

RULES OF THE
DEPARTMENT OF REVENUE

CHAPTER 810-3-25

Estates and Trusts

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810-3-25-.01 Taxable Income of Estates and Trusts, for Taxable Years Beginning Prior to January 1, 2005.

(1) The tax imposed by Chapter 18, Title 40, Code of Alabama 1975, shall apply to the income of estates or of any kind of property held in trust, including:

(a) Income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(c) Income accumulated or held for future distribution under the terms of the will or trust; and,

(d) Income which is to be distributed to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct.

(2) The net income, or taxable income, of an estate or trust is computed in the same manner as that of an individual, with the exception that the deduction for amounts paid or permanently put aside for a charitable purpose shall be allowed to the extent specified in 26 U.S.C. § 642(c). For interpretation of federal statutes adopted by the Alabama legislature, see Rule 810-3-1.1-.01, Operating Rules.

(a) Gross income is computed as provided in § 40-18-14.

(b) Deductions (including net operating loss carrybacks or carryforwards) are allowed as provided in §§ 40-18-15 and 40-18-15.2.

1. Federal estate taxes are an allowable deduction on the fiduciary return of an estate.

(c) Taxable income is reduced by any income properly paid to the beneficiary of the estate of a deceased person which is taxable to the beneficiary.

(d) Taxable income is also reduced by the amount of income identified in paragraph (1)(d), above.

(e) The estate or trust is allowed the same exemption as is allowed a single person under § 40-18-19.

(f) In the case of a trust created by a nonresident or the estate of a nonresident, gross income of such trust or estate includes only amounts which would be included in the gross income of a nonresident individual as provided in § 40-18-14(4).

(3) The Subchapter J and Business Trust Conformity Act, Act 2006-114, was passed by the Alabama Legislature effective for taxable years beginning after December 31, 2004 - please refer to the regulations promulgated to implement the new act.

Author: Ron Bedsole and Ed Cutter, CPA
Authority: §§40-2A-7(a)(5) and 40-18-25, Code of Alabama 1975
History: Adopted September 30, 1982;
Amended: Filed June 17, 1988, effective July 27, 1988.
Amended: Filed July 26, 1999, effective August 30, 1999.
Amended: Filed December 27, 2006, effective January 31, 2007.

810-3-25-.04 Estates and Trusts Tax Computation, for Taxable Years Beginning Prior to January 1, 2005.

(1) Estates and trusts are taxed at the same rate as a single individual - see § 40-18-5(1), Code of Alabama 1975. Those rates are two percent of the first \$500.00 of taxable income, four percent of the taxable income in excess of \$500.00 and not in excess of \$3,000.00, and five percent of taxable income in excess of \$3,000.00.

(2) A resident estate or trust that has gross income taxable in Alabama and another state will be allowed a credit for net income taxes paid the other state on such income as provided in §40-18-21. See Rule 810-3-21-.01.

(3) The Subchapter J and Business Trust Conformity Act, Act 2006-114, was passed by the Alabama Legislature effective for taxable years beginning after December 31, 2004 - please refer to the regulations promulgated to implement the new act.

Authors: Ron Bedsole and Ed Cutter, CPA
Authority: §§ 40-2A-7(a)(5) and 40-18-25, Code of Alabama 1975
History: Adopted September 30, 1982.
Amended: Filed June 17, 1988, effective July 27, 1988.
Amended: Filed March 31, 2000, effective May 5, 2000.
Amended: Filed December 27, 2006, effective January 31, 2007.

810-3-25-.05 Estates and Trusts Beneficiary Taxable Income, for Taxable Years Beginning Prior to January 1, 2005.

(1) (a) Each beneficiary of a trust or estate shall include in gross income the distributive share, whether distributed or not, of the net income of the trust or estate; except that portion of the estate or trust net, or taxable, income which was taxed as provided in Rule 810-3-25-.01. Income which would be exempt if received directly by the beneficiary shall be exempt if received through a fiduciary.

(b) Each nonresident beneficiary of an estate or trust shall include in Alabama gross income the distributive share, whether distributed or not, of the net income of the trust or estate which is attributable to Alabama sources; except that portion of such trust or estate income which was taxed as provided in Rule 810-3-25-.01.

