this ratio is reflected on Schedule T of the insurer's annual statement filed with the insurance commissioner for the immediate preceding tax year.

Author: Voncile Catledge

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-14A-1.

History: New Rule: Filed July 26, 2000, effective August 30, 2000.

810-2-8-.03 Executive Of Privilege Tax Return. A paid preparer may execute and file the business privilege tax return, extension request, and the annual report, if a power of attorney is on file, or is filed simultaneously with the return, etc., authorizing this action. Otherwise, the return, etc. must be executed by one of the officers specified in Section 40-18-39(e), Code of Ala. 1975.

Author: Michael E. Mason

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-14A-26.

History: New Rule: Filed March 20, 2001; effective April 24, 2001.

810-2-8-.04 Business Privilege Tax - Transition Rules From A Calendar Year Basis To A Fiscal Year Basis.

(1) Scope. This rule is issued pursuant to Section 40-2A-7(a)(5), Code of Ala 1975, to provide guidance to business entities subject to the Business Privilege Tax to transition from a calendar year tax basis to a fiscal year tax basis and provide for the computation of a tax obligation when an accounting period change is made.

(2) Definitions. The following terms have the meanings ascribed to them for purposes of this rule:

(a) Business Privilege Tax. The tax levied by Section 40-14A-22, Code of Ala. 1975.

(b) Calendar Year Tax Period. The period from January 1 of each year through December 31 of that year.

(c) Fiscal Year Tax Period. Any 365 consecutive day period other than a calendar year tax period.

(d) Determination Period. A taxpayer's taxable period that precedes the taxpayer's current taxable period.

(d) Determination Date. The date upon which the Business Privilege Tax accrues.

(3) Applicability of Taxing Statutes.

(a) Pursuant to Section 40-14A-2(b), for taxable years 2000 and 2001, all taxpayers subject to the tax levied in Section 40-14A-22, shall have a determination date of January 1 following the determination period. For all taxable years ending after December 31, 2000, the determination date shall be the first day of the taxable year following the determination period.

(b) If the taxpayer has a change of accounting period, that change shall follow the rules provided in Section 40-18-30(a), Code of Ala. 1975.

Author: Michael E. Mason

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-14A-1, 40-14A-2, 40-14A-22, 40-18-30(a).

History: New Rule: Filed March 20, 2001; effective April 24, 2001.

810-2-8-.05 Election To File As A Family Limited Liability Entity.

(1) Any entity qualifying to elect status as an Electing Family Limited Liability Entity as defined by §40-14A-1(h), Code of Ala. 1975, must file with the Department of Revenue an annual election to be taxed as a family limited liability entity for the taxable year represented by the Business Privilege Tax return.

(2) The election must be attached to the Business Privilege Tax return and filed on or before the due date of the return (including extensions).

(3) The election must be made on forms prescribed by the Department, and must contain the following:

(a) Name and FEIN of the taxpayer;

(b) A statement that the profits and capital interests of the entity were calculated using the constructive ownership rules of 26 U.S.C. §318, without regard to the 50% limitation contained in 26 U.S.C. §318(a)(2)(C) and 26 U.S.C. §318(a)(3)(C);

(c) Indication whether the entity meets the gross receipts test, the assets test, or both, by completing the Electing Family Limited Liability Election Form in its entirety; and

(d) Signature of the taxpayer or authorized representative.

(4) Electing Family Limited Liability Entity status will be disallowed if the election is not filed in a timely manner, does not contain the required information, or is not properly signed by the taxpayer or authorized representative.

Authors: Tamera P. Bruton, Ann F. Winborne, Richard H. Henninger

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-14A-1(h).

History: New Rule: Filed December 15, 2004, effective January 19, 2005.

810-2-8-.06 Extension Of Time For Filing Of Business Privilege Tax Returns.

