

APA-6
10/96

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: **810-3-28-01**

Rule Title: **Income to be Reported to Shareholders**

_____ New XX Amend _____ Repeal _____ Adopt by Reference

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:

To conform the regulation to the requirements of the underlying statute consistent with the Administrative Law Division's ruling in *McNees v. Department of Revenue*, DOCKET No. 06-523, December 12, 2006.

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE: N/A

3. EFFECT OF THIS RULE ON COMPETITION: N/A

4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED: N/A

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED: N/A

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE: N/A

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

The economic impact is substantial, but unquantifiable.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON: N/A
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH: N/A
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED: N/A
11. OTHER COMMENTS: None

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11/96

**ALABAMA DEPARTMENT OF REVENUE
Individual & Corporate Tax Division**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE:

810-3-14-.01	Gross Income in General
810-3-28-.01	Partnership Returns
810-3-162-.01	Income to be Reported by Shareholders

INTENDED ACTION: Amend the above rules

SUBSTANCE OF PROPOSED ACTION: The purpose of the proposed action is to conform the regulations to the requirements of the underlying statute and associated case law (McNees v. Department of Revenue, DOCKET NO. 06-523, December 12, 2006).

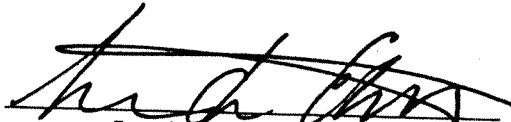
TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 10:00 a.m. on Thursday, May 5, 2011, in the Office of the Legal Division, Room 3114, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at www.revenue.alabama.gov/rulehear.html.

All interested parties may present their views in writing to the Secretary of the Alabama Department of Revenue, Room 4112, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132 at any time during the thirty-five (35) day period following publication of the notice or by appearing at the hearing.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
Friday, May 6, 2011

CONTACT PERSON AT AGENCY:

Patricia Toles
Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380


Lewis A. Easterly
Alabama Department of Revenue

810-3-28-.01 Partnership Returns.

(1) (a) Each subchapter K entity, and every single member limited liability company having income from property owned or business conducted in this state shall file Form 65, "Partnership Return of Income," on or before the fifteenth day of the fourth month following the close of the taxable year.

(b) An Alabama Schedule K-1 must be prepared for each person who held an interest in the subchapter K entity or single member limited liability company during the taxable year showing each partner's or member's name, address, social security or federal employers identification number, distributive share of the income (or loss) of the partnership and distributive share of charitable contributions made by the partnership.

1. For an Alabama resident partner or member, the K-1 **for tax years beginning after December 31, 1996 and before January 1, 2011** shall include:

(i) For multi-state subchapter K entities doing business within and without the State of Alabama, only that income which is required to be allocated and apportioned to Alabama under the rules of Section 40-18-22. (If the multi-state subchapter K entity is not doing business in Alabama, no income is reportable to Alabama from that subchapter K entity.)

(ii) For a subchapter K entity doing business in only one state, whether the state of Alabama or another state, the distributive share of the entire income from that subchapter K entity.

2. For a non-resident partner or member, the K-1 shall include:

(i) For multi-state subchapter K entities doing business within and without the State of Alabama, only that income which is required to be allocated and apportioned to Alabama under the rules of Section 40-18-22.

(ii) For a subchapter K entity doing business in Alabama exclusively, the distributive share of the entire income from that subchapter K entity.

3. For an Alabama resident partner or member, the K-1 for tax years beginning after December 31, 2010 shall include amounts determined in accordance with subchapter K of the Internal Revenue Code, 26 U.S.C. §§ 701-761, Alabama Code §§ 40-18-24 and 40-18-14 (1975) and without regard to 1. above. Likewise, Alabama resident partners or members of sub-chapter K entities are entitled to a credit computed in accordance with Ala. Code § 40-18-21(a) (1975) for taxes paid by (or one behalf of) the resident partner or member (including composite return and withholding payments) to other states where the sub-chapter K entity does business and is treated as a sub-chapter K entity.

(c) Form 65 is designed as a "cover sheet" to the federal Form 1065 "U.S. Partnership Return of Income". The computation of Alabama net partnership income on Form 65 begins with the Federal ordinary income as shown on Form 1065. Adjustments must be made to conform federal income to the Alabama law for any items of income or expense, except contributions, which are passed directly through to the partners or members on the federal return and for items which are treated differently under Alabama law than federal law. These adjustments include, but are not limited to, the following:

1. long-term capital gains (or losses) which are passed through directly to partners or members on the federal return are added to federal ordinary income, and
2. additional depreciation is allowed for assets which have a reduced federal basis due to investment tax credits or which have been expensed under I.R.C. § 179, and
3. depletion on oil and gas properties which is passed through directly to the partners or members in the federal return are subtracted from federal ordinary income using the rates allowed by §§ 40-18-16 or 40-18-15, and
4. percentage depletion in excess of cost on minerals other than oil and gas are added to federal ordinary income.
5. interest expense passed through directly to partners or members on Form 1065 is subtracted from federal ordinary income.
6. any other items of income, expense or deduction which are passed directly through to partners or members and not included in federal ordinary income.

(d) Federal Form 1065 and accompanying schedules must be attached to Form 65 when filed.

(e) The return must be signed by one partner or member and the person who prepared the return, and must contain a printed declaration that it is made under the penalties of perjury.

(2) See Reg. 810-3-24-.01, et seq., for computation of distributive income for subchapter K entity or single member limited liability company and the distributive share for each partner or member.

(3) Partnership returns shall be made on or before the fifteenth day of the fourth month following the close of the calendar or fiscal year, whichever taxable year is used by the subchapter K entity or single member limited liability company.

(4) The amendments to this regulation which were filed with the Legislative Reference Service on March 21, 2011 are effective for tax years beginning on or after January 1, 2011. These amendments are consistent

with the Administrative Law Division's Ruling, *McNees v. Department of Revenue*, DOCKET NO. 06-523, entered December 12, 2006. The Department of Revenue will not enforce these regulatory changes for tax periods ending prior to January 1, 2011.

Author: **Ann F. Winborne, CPA**, Individual and Corporate Tax Division, **and Joe Garrett, Tax Policy Administrator**

Authority: Sections 40-2A-7(a)(5) and 40-18-28
Code of Alabama 1975

History: Adopted September 30, 1982.
Amended April 24, 1989.
Amended: March 26, 1998, effective date April 30, 1998.
Amended: Proposal to amend rule filed February 18, 2005 – rule was not certified.