(2) The amounts distributed to an individual from those trusts described in Rule 810-3-25-.06 subparagraphs (1)(a), (1)(b), (1)(c), and (1)(d) shall be taxable to the distributee in accordance with 26 U.S.C. § 72 in the year in which distributed as if it were an annuity the consideration for which is the amount contributed by the employee.

(a) The individual's cost basis, "the amount contributed by the employee", shall include:

1. Amounts contributed before January 1, 1982, by an individual and/or his spouse to an individual retirement account, bond, or annuity for which no deduction was allowed under § 40-18-15, Code of Alabama 1975.

2. Amounts contributed before January 1, 1982, by a taxpayer to a trust described in § 40-15-25(e) for which no deduction was allowed under § 40-18-15.

3. Amounts contributed before January 1, 1985 to an annuity plan qualifying under 26 U.S.C. §§ 401(k)(2) and 403(b), for which no deduction was allowed under § 40-18-15.

4. The amount included in prior years income by the individual or the trust due to failure to qualify for exempt status.

5. The amount included in the individual's gross income because of a prior distribution that failed to qualify for the "rollover provision" or was included in gross income pursuant to 26 U.S.C. § 408(m) (acquisition of works of art, etc., treated as a distribution).

(b) The cost of the annuity to the recipient is the amount contributed by him or her, and not previously deducted.

1. For annuities which started before January 1, 1985, annuity proceeds are first considered to be a recovery of contributions to the extent of such contributions before being included in gross income of the recipient.

2. For annuities which started after December 31, 1984, but before January 1, 1986, annuity proceeds will be included in gross income in the ratio of expected return in excess of contributions to total expected return; provided however, that recipients of an employee annuity as defined in 26 U.S.C. 72(d) (as in effect before January 1, 1986) will continue to recover all costs first as provided in subparagraph 1., above.

3. For annuities which started after December 31, 1985, annuity proceeds will be included in gross income in the ratio of expected return in excess of contributions to total expected return in the same manner as described in 26 U.S.C. § 72 (as in effect after December 31, 1985).

(c) 1. Lump sum distributions will be included in gross income in the year received. There is no provision in Alabama law for the forward averaging of such distributions.

2. No part of a distribution may be excluded from gross income as a capital gain.

(d) Alabama law, unlike the provisions of 26 U.S.C. § 72, does not impose an additional tax on certain early distributions from trusts described in § 40-18-25(e).

(3) Recipients of distributions from charitable remainder unitrusts and charitable remainder annuity trusts shall include in gross income the amounts specified in 26 U.S.C. §§ 664 (b) (1) and (2).

(4) Distributions from or rollovers to individual retirement accounts described in 26 U.S.C. §§ 408A and 530, shall be taxed to the distributee according to 26 U.S.C. §§408A and 530. See also Rule 810-3-25-.09, Reporting of Roth IRA Conversions for Part-Year Residents.

(5) Distributions from a trust that are not included in gross income of the individual for federal purposes due to the "rollover provisions" of 26 U.S.C. §§ 402, 403, 408, and 409 are excluded from Alabama gross income of the individual. These are:

(a) Qualified stock bonus, pension, or profit sharing plans as described in 26 U.S.C. §401(a), which are exempt under 26 U.S.C. § 501(a), and meet the rollover requirements of 26 U.S.C. § 402,

(b) Employee annuities which meet the requirements of 26 U.S.C. § 404(a)(2), and the rollover requirements of 26 U.S.C. § 403,

(c) Individual retirement accounts that qualify under and meet the "rollover provisions" of 26 U.S.C. § 408, and

(d) Retirement bonds that qualify under 26 U.S.C. §§ 409 or 219 and meet the "rollover provisions" of 26 U.S.C. § 409.

(6) If an employer makes a contribution to a nonexempt trust for an employee and the contribution is nonforfeitable to the employee, it shall be included in the gross income of the employee at the time of the contribution.

(7) If contributions in the preceding paragraph are not nonforfeitable when made but later become nonforfeitable, their fair market value shall be included in the gross income of the employee when they become nonforfeitable.

