

RULES OF THE
DEPARTMENT OF REVENUE

CHAPTER 810-3-8

Recognition of Gain or Loss

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810-3-8-.01. Recognition of Gain or Loss.

(1) For transactions closed before January 1, 1985, gain or loss shall be recognized in accordance with the following rules:

(a) The Federal Internal Revenue Code contains provisions similar to those in §40-18-8, Code of Alabama 1975. Decisions and interpretations of the federal courts and agencies will be given due weight in interpreting this section. The terms "property of like kind", "for productive use", and "party to a reorganization" are considered to have the same meaning as in Federal taxation. The terms "control" and "reorganization" as defined in §40-18-8 have a somewhat different meaning from the same terms as used in Federal taxation.

(b) The entire amount of gain or loss realized upon the sale or exchange of property shall normally be recognized on the tax return for that year. Exceptions from the general rule are made in §40-18-8 with respect to certain exchanges of property in which at the time of the exchange the particular differences existing between the property disposed of and the property acquired are more formal than substantial. The law provides that such differences shall not be deemed controlling and that gain or loss shall not be recognized at the time of the exchange. The underlying assumption of these exceptions is that the new property is substantially a continuation of the old investment.

(c) The exceptions from the general rule requiring the recognition of all gains and losses are strictly construed. Nonrecognition is accorded by the law only if the exchange is one which satisfies both the specific description in the law of an excepted exchange, and the underlying purpose for which such exchange is excepted from the general rule.

(d) The law makes specific provision for the case in which, in addition to property which may be received tax-free on the exchange, additional money or property is received. In such a case, gain is recognized to the extent of the additional property or money, but no loss of any kind is recognized.

(e) To constitute an exchange within the meaning of this section the transaction must be a reciprocal transfer of property, as distinguished from a transfer of property for money consideration only.

(f) For nonrecognition of gain on the sale of a personal residence in the year of the sale, see §40-18-14, Code of Alabama 1975, Regs. 810-3-14-.07 and 810-3-14-.08.

(2) For transactions closed after December 31, 1984, upon the sale, exchange, or other disposition of property the entire amount of the gain or loss realized shall be recognized on the current year tax return, except as provided in Regs. 810-3-8-.02, et seq.

Author: Income Tax Division
Authority: §40-18-8, Code of Alabama 1975
History: Effective December 4, 1992.
Amended September 18, 1996, effective date October 23, 1996.

810-3-8-.02 Like-Kind Exchanges of Property Held for Productive Use in Trade or Business or for Investment.

(1) If an exchange of property occurring after December 31, 1984, satisfies the requirements of 26 U.S.C. § 1031, relating to like-kind exchanges, then the amount of gain or loss recognized in the exchange shall be determined in accordance with 26 U.S.C. § 1031. For interpretation of federal statutes adopted by the Alabama Legislature see Rule 810-3-1.1-.01, Operating Rules.

(2) Transactions occurring prior to January 1, 1985: As used in §40-18-8(b)(1), Code of Alabama 1975, the words "like kind" have reference to the nature of the property and not to its grade or quality. One kind or class of property may not, under such subsection, be exchanged for property of a different kind or class. The fact that any real estate involved is improved or unimproved is not material, for such fact relates only to the grade or quality of the property and not to its kind or class. Unproductive real estate held by one, other than a dealer, for future use or future realization of the increment in value comes within the meaning of this subsection.

(a) No gain or loss is recognized if:

1. a taxpayer exchanges property held for productive use in his trade or business, together with cash, for other property of like kind for the same use, such as a truck for a new truck to be used for a like purpose, or

2. a taxpayer, who is not a dealer in real estate, exchanges city real estate for a farm, or improved real estate for unimproved real estate, or

3. a taxpayer exchanges investment property and cash for investment property of a like kind.

Author: Edward F. Cutter, CPA.

Authority: §§40-2A-7(a)(5) and 40-18-8, Code of Alabama 1975

History: Adopted through APA September 30, 1982.

Amended July 27, 1988.

Amended December 4, 1992.