(1) Corporations are required to file an Alabama Business Privilege Tax ("BPT") return no later than two and a half months after the beginning of a taxpayer's taxable year. Generally, all other taxpayers must file no later than three and a half months after the beginning of the taxpayer's taxable year.

(2) Notwithstanding the requirement in (1) above, any taxpayer required to file a BPT return will be granted an automatic six-month extension of time for filing the return.

(3) However, in no event shall a taxpayer extend the original due date to pay the tax. An extension of time granted to file the return pursuant to this section 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 regard to the extension to file the return.

(a) Payment of the tax shall be made via the paper Payment Voucher or by Electronic Funds Transfer (EFT). However, payment must be made via EFT if the payment exceeds \$750. Please refer to Regulations 810-13-1-.01 and 810-13-1-.03.

(b) Underpayment of tax penalties plus any applicable interest will be imposed as provided by law without regard to any extension granted under this section.

(4) An entity that fails to file the required return by the extended due date may not be granted an automatic extension the following (ensuing) year, but may be required to request the extension in writing. If a written request is required, the request must be made to the Commissioner of Revenue or to his designee, and must explain the reason for the request and the reason for failing to timely file the return in the previous year. The request also must state that the entity has no outstanding debts owed to the Department.

Authors: Ann F. Winborne, CPA, Richard H. Henninger

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-14A-25.

History: New Rule: Filed November 26, 2008; effective December 31, 2008.

810-2-8-.07 Definition Of Homeowners Association For Purposes Of Administering The Alabama Business Privilege Tax Law.

(1) For purposes of administering the Alabama business privilege tax law levied by §40-14A-22, Code of Ala. 1975, effective with business privilege taxable years beginning on or after January 1, 2009, and business privilege tax determination periods beginning on or after January 1, 2008:

(a) Entities which are formed by restrictive covenant or a declaration of restrictions by the owners of real property in a defined area which are united as a nonprofit association to improve or maintain the area's quality will be presumed to be exempt from the Alabama business privilege tax as "homeowners associations" referred to in §40-14A-43, Code of Ala. 1975.

(b) The not-for-profit corporations referred to as "property owners' associations" in §40-14A-22, Code of Ala. 1975, will be treated as "homeowners associations," as referred to in §40-14A-43, and will be exempt from the Alabama business privilege tax.

(c) A unit owners' association organized under the Alabama Uniform Condominium Act will be treated as a homeowners association in accordance with §40-14A-43, if the association is a nonprofit entity.

(d) For-profit entities are not presumed to be homeowners associations for purposes of the Alabama business privilege tax exemption provided for in §40-14A-43, Code of Ala. 1975.

Authors: Voncile Catledge, Ed Cutter

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-14A-22, 40-14A-43.

History: New Rule: Filed August 20, 2009, effective September 24, 2009.

810-2-8-.09 Business Privilege Tax Filing Requirements For Disregarded Entities And Owners Of Disregarded Entities.

(1) Scope. This regulation provides guidance concerning the Alabama business privilege tax filing

requirements for certain disregarded entities and the owners of the disregarded entities.

(2) Net Worth Computation of Disregarded Entities. Section 40-14A-23, Code of Ala. 1975, establishes the net worth computation for business entities subject to the Alabama business privilege tax. In accordance with the section, the net worth computations of a disregarded entity differ based upon whether the owner of the disregarded entity is subject to the Alabama business privilege tax. See Section 40-14A-1, Code of Ala. 1975, for a definition of "disregarded entity."

(a) Disregarded Entity Net Worth Computation if the Owner of the Disregarded Entity is Subject to the Alabama Business Privilege Tax. The net worth of the disregarded entity shall be zero, and the items that would enter into determining the net worth of the disregarded entity shall be used in computing the net worth of the owner of the disregarded entity.

1. Both the disregarded entity and the disregarded entity's owner would be required to file an Alabama business privilege tax return.

2. The disregarded entity must disclose the owner's name and Federal Employer Identification Number (FEIN) as required by the Alabama business privilege tax form.