(8) The income from a revocable trust is taxable income to the grantor unless the trust is irrevocable as to the income, then the income is taxable to the trust or the beneficiary as directed in § 40-18-25.

(a) A loss on the final return of a revocable trust is allowed to pass on to the grantor unless the trust is irrevocable as to income, then the loss is allowed to pass on to the beneficiary.

(b) A loss on an irrevocable trust cannot be passed on to the grantor or the beneficiary.

(9) See also § 40-18-14 for inclusion of trust or estate distributions in gross income.

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

(11) The Subchapter J and Business Trust Conformity Act, Act 2006-114, was passed by the Alabama Legislature effective for taxable years beginning after December 31, 2004 - please refer to the regulations promulgated to implement the new act.

Authors: Ron Bedsole and Ed Cutter, CPA

Authority: §§ 40-2A-7(a)(5) and 40-18-25, Code of Alabama 1975

History: Adopted September 30, 1982;

Amended: Filed October 26, 1988, effective December 2, 1988.

Amended: Filed March 31, 2000, effective May 5, 2000.

Amended: Filed December 27, 2006, effective January 31, 2007.

810-3-25-.06 Trusts Exempt from Taxation, for Taxable Years Beginning Prior to January 1, 2005.

(1) Except as provided in paragraphs (2), (3) and (4) below, the following trusts are exempt from taxation under § 40-18-25, Code of Alabama 1975:

(a) Any qualified trust defined in 26 U.S.C. § 401(a) relating to qualified pension, profit sharing, or stock bonus plans.

(b) A custodial account, an annuity contract, or a contract issued by an insurance company that qualifies under 26 U.S.C. § 401(f).

(c) An individual retirement account, an individual retirement annuity, or any custodial account that qualifies under 26 U.S.C. § 408(e), 26 U.S.C. § 408A, or 26 U.S.C. § 530.

(d) A retirement bond that qualifies under 26 U.S.C. § 409.

(e) Corporations, as described in 26 U.S.C. § 501(c)(2), organized for the exclusive purpose of holding title to property, collecting income therefrom, and remitting the proceeds, less expenses, to an organization which is exempt under § 40-18-25.

(f) Voluntary employees' beneficiary associations as described in 26 U.S.C. § 501(c)(9).

(g) Local teachers' retirement fund associations as described in 26 U.S.C. § 501(c)(11).

(h) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits as described in 26 U.S.C. § 501(c)(17).

(i) An organization or trust created exclusively to form part of a qualified group legal services plan or plans, as described in 26 U.S.C. § 501(c)(20).

(j) A trust created exclusively to pay liability insurance premiums for, pay administrative and other expenses of, and pay claims for liability for disability or death due to pneumoconiosis (black lung), as described in 26 U.S.C. § 501(c)(21).

(k) A charitable remainder annuity trust or a charitable remainder unitrust, as those terms are defined in 26 U.S.C. § 664, relating to charitable remainder trusts, to the extent provided in 26 U.S.C. § 664.

(l) Corporations and any organization as described in 26 U.S.C. § 501(c)(3).

(2) Feeder organizations, as described by 26 U.S.C. § 502, are not exempt from taxation under § 40-18-25, Code of Alabama 1975.

(3) Organizations not exempt from federal income tax due to the requirements of 26 U.S.C. § 503, relating to requirements for exemption, are not exempt from taxation under § 40-18-25, Code of Alabama 1975.

(4) The unrelated business income of an exempt organization, as defined in 26 U.S.C. § 512, is not exempt from taxation under § 40-18-25, Code of Alabama 1975 . See Reg. 810-3-32-.03.

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

(6) The Subchapter J and Business Trust Conformity Act, Act 2006-114, was passed by the Alabama Legislature effective for taxable years beginning after December 31, 2004 - please refer to the regulations promulgated to implement the new act.

Authors: J. Ron Bedsole, Nancy Butler, and Ed Cutter, CPA

Authority: §§40-2A-7(a)(5) and 40-18-25, Code of Alabama 1975

History: Adopted September 30, 1982.