Amended: Filed September 18, 1996, effective October 23, 1996.

Amended: Filed April 28, 1999, effective June 2, 1999.

810-3-8-.03 Stock for Stock of the Same Corporation. Federal regulations and decisions of federal courts and agencies regarding the exchange of stock for stock of the same corporation will generally be followed in the interpretation of this rule. See also Rule 810-3-1.1-.01, Operating Rules, for interpretation of federal statutes adopted by the Alabama Legislature.

Author: Verlon R. Frost, Jeff Taylor, and Ed Cutter, CPA
Authority: §§ 40-2A-7(a)(5), 40-18-8 and 40-18-5, Code of Alabama 1975
History: Adopted through APA September 30, 1982.
Amended July 27, 1988.
Amended: Filed March 4, 1997, effective April 8, 1997.
Amended: Filed April 28, 1999, effective June 2, 1999.

810-3-8-.04 Exchanges in Pursuance of a Plan of Reorganization.

(1) For transactions after December 31, 1984, federal interpretations pertaining to 26 U.S.C. §§ 354, 355, 356, 361, 371 and 374 will be followed in determining the amount of gain or loss recognized as the result of a reorganization specified in 26 U.S.C. § 368 or a distribution that qualifies under 26 U.S.C. § 355. For interpretation of federal statutes adopted by the Alabama Legislature see Rule 810-3-1.1-.01, Operating Rules.

(2) For transactions before January 1, 1985 -

(a) For the purpose of this rule the term "reorganization" means:

1. The merger of one or more corporations in accordance with statutory authority into another;

2. The consolidation pursuant to statutory authority of two or more corporations into a new corporation;

3. The acquisition by one corporation of at least a majority of the voting stock, or substantially all the properties of another corporation;

4. The transfer by one corporation of all or a part of its assets to another, if immediately after the transfer the first corporation or its stockholders, or both, are in control of the second corporation (control for this purpose being defined in §40-18-8(j), Code of Alabama, 1975, as the ownership by the first corporation or its stockholders, or both, of the second corporation to the extent of at least fifty-one percent of the voting stock and at least eighty percent of the total number of shares of all other classes thereof);

5. A recapitalization;

6. A mere change in identity, form or place of organization, however effected.

(b) No taxable income is received, nor is a deductible loss sustained, when a corporation exchanges property solely for stock or securities in another corporation, if

1. the exchange is in pursuance of a plan of reorganization, and

2. the corporation receiving the stock is a party to a plan of reorganization, and

3. the stock received is of a corporation which is a party to the same plan of reorganization.

(c) If in any transaction, which would fall within §40-18-8(b)(4) if the exchange were solely in kind, there is received by the taxpayer other property (in addition to property permitted to be received by the taxpayer without recognition of gain) and/or money, then -

1. if the corporation receiving such other property or money distributes it in accordance with the plan of reorganization, no gain from the exchange will be recognized to the corporation, or

2. if such distribution is not made, the gain to the corporation shall be recognized in an amount not in excess of the sum of money and the fair and reasonable market value of such other additional property received.

(d) If a shareholder in a corporation, in a reorganization, surrenders none of his stocks or securities but receives stocks or securities in any corporation which is a party of the reorganization no gain is recognized.

1. The distribution shall not be considered a distribution of earnings and profits within the meaning of §40-18-8(b)(4) for determining the taxability of subsequent distributions by the corporation.

Author: Verlon R. Frost, Jeff Taylor

Authority: Sections 40-2A-7(a)(5) and 40-18-8, Code of Alabama 1975
Adopted through APA December 4, 1992.

Amended: Filed March 4, 1997, effective April 8, 1997.

Amended: Filed April 28, 1999, effective June 2, 1999.

810-3-8-.05 Transfer of Property to Corporation Controlled by Transferor.

(1) For transactions occurring after December 31, 1984.

(a) If property is transferred to a corporation in a transaction which satisfies the requirements of 26 U.S.C. § 351, relating to transfers to corporations controlled by the transferor, the amount of gain or loss shall be determined in accordance with 26 U.S.C. § 351, as modified by 26 U.S.C. § 357, relating to the recognition of gain as a result of the transferee corporation's assumption of liabilities.