(b) Disregarded Entity Net Worth Computation if the Owner of the Disregarded Entity Is Not Subject to the Alabama Business Privilege Tax. The net worth of the disregarded entity shall be equal to the amount of the disregarded entity's assets less its liabilities.

1. Since, the owner of the disregarded entity is not subject to the Alabama business privilege tax, the owner would not be required to file an Alabama business privilege tax return.

2. Disregarded entity owners that are not subject to the Alabama business privilege tax include, but are not limited to: resident individual taxpayers; nonresident individual taxpayers; general partnerships; and, foreign business entities not doing business in the state of Alabama and not registered with the Alabama Secretary of State's Office to do business in the state of Alabama.

3. The disregarded entity must disclose the owner's name and FEIN as required by the Alabama business privilege tax form. A statement must be attached to the business privilege tax return explaining why the owner is not subject to the Alabama business privilege tax.

Authors: Brenda J. Russ, Cathy McCary

Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-14A-22, 40-14A-23,

History: New Rule: Filed February 23, 2011; effective March 30, 2011.

810-2-8-.10 Business Privilege Tax Filing Requirements, Clarifications and Explanations.

(1) Scope. This regulation provides guidance concerning the general filing requirements for taxpayers subject to the Alabama business privilege tax.

(a) Section 40-14A-22, Code of Ala. 1975, levies the annual Alabama business privilege tax on every corporation, limited liability entity, and disregarded entity doing business in Alabama, or organized, incorporated, qualified or registered under the laws of Alabama.

1. The terms "corporation", "limited liability entity," and "disregarded entity" are defined in Section 40-14A-1, Code of Ala. 1975.

2. "Business entity" when used in this regulation means corporations, limited liability entities, and disregarded entities, as defined in Section 40-14A-1, Code of Ala. 1975.

3. "Qualified or registered" refers to the registration of a foreign business entity with the Alabama Secretary of State's Office to do business in the state of Alabama, in accordance with the requirements of Title 10, Code of Ala. 1975.

4. "Doing business in Alabama" is not defined in the Alabama Business Privilege Tax Act of 1999.

(2) Foreign Business Entities. All foreign business entities which have qualified or registered with the Alabama Secretary of State's Office are subject to the Alabama business privilege tax filing requirements.

(a) A foreign business entity is subject to the filing requirement until the earlier of the date the entity ceases to be in legal existence, or, the date the entity cancels or withdraws its registration with the Alabama Secretary of State's Office.

(b) A foreign business entity is subject to the filing requirement for a business privilege taxable year regardless of the level of business activity conducted in the State of Alabama during the related determination period, even if the entity was dormant during the related determination period. See Section 40-14A-1, Code of Ala. 1975, for a definition of the terms "taxable year" and "determination period."

(3) Business Entities Created in the State of Alabama. All business entities created in the state of Alabama have an Alabama business privilege tax filing requirement for a business privilege taxable year so long as the entity is in legal existence, regardless of the level of business activity conducted in the State of Alabama during the related determination period. See Section 40-14A-1, Code of Ala. 1975, for a definition of the terms "taxable year" and "determination period."

(4) Guidance for Determining if a Foreign Business Entity is Doing Business in Alabama for Purposes of the Alabama Business Privilege Tax Law.

(a) General Rule. A foreign business entity owning property located in Alabama is considered doing business in the state of Alabama, and is considered to be subject to the Alabama business privilege tax.

1. While it is possible for the mere passive ownership of Alabama property to not rise to the level of doing business in Alabama, most instances of Alabama property ownership by a foreign business entity will be considered doing business and will subject the business entity to the Alabama business privilege tax.

2. The following are specific examples of property ownership by a foreign business entity that would cause the entity to be considered doing business in the state of Alabama:

i. The property owned is considered to be an item of inventory in the hands of the business entity or in the hands of a related business entity.

ii. The property is being held with a profit motive.

iii. The property owned is real estate located in Alabama and the real estate is being leased.

iv. The property owned is personal property and the personal property is being leased.