Amended: Filed June 17, 1988, effective July 27, 1988.

Amended: Filed March 31, 2000, effective May 5, 2000.

Amended: Filed December 27, 2006, effective January 31, 2007.

810-3-25-.07 Estates and Trusts, Miscellaneous Information.

(1) Estates and trusts are required to file Alabama Form 41, Fiduciary Income Tax Return, by the 15th day of the fourth month following the close of their calendar or fiscal year.

(a) The entity will be granted an automatic five month extension of time for filing the fiduciary return.

(b) 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.

(2) (a) The fiduciary is required to make and file the return and pay the tax on the taxable income of an estate or trust. An extension of time granted to file the fiduciary 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.

1. Payment of the tax shall be made via the paper Payment Voucher or by Electronic Funds Transfer (EFT).

2. 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.

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

(b) If a fiduciary receives income which is to be distributed to a nonresident beneficiary, the fiduciary shall file with his or her return a schedule showing the amount of income distributed to each such beneficiary and the portion thereof which is exempt and the portion which is subject to Alabama tax.

(3) (a) For rules on recognition of gain or loss on transfer of property to or from an estate, trust, or beneficiary, see § 40-18-8, Code of Alabama 1975.

(b) For rules on basis of property transferred to or from an estate, trust, or beneficiary, see § 40-18-6.

(4) The Internal Revenue Code contains provisions similar to those of § 40-18-25. Decisions and interpretations of the federal courts and agencies will be given due weight in interpreting this section.

Authors: Ron Bedsole, Ann F. Winborne, CPA, Richard H. Henninger, and Ed Cutter, CPA
Authority: §§ 40-2A-7(a)(5) and 40-18-25, Code of Alabama 1975
History: Adopted September 30, 1982;
Amended: Filed June 17, 1988, effective July 27, 1988.
Amended: Filed March 31, 2000, effective May 5, 2000.
Amended: Filed November 26, 2008, effective December 31, 2008.

810-3-25-.08 Trusts and Estates Net Operating Loss, for Taxable Years Beginning Prior to January 1, 2005.

(1) A trust or estate may carryover a net operating loss in the same manner as an individual. See Rule 810-3-15-.22.

(a) When a trust or estate has a carryback of a net operating loss that reduces income available for distribution to beneficiaries below the amount that has been distributed, the prior distribution in excess of available income becomes a nontaxable distribution of corpus. If such income was taxed to the beneficiary, an amended Alabama return should be filed.

(b) A trust or estate loss cannot be passed on to the beneficiary except as described in Rule 810-3-25-.05(8).

(2) The Subchapter J and Business Trust Conformity Act, Act 2006-114, was passed by the Alabama Legislature effective for taxable years beginning after December 31, 2004 - please refer to the regulations promulgated to implement the new act.

Authors: Ron Bedsole and Ed Cutter, CPA
Authority: §§ 40-2A-7(a)(5) and 40-18-25, Code of Alabama 1975
History: Adopted September 30, 1982.
Amended: Filed June 17, 1988, effective July 27, 1988.
Amended: Filed March 31, 2000, effective May 5, 2000.
Amended: Filed December 27, 2006, effective January 31, 2007.

810-3-25-.09 Reporting of Roth IRA Conversions for Part-Year Residents.

(1) Taxpayers are allowed to convert an IRA to a Roth IRA in accordance with 26 U.S.C. §408A. Any amount required to be included in gross income as a result of the conversion will be ratably included in gross income over a 4-taxable year period beginning with the taxable year in which the conversion is made.

(2) Part-year residents, reporting in years 1998, 1999, 2000 and 2001, will use the original date of rollover to determine whether the allocated amount will be included as Alabama income.

(a) If an individual becomes an Alabama resident on or before the date of rollover or the anniversary date of the rollover, the allocation for that year will be taxable to Alabama.

(b) If an individual ceases to be an Alabama resident after the date of rollover or the anniversary date of the rollover, the allocation for that year will be taxable to Alabama.

Authors: Nancy Butler, Ronnie Bedsole & Ed Cutter, CPA
Individual and Corporate Tax Division

Authority: Sections 40-2A-7(a)(5) and 40-18-25, Code of Alabama 1975

History: New rule: Filed March 31, 2000, effective May 5, 2000.