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

Author: Nancy D. Hatfield

Individual and Corporate Tax Division

Authority: Sections 40-2A-7(a)(5) and 40-18-8, Code of Alabama 1975

History: Adopted through APA September 30, 1982.

Amended: Filed July 27, 1988, effective August 30, 1988.

Amended: Filed September 18, 1996, effective October 23, 1996.

Amended: Filed April 28, 1999, effective June 2, 1999.

810-3-8-.06 Involuntary Conversions. For transactions occurring after December 31, 1984, if a taxpayer makes a valid election under 26 U.S.C. § 1033 (relating to involuntary conversions) for federal income tax purposes , the amount of gain recognized for Alabama income tax purposes shall be determined according to 26 U.S.C. § 1033. For interpretation of federal statutes adopted by the Alabama Legislature see Rule 810-3-1.1-.01, Operating Rules.

Author: Edward F. Cutter, CPA.

Authority: §§40-18-8, 40-18-57, Code of Alabama 1975.

History: Adopted September 30, 1982.

Amended June 17, 1988; filed with LRS July 27, 1988.

Amended: Filed September 18, 1996, effective October 23, 1996.

Amended: Filed April 28, 1999, effective June 2, 1999.

810-3-8-.08 Exchange of Stock for Property. For transactions occurring after December 31, 1984, no gain or loss will be recognized by a corporation on the receipt of money or other property in exchange for the stock of the corporation, including treasury stock or with respect to the acquisition or lapse of an option to buy or sell its stock. Federal regulations and decisions of federal courts and agencies regarding the exchange of stock for property will generally be followed in the administration of this regulation.

Author: Verlon R. Frost, Jeff Taylor.

Authority: Sections 40-18-8, 40-18-57, Code of Alabama 1975.

History: Effective July 27, 1988.

Amended: Filed March 4, 1997, effective April 8, 1997.

Amended: Filed April 28, 1999, effective June 2, 1999.

810-3-8-.09 Complete Liquidation of Subsidiaries.

(1) For transactions occurring after December 31, 1984, no gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation as described in 26 U.S.C. § 332. For interpretation of federal statutes adopted by the Alabama Legislature see Rule 810-3-1.1-.01, Operating Rules.

(2) See Reg. 810-3-6-.02 for determining the basis of property received by a corporation in a distribution under this rule.

Author: Verlon R. Frost, Jeff Taylor
Authority: Sections 40-18-8, 40-18-57, Code of Alabama 1975
History: Effective July 27, 1988.
Amended: Filed March 4, 1997, effective April 8, 1997.
Amended: Filed April 28, 1999, effective June 2, 1999.

810-3-8-.10. Gain or Loss on Certain Liquidations.

(1) For transactions after December 31, 1984, and before August 1, 1986 -

(a) If, within the twelve (12) month period beginning on the date on which a corporation adopts a plan of complete liquidation, all of the assets of the corporation are distributed in complete liquidation (except for assets retained to meet claims), then no gain or loss shall be recognized to such corporation from the sale or exchange of property within such twelve (12) month period.

1. For the purposes of this subparagraph (1)(a), the term "property" does not include -

(i) stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year, and property held by the corporation primarily for sales to customers in the ordinary course of its trade or business.

(ii) installment obligations acquired in respect to the sale or exchange (without regard to whether such sale or exchange occurred before, on, or after the date of the adoption of the plan referred to in this subparagraph (1)(a)), of stock in trade or other property described in subparagraph (1)(a)1.(i) above.

(iii) installment obligations acquired in respect of property (other than property described in subparagraph (1)(a)1.(ii) above) sold or exchanged before the date of the adoption of such plan of liquidation.

2. Notwithstanding subparagraph (1)(a)1. above, if substantially all of the property described in subparagraph (1)(a)1.(i) above, which is attributable to a trade or business of the corporation is sold or exchanged to one person in one transaction, then for purposes of this subparagraph (1)(a), the term "property" includes such property so sold or exchanged and installment obligations acquired in respect of such sale or exchange.