(b) The facts and the circumstances of each case must be considered in order to determine if a foreign business entity is doing business in the state of Alabama. Facts to be considered include but are not limited to: the business purpose of the business entity in its state of origin; the business activities of the business entity in other states; the activities performed in the state of Alabama; the property owned in the state of Alabama; and, whether a profit motive exists for the ownership of property in the state of Alabama.

(c) In addition to the general rule described in subparagraph (a), a foreign business entity is considered to be doing business in the state of Alabama for business privilege tax purposes, if in the state of Alabama the foreign business entity:

1. conducts a trade or business;

2. engages in commerce of any kind;

3. renders professional services;

4. conducts the business of insurance subject to the regulatory authority of the Alabama Insurance Commissioner, as specified in Section 27-2-27, Code of Ala. 1975; or,

5. conducts the business of a financial institution, as defined in Section 40-16-1, Code of Ala. 1975.

(d) Having an Ownership Interest in a Business Entity Conducting a Trade or Business in the State of Alabama. If a business entity is doing business in the state of Alabama, and the owner of the business entity is a foreign business entity that has no other contact with the state of Alabama other than its passive ownership interest in the business entity, then,

generally, the owner of the business entity is not considered doing business in the state of Alabama and is not considered to have a business privilege tax filing requirement.

1. However, if the foreign business entity described as the owner in subparagraph (d) routinely manages the day-to-day operations of the business entity that is doing business in the state of Alabama, then the owner, the foreign business entity, can be deemed as doing business in the state of Alabama and would have a business privilege tax filing requirement.

(5) The Alabama business privilege tax filing requirements are independent of the Alabama income tax filing requirements stated in Chapter 18, Title 40, Code of Ala. 1975.

(a) The Alabama business privilege tax filing requirement for foreign business entities is based upon whether the entity is qualified or registered under the laws of Alabama or is doing business in Alabama.

(b) The Alabama income tax levy found in Section 40-18-2, Code of Ala. 1975, is based upon the foreign business entity "doing business in Alabama or deriving income from sources within Alabama, including income from property located in Alabama" or "receiving income from property owned or business transacted in Alabama."

(c) A foreign business entity can have an Alabama income tax filing requirement, but not have an Alabama business privilege tax filing requirement for the same tax period. An example of this might be a foreign business entity that derives income from its ownership interest in a business entity conducting a trade or business in the state of Alabama, but which has no other contacts with the state of Alabama.

(d) A foreign business entity can have an Alabama business privilege tax filing requirement, but not have an Alabama income tax filing requirement for the same tax period.

1. Protected Activities Under Public Law 86-272. Alabama Department of Revenue Regulation Number 810-27-1-4-.19, Public Law 86-272 Exemption from Income Tax, provides an exemption from Alabama income tax for foreign business entities that perform only certain protected activities in the state of Alabama. The protected activities are specified in the regulation, but those activities could be construed as doing

business in the state of Alabama for Alabama business privilege tax purposes.

2. Financial Institutions. A foreign business entity that meets the definition of "financial institution" stated in Section 40-16-1, Code of Ala. 1975, is subject to the Alabama financial institutions excise tax, but is exempt from the Alabama income tax. A foreign business entity doing business in the state of Alabama as a financial institution is subject to the Alabama business privilege tax filing requirement.

3. Foreign Business Entities Subject to the Alabama Insurance Premiums Tax. A foreign business entity that is an insurance company upon which the statutes of Alabama imposes a tax upon its premium income is exempt from the Alabama income tax, in accordance with Section 27-4A-6, Code of Ala. 1975. A foreign business entity doing business in Alabama as an insurance company subject to the Alabama insurance premiums tax is subject to the Alabama business privilege tax filing requirement.

Authors: Brenda J. Russ, Cathy McCary

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-14A-22.