810-3-25-10 Computation of Alabama Taxable Income for an Estate or Trust for Tax Years Beginning after December 31, 2004.

(1) For tax years beginning after December 31, 2004, the computation of Alabama taxable income for an estate or trust shall be determined in accordance with Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code, 26 U.S.C. §§ 641 through 692, relating to estates, trusts, beneficiaries, and decedents, with certain exceptions, as specified below:

(a) The income and deductions of the estates and trusts shall be increased by any items that are includable or deductible by an individual in computing Alabama income tax but are not includable or not deductible by an individual in computing federal income tax. The income and deductions of the estates and trusts shall be decreased by any items that are not includable or not deductible by an individual in computing Alabama income tax but are includable or deductible by an individual in computing federal income tax.

1. The differences referred to in this paragraph are numerous, and can change with the passage of federal or Alabama tax legislation. This regulation does not intend to include a complete list of such differences.

2. Deduction for Federal Income Taxes Paid. One example of the differences is the treatment of payments for federal income tax. Federal income tax paid is allowed as a deduction to individuals in accordance with §40-18-15, Code of Alabama 1975, but is not allowed as a deduction for federal income tax purposes. Refunds of federal income tax paid in a prior tax year is includable as income in computing the Alabama taxable income for an individual taxpayer.

3. Depletion Deduction. The depletion deduction allowed individuals in computing Alabama taxable income is specified in §40-18-15, Code of Alabama 1975, but may differ from the depletion deduction allowed for federal income tax purposes.

4. Payments for State Income Taxes. State income taxes paid to a state other than Alabama may be deductible for federal income tax purposes, but is not deductible by an individual in computing Alabama taxable income - see §40-18-15, Code of Alabama 1975.

5. Tax Exempt Income. Tax exempt interest income for Alabama income tax purposes can differ from tax exempt interest income for federal purposes. Interest income from obligations of the United States or its possessions is taxable for federal income tax purposes and is exempt for Alabama income tax purposes - see §40-18-14, Code of Alabama 1975. Interest income from the obligations of the State of Alabama and the obligations of Alabama local political subdivisions is exempt for federal income tax purposes, and is exempt for Alabama income tax purposes - see §40-18-14, Code of Alabama 1975. Interest income from non-Alabama state and local government obligations is exempt for federal income tax purposes, but not for Alabama income tax purposes - see §40-18-14, Code of Alabama 1975.

6. Federal Passive Activity Loss Restrictions. Estates and trusts are subject to certain federal passive activity losses restrictions, which are not applicable in computing Alabama taxable income.

7. Capital Gains and Losses. While federal income tax law may limit the amount of capital losses that may be claimed by a taxpayer in a tax year, in computing Alabama taxable income estates and trusts shall report gains and losses in accordance with §40-18-8, Code of Alabama 1975.

8. Charitable Contribution Deduction. In computing Alabama taxable income an estate or trust is entitled to the charitable contribution deduction provided for individual taxpayers in §40-18-15, Code of Alabama 1975, or the unlimited charitable contribution deduction allowed by 26 U.S.C. § 642(c).

9. Net Operating Loss Deduction. In computing Alabama taxable income an estate or trust is only entitled to the net operating loss deduction provided for individual taxpayers in §40-18-15.2, Code of Alabama 1975, not the federal net operating loss deduction allowed by 26 U.S.C. § 172. In addition to the NOL deduction allowed by §40-18-15.2, Code of Alabama 1975, certain trusts are allowed a Special NOL Deduction by Section 4 of Act 2006-114.

10. Personal Exemption. The personal exemption amount allowed as a deduction to estates and trusts in computing Alabama taxable income is \$1,500 – the same amount allowed a single individual under §40-18-19, Code of Alabama 1975.

11. Nonresident Estate and Trust Income and Deductions. Nonresident estates and trusts must report Alabama source income in accordance with §40-18-14, Code of Alabama 1975, and are allowed deductions in computing Alabama taxable income in accordance with §40-18-15, Code of Alabama 1975.