(b) Subparagraph (1)(a) above does not apply to the following liquidations described in this subparagraph (1)(b):

1. Any sale or exchange made by a collapsible corporation (as defined in 26 U.S.C. § 341(b)).

2. Any sale or exchange made by a corporation following the adoption of a plan of complete liquidation if §40-18-8(k), Code of Alabama 1975, (relating to election as to recognition of gain in certain liquidations as defined in 26 U.S.C. § 333) applies with respect to such liquidation.

3. In the case of any sale or exchange following the adoption of a plan of liquidation if §40-18-8(i) (relating to liquidation of subsidiaries pursuant to 26 U.S.C. § 332) applies to such liquidation.

4. This subparagraph (1)(b) shall not apply to a sale or exchange by a corporation (referred to herein as the "selling corporation"), if -

(i) within the twelve (12) month period beginning on the date of the adoption of a plan of complete liquidation by the selling corporation, the selling corporation and each distributee corporation is completely liquidated, and

(ii) none of the complete liquidations are liquidations to which §40-18-8(k) (and 26 U.S.C. § 333) applies.

(I) The term "distributee corporation" means a corporation in the chain of includable corporations to which the selling corporation or a corporation above the selling corporation in such chain makes a distribution in complete liquidation within the twelve (12) month period referred to in subparagraph (1)(a).

(II) The term "chain of includable corporations" includes, in the case of any distribution, any corporation which (at the time of such distribution) is in a chain of includable corporations for purposes of Reg. 810-3-6-.02(1)(k) 7.(x). Such term includes, where appropriate, the common parent corporation.

(c) If a corporation adopts a plan of complete liquidation, and if subparagraph (1)(a) of this rule does not apply to sales or exchanges of property by such corporation solely by reason of the application of subparagraph (1)(b)4.(i) of this rule (relating to liquidations of subsidiaries under §40-18-8(i) and 26 U.S.C. § 332), then for the first taxable year of any shareholder (other than a corporation which meets the eighty percent (80%) stock ownership requirement in paragraph (1) of this rule), in which he receives a distribution in complete liquidation -

1. the amount realized by such shareholder on the distribution shall be increased by his proportionate share of the amount by which the tax imposed by Chapter 18 of Title 40, Code of Alabama, 1975, on such corporation would have been reduced if subparagraph (1)(b)4.(ii) had not been applicable, and

2. for purposes of Chapter 18 of Title 40, such shareholder shall be deemed to have paid, on the last day prescribed by law for the payment of the tax imposed by said Chapter 18 on such shareholder, an amount of tax equal to the amount of the increase described in subparagraph (1)(c)1. above.

(d) If there is an involuntary conversion (within the meaning of §40-18-8(d) and 26 U.S.C. § 1033), and there is a complete liquidation of such corporation which qualifies under subparagraph (1)(a) above of this rule -

1. the disposition of the converted property occurs within the sixty (60) day period which ends on the last day before the first day of the twelve (12) month period, and

2. such corporation elects the application of §40-18-8(j) and this rule in accordance with regulations prescribed by the United States Secretary of the Treasury, then for purposes of §40-18-8(j) and this rule, such disposition shall be treated as a sale or exchange occurring within the twelve (12) month period specified in paragraph (1) above.

(e) In the case of a corporation inventorying goods under the LIFO (last-in, first-out) method, subparagraph (1)(a) above shall apply to gain from the sale or exchange of inventory assets only to the extent that such gain exceeds the LIFO recapture amount with respect to such assets.

1. The term "LIFO recapture amount", as used in this subparagraph (1)(e), means the amount, if any, by which the inventory amount of the inventory assets under the FIFO (first-in, first-out) method exceeds the inventory amount of such assets under the LIFO method.