History: New Rule: Filed February 23, 2011, effective March 30, 2011.

810-2-8-.11 Issuance Of A Certificate Of Good Standing For The Alabama Business Privilege Tax.

(1) Scope. This rule provides guidance about the request for and issuance of the certificate of good standing allowed by §40-2A-10, Code of Ala. 1975, concerning the filing and payment compliance of a business entity with the Alabama business privilege tax filing and payment requirements of Chapter 14A, Title 40, Code of Ala. 1975, The Alabama Business Privilege and Corporate Shares Act of 1999.

(2) Section 40-14A-22, Code of Ala. 1975, levies an annual privilege tax on every corporation, limited liability entity, and disregarded entity doing business in Alabama, or organized, incorporated, qualified, or registered under the laws of Alabama.

(a) When the term, "business entity," is used in this rule, it has the same meaning as is used for the term "taxpayer," in Chapter 14A, Title 40, Code of Ala. 1975.

(b) See Section 40-14A-1, Code of Ala. 1975, for the definitions of "corporation," "limited liability entity," "disregarded entity," and "taxpayer."

(3) Section 40-14A-43, Code of Ala. 1975, exempts certain nonprofit entities from the Alabama business privilege tax. The section refers to the entities described in 26 U.S.C. §501(a) as being exempt from the tax. Also, the section specifically identifies additional nonprofit entities that are exempt from the tax.

(a) See Alabama Department of Revenue Rule Number 810-2-8-.07, Definition of Homeowners Association for Purposes of Administering the Alabama Business Privilege Tax Law, for a clarification of the exempt nature of homeowners associations.

(4) Section 40-2A-10, Code of Ala. 1975, as a general rule, prohibits the disclosure of tax returns and tax return information, without the written permission or approval of the taxpayer. As one of the exceptions to the general disclosure rule, the section allows the Commissioner of Revenue or his or her delegate to disclose in writing, to any person that makes such a request, the status of compliance of business entities subject to the Alabama business privilege tax.

(a) The Department will issue a certificate of good standing to a requesting person with respect to a business entity if the business entity is subject to the Alabama business privilege tax; has filed all tax returns required under Chapter 14A, Title 40, Code of Ala. 1975; and, has paid all of the taxes, penalties, and interest shown payable on those returns, as those returns may have been adjusted by the Alabama Department of Revenue.

1. A certificate of good standing cannot be issued for any entity identified as exempt from the Alabama business privilege tax in §40-14A-43, Code of Ala. 1975.

2. A certificate of good standing cannot be issued for any person not subject to the Alabama business privilege tax, such as individuals and general partnerships.

(b) Fee for Requesting a Certificate of Good Standing. The fee for requesting a certificate of good standing for a business entity is \$10 for each request.

1. The fee for requesting a certificate of good standing is nonrefundable.

(c) Departmental Research of a Certificate of Good Standing Request. Upon receiving a certificate of good standing request for a business entity and full payment of the request fee, the Alabama Department of Revenue will research its business privilege tax payment and return records, using the business entity name exactly as stated on the certificate of good standing request, in order to determine if a certificate of good standing can be issued.

(d) Issuance of a Certificate of Good Standing or Notice that a Certificate of Good Standing Cannot Be Issued. If the business entity for which a certificate of good standing is requested is subject to the business privilege tax, has filed all required business privilege tax returns, and has paid the full amount shown due on those returns, as those returns may have been adjusted by the Alabama Department of Revenue, then a certificate of good standing will be issued. Otherwise, a notice will be issued stating that a certificate of good standing cannot be issued at this time for the business entity specified in the request.

1. Certificate of Good Standing.

(i) The certificate of good standing will state the name of the business entity as stated on the certificate of good standing request, the issuance date, and, that the business entity is in compliance with the Alabama business privilege tax payment and return requirements of Chapter 14A, Title 40, Code of Ala. 1975, as of the issuance date of the certificate of good standing.