(f) If a corporation completely liquidates pursuant to a plan of complete liquidation adopted in a federal bankruptcy case under Title 11, U.S.C., or a receivership, foreclosure, or similar proceeding in a federal or state court, then -

1. for the purpose of subparagraph (1)(a) above, the term "property" shall not include any item acquired on or after the date of the adoption of the plan of complete liquidation if such item is not property within the meaning of subparagraph (1)(b)2. above, and

2. subparagraph (1)(a) above shall apply to sales and exchanges by the corporation of property within the period beginning on the date of the adoption of the plan and ending on the date of the termination of the case in federal or state court.

Author: Verlon R. Frost, Jeff Taylor
Authority: Section 40-18-8, Code of Alabama 1975
History: Effective December 4, 1992.
Amended March 4, 1997, effective date April 8, 1997.

810-3-8-.11 Election to Recognize Gain on Certain Liquidations.

(1) For transactions occurring after July 31, 1986 - the election to recognize gain on certain liquidations pertaining to 26 U.S.C. § 333 has been repealed under the provisions of Act 90-583 and Public Law 99-514.

(2) For Transactions after December 31, 1984, and before August 1, 1986 - In the case of a shareholder who has made a valid election pursuant to 26 U.S.C. § 333 to recognize gain in certain liquidations for federal income tax purposes, then in the case of property distributed in complete liquidation of a corporation incorporated under the laws of the United States, or any state or political subdivision thereof, if -

(a) the liquidation is made in pursuance of a plan of liquidation adopted, and

(b) the distribution is in complete cancellation or redemption of all the stock, and the transfer of all the property under the liquidation occurs within some one calendar month, then in the case of each qualified electing shareholder (as defined in 26 U.S.C. § 333), gain on the shares owned by him at the time of the adoption of the plan of liquidation shall be recognized only to the extent provided in paragraph (2) below.

(3) (a) In the case of a qualified electing shareholder other than a corporation -

1. there shall be recognized, and treated as a dividend, so much of the gain as is not in excess of his ratable share of the earnings and profits of the corporation accumulated after December 31, 1932. Such earnings and profits are to be determined as of the close of the month in which the transfer in liquidation occurred under subparagraph (1)(b) above, but without diminution by reason of distributions made during such month; but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed; and

2. there shall be recognized, and treated as a gain from the sale or exchange of property, so much of the remainder of the gain as is not in excess of the amount by which the value of that portion of the assets received by him which consists of money, or of stock or securities acquired by the corporation after December 31, 1932, exceeds his ratable share of such earnings and profits.

(b) In the case of a qualified electing shareholder which is a corporation, the gain shall be recognized only to the extent of the greater of the following -

1. the portion of the assets received by it which consists of money, or of stock or securities acquired by the liquidating corporation after December 31, 1932; or

2. its ratable share of the earnings and profits of the liquidating corporation accumulated after December 31, 1932, such earnings and profits to be determined as of the close of the month in which the transfer in liquidation occurred under subparagraph (1)(b) above, but without diminution by reason of distributions made during such month, but by including in the computation thereof all amounts accrued up to the date on which the transfer of all the property under the liquidation is completed.

Author: Verlon R. Frost, Jeff Taylor

Authority: Sections 40-2A-7(a)(5) and 40-18-8, Code of Alabama 1975

History: Effective December 4, 1992.

Amended: Filed March 4, 1997, effective April 8, 1997.

Amended: Filed April 28, 1999, effective June 2, 1999.

810-3-8-.13 Recognition of Gain by Target Corporations. If an acquiring corporation makes a valid election under 26 U.S.C. § 338, the amount of gain recognized by the target corporation shall be determined in accordance with 26 U.S.C. § 338. For interpretation of federal statutes adopted by the Alabama Legislature see Rule 810-3-1.1-.01, Operating Rules.

Author: Verlon R. Frost, Jeff Taylor

Authority: Section 40-18-8, Code of Alabama 1975

History: Effective December 4, 1992.

Amended: Filed March 4, 1997, effective April 8, 1997.

Amended: Filed April 28, 1999, effective June 2, 1999.