(ii) The certificate of good standing will state that it is valid for sixty days from the date of issuance, although the document will only be available for retrieval from the Department's on-line delivery system for a limited number of days.

2. Notice that a Certificate of Good Standing Cannot be Issued. The notice that a certificate of good standing cannot be issued will state: the name of the business entity as

provided on the certificate of good standing request; the issuance date; that any further discussions between the Department and the certificate of good standing requestor about the business privilege tax filing and payment compliance of the business entity are prohibited by §40-2A-10, Code of Ala. 1975; and, will provide the telephone number, fax number, and e-mail address of the Department contact concerning the notice. The notice will encourage the requestor to have the business entity contact the Alabama Department of Revenue if additional information is required to resolve the certificate of good standing request.

(i) If the request for a certificate of good standing is made during the business privilege taxable year for a business entity, but after the original due date for the business privilege tax return for the taxable year, and no business privilege tax payment is shown on the business privilege tax payment records of the Department, then a notice will be issued stating that a certificate of good standing cannot be issued at this time. See Section 40-14A-1, Code of Ala. 1975, for the definition of "taxable year."

(ii) If the request for a certificate of good standing is made during the business privilege taxable year for a business entity, but after the extended due date for the business privilege tax return for the taxable year, and no business privilege tax return is shown on the business privilege tax return records of the Department, then a notice will be issued stating that a certificate of good standing cannot be issued at this time.

(iii) If a request for a certificate of good standing is made for a business entity, and the business privilege tax records of the Department indicate that a return was not filed for a taxable year or that the business privilege tax, including any penalties and interest, has not been paid for a taxable year, then a notice will be issued stating that a certificate of good standing cannot be issued at this time.

(5) Resolution of a Notice that a Certificate of Good Standing Cannot be Issued.

(a) If the Department has issued a notice that a certificate of good standing cannot be issued for a business entity, in order to comply with the disclosure prohibitions of §40-2A-10, Code of Ala. 1975, a Departmental employee cannot inform the requestor of the existence or nonexistence of any

return or any payment, or of any return information or any payment information, without the written permission of the business entity.

(b) In order for a Departmental employee to discuss the business entity's business privilege tax return and payment compliance with the requestor of the certificate of good standing after the Department has issued a notice that a certificate of good standing cannot be issued, the requestor must provide the employee with written permission from the business entity to allow the Department to disclose all of the business privilege tax return and payment information of the business entity to the requestor.

1. Alabama Form 8821A, Tax Information Authorization, can be used to provide the Department with the required written permission. If the form is used to provide the required written permission, then "Business Privilege Tax" should be entered in the Type of Tax column; "Certificate of Good Standing" should be entered in the Tax Form Number column; and, "All Applicable" should be entered in the Year(s) or Period(s) column. The completed form can be faxed to the Department contact person, in order to expedite the resolution of the certificate of good standing request.

(c) A Departmental employee can inform the requestor of a certificate of good standing, or anyone, of any information available on the Alabama Secretary of State's website concerning a business entity. Information on the Alabama Secretary of State's website is public information, including the corporate annual report information, which indicates the date the corporate annual report was processed by the Alabama Department of Revenue.

(d) A Departmental employee may discuss the business privilege tax filing and payment compliance of a business entity with the business entity's owner or officer, once the Departmental employee is satisfied that the business entity owner or officer is authentic, having substantiated the ownership of the business entity with information in Departmental records or with public information - such as information from the Alabama Secretary of State's Office, or having substantiated the officer's authority through Departmental or public records.

1. Once the authenticity of the business entity owner or officer has been established, a Departmental employee

may discuss the business privilege tax filing and payment compliance with anyone the business entity owner or officer verbally approves, in order to expedite the resolution of the certificate of good standing request.

(e) A Departmental employee may discuss the business privilege tax filing and payment compliance of a business entity with an employee of the business entity, once the Departmental employee is satisfied that the business entity employee is authentic and has the authority of the business entity to discuss the business privilege tax filing and payment compliance of the business entity.

1. The Departmental employee may wish to substantiate the information provided by the business entity's employee with information recorded in Departmental records, after obtaining, from the business entity employee: the employee's full name and title; the reason for requesting the information; and, such additional information as the taxpayer identification number of the business entity, the business privilege tax account number of the business entity, the account sign-on identification number of the business entity, the account access code of the business entity, and document identification numbers from Departmental correspondence or billings mailed to the business entity.

(f) If Departmental records indicate that the business entity has authorized the Department to discuss any item on the business privilege tax return for a taxable year with the paid preparer of the return, the Departmental employee may discuss the return and the related payment with any employee of the paid preparer, upon determining that the paid preparer employee is authentic.

(g) If, the Department issues a notice that a certificate of good standing cannot be issued, and within five business days of the issuance date of the notice, information, returns, or payments are provided to the Department which will cause the business entity to be in compliance with the business privilege tax filing and payment requirements, then a certificate of good standing may be issued, at no additional fee. Otherwise, a new certificate of good standing request must be submitted with the required payment, if a certificate of good standing is needed for the business entity.

Authors: Brenda J. Russ and Cathy McCary, CPA

Statutory Authority: Code of Ala. 1975, §§ 40-2A-7(a)(5), 40-2A-10.

Chapter 810-2-8

Revenue

History: New Rule: Filed May 25, 2011; effective June 29, 2011.

APPENDIX A
CHAPTER 810-2-8

ATTACHMENT - 810-2-8-.05

APPENDIX A
CHAPTER 810-2-8

ATTACHMENT - 810-2-8-.05

FORM BPT-E

ALABAMA DEPARTMENT OF REVENUE
INDIVIDUAL & CORPORATE TAX DIVISION
Family Limited Liability
Entity Election Form

Partnership or LLC: Tax Period:

FEB:

The following information must be provided in order for this election to be effective.

Part 1 - 80% Ownership Test

Partner's capital account from Form 1065, Schedule L: \$

Percentages of partners' capital accounts that are directly or constructively owned by:
Individual: %
Spouse: %
Parents: %
Grandparents: %
Lineal descendants of grandparents: %
Total: %

Part 2 - Taxpayer must complete at least one of the following.

- (A) Gross Receipts Test: 80% or more of the gross receipts of the entity consist of any combination of the following:
(i) Interest
(ii) Dividends/distributions/payments on stock or securities
(iii) Rents, license fees or other fees for use of property
(iv) Receipts from sale or leasing of timber or timberland
(v) Royalties
(vi) Annuity payments
(vii) Proceeds from sale of asset not in ordinary course of business
Total: %
(B) Assets Test: The aggregate adjusted basis of the following assets constitutes at least 90% of the adjusted basis of all of the entity's assets:
(i) Cash or cash equivalents
(ii) Stocks, bonds, debentures, notes or other securities
(iii) Timber or timberlands
(iv) Annuities
(v) Assets held principally for appreciation and not production of income
(vi) Mutual funds
(vii) Assets not used directly in the conduct of the entity's business
(viii) Royalty interests
Total: %

This entity is making an election to be an electing family limited liability entity as described in Code of Alabama 1975, §40-14A-1(h). I hereby certify that the profits and capital interests of the entity were calculated using the constructive ownership rules of 26 U.S.C. §318, without regard to the 50% limitation contained in 26 U.S.C. §318(a)(2)(C) and 26 U.S.C. §318(a)(2)(F).

Signature: Date:

Title:

Form BPT-E - Family Limited Liability Entity Election Form

See Master Code for Copy of form

Authors: Tamera P. Bruton, Ann F. Winborne, Richard H. Henninger

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-14A-1(h).

History: New Form (BPT-E (10/04)): Filed December 15, 2004, effective January 19, 2005.