810-3-8-.14 Taxability of Corporation on Distribution. The amount of gain recognized by a corporation on the distribution of its stock, rights to acquire its stock, or property shall be determined in accordance with 26 U. S. C. § 311, relating to the taxability of corporations on distributions. For interpretation of federal statutes adopted by the Alabama Legislature see Rule 810-3-1.1-.01, Operating Rules.

Author: Verlon R. Frost, Jeff Taylor
Authority: Sections 40-2A-7(a)(5) and 40-18-8, Code of Alabama 1975
History: Effective December 4, 1992.
Amended: Filed March 4, 1997, effective April 8, 1997.
Amended: Filed April 28, 1999, effective June 2, 1999.

810-3-8-.16 Gain or Loss Recognized on Property in Complete Liquidation.

(1) Gain or loss shall be recognized to a liquidating corporation on the distribution of property in complete liquidation as described in 26 U.S.C. § 336 and shall be subject to the same treatment, limitations and exceptions as set forth in 26 U.S.C. § 336 and in accordance with § 40-18-8(l), Code of Alabama 1975.

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

Author: Verlon R. Frost, Jeff Taylor
Authority: Sections 40-2A-7(a)(5) and 40-18-8, Code of Alabama 1975
History: Effective December 4, 1992.
Amended: Filed March 4, 1997, effective April 8, 1997.
Amended: Filed April 28, 1999, effective June 2, 1999.

810-3-8-.18 Recognition of Gain or Loss on Transfer of Property to a Spouse or Former Spouse. The amount of gain or loss on the transfer of property to a spouse or former spouse shall be determined in accordance with 26 U.S.C. § 1041. For interpretation of federal statutes adopted by the Alabama Legislature see Rule 810-3-1.1-.01, Operating Rules.

Author: Brenda J. Fincher, Judy A. Robbins.

Authority: Sections 40-2A-7(a)(5) and 40-18-8, Code of Alabama 1975.

History: Effective December 4, 1992.

Amended: Filed September 18, 1996, effective October 23, 1996.

Amended: Filed April 28, 1999, effective June 2, 1999.

810-3-8-.19 Sales of Stock to Employee Stock Ownership Plans or Certain Cooperatives.

(1) The amount of gain recognized by a taxpayer who has made a valid election under 26 U.S.C. § 1042, relating to sales of stock to employee stock ownership plans or certain cooperatives, shall be determined in accordance with 26 U.S.C. § 1042.

(2) If a taxpayer disposes of qualified replacement property, as defined by 26 U.S.C. § 1042, and recognizes gain under 26 U.S.C. § 1042(e), then the gain shall be recognized to the same extent and at the same time as under 26 U.S.C. § 1042(e).

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

Author: Verlon R. Frost, Jeff Taylor, and Ed Cutter, CPA
Authority: Sections 40-2A-7(a)(5) and 40-18-8, Code of Alabama 1975
History: Effective June 19, 1992.
Amended: Filed March 4, 1997, effective April 8, 1997.
Amended: Filed April 28, 1999, effective June 2, 1999.

810-3-8-.20 Recognition of Gain or Loss on Transfer of Property to and Distribution of Property by a Subchapter K Entity.

(1) For all taxable years with respect to which a preliminary assessment of income tax could be made under the provisions of Section 40-2A-7, Code of Alabama 1975, as of May 27, 1997, or thereafter:

(a) Contribution of property to a subchapter K entity - The amount of gain or loss recognized on the contribution of property to a subchapter K entity in exchange for an interest in the subchapter K entity shall be determined in accordance with 26 U.S.C. § 721.

(b) Distribution of property by a subchapter K entity - The amount of gain or loss recognized on the distribution of property by a subchapter K entity shall be determined in accordance with 26 U.S.C. § 731.

(2) No refunds shall be due or issued by reason of this regulation with respect to taxable years beginning before January 1, 1997.

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

Author: Ann Fondren Winborne, CPA and Nancy D. Hatfield
Individual and Corporate Tax Division
Authority: §§ 40-2A-7(a)(5) and 40-18-8, Code of Alabama 1975
History: New rule filed March 26, 1998, effective date April 30, 1998.
Amended: Filed April 28, 1999, effective June 2, 1999.