12. Deductions not Claimed on the Federal Return in Order to Take a Federal Employment Tax Credit. Certain federal employment tax credits require the wages to be reduced in the amount of the credit taken – the amount the wages were reduced would be allowed as a deduction for Alabama income tax purposes.

13. Deduction for Foreign Income Taxes Paid. In some cases a taxpayer may deduct foreign income taxes paid or accrued for federal income tax purposes. An estate or trust is prohibited by §40-18-15, Code of Alabama 1975, from claiming a deduction for foreign income taxes paid or accrued in computing Alabama taxable income.

14. Federal Estate Tax.

1. An estate or trust in computing Alabama taxable income is prohibited by §40-18-25(f), Code of Alabama 1975 , from claiming the deduction otherwise allowable under 26 U.S.C. § 691(c)(1)(A), the federal deduction for a portion of the estate tax paid when income in respect of a decedent is reported.

2. Federal estate taxes paid are allowed as a deduction to individuals in computing Alabama taxable income - in accordance with §40-18-15, Code of Alabama 1975.

(b) The Alabama income distribution deduction is computed in accordance with 26 U.S.C. §§ 651 and 661, including any limitations, using amounts determined in accordance with Title 40, Chapter 18, Code of Alabama 1975.

(c) An estate or trust in computing Alabama taxable income cannot claim a deduction for any item more than once.

Author: Voncile Catledge, Joe Garrett, and Ed Cutter, CPA

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

History: New Rule: Filed December 27, 2006, effective January 31, 2007.

810-3-25-.11 Computation of Alabama Taxable Income for Beneficiaries and Owners for Tax Years Beginning after December 31, 2004.

(1) For tax years beginning after December 31, 2004, the computation of Alabama taxable income for a beneficiary of an estate or trust and for persons treated as owners of any portion of a trust shall be determined in accordance with Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code, 26 U.S.C. §§ 641 through 692, relating to estates, trusts, beneficiaries, and decedents, with certain exceptions - as specified below:

(a) Resident beneficiaries and owners must report as Alabama income the beneficiary or owner's share of the amount paid or deemed to have been paid by the estate or trust to the beneficiary or owner and claimed as an income distribution deduction, in accordance with 26 U.S.C. §§ 651 or 661, by the estate or trust in the computation of its own Alabama taxable income.

1. Nonresident beneficiaries and owners must report as Alabama income the beneficiary or owner's share of the amount paid or deemed to have been paid by the estate or trust to the beneficiary or owner and claimed as an income distribution deduction, in accordance with 26 U.S.C. §§ 651 or 661, by the estate or trust in the computation of its own Alabama taxable income. The income reported by nonresident beneficiaries and owners is limited in accordance with §40-18-14, Code of Alabama 1975, and the deductions allowed in computing Alabama taxable income are limited in accordance with §40-18-15, Code of Alabama 1975.

(b) The character of any income required to be reported by the beneficiary or owner as a result of receiving the distribution from the estate or trust shall be the same character of income as if the item of income was received directly from the source of income.

(c) The character of any deduction allowed to be claimed by the beneficiary or owner as a result of receiving the distribution from the estate or trust shall be the same character of deduction as if the deduction was incurred directly by the beneficiary or owner.

(d) Federal Estate Tax.

1. A beneficiary in computing Alabama taxable income is prohibited by §40-18-25(f), Code of Alabama 1975, from claiming the deduction otherwise allowable under 26 U.S.C. § 691(c)(1)(A), the federal deduction for a portion of the estate tax paid when income in respect of a decedent is reported.

2. Federal estate taxes paid are allowed as a deduction to individuals in computing Alabama taxable income - in accordance with §40-18-15, Code of Alabama 1975.

(e) A beneficiary or owner in computing Alabama taxable income cannot claim a deduction for any item more than once.

(f) The provisions of 26 U.S.C. § 642(h), concerning unused net operating loss carryovers or excess deductions of the estate or trust, shall not apply in the computation of Alabama taxable income for the beneficiary or owner.

Author: Voncile Catledge, Joe Garrett, and Ed Cutter, CPA

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

History: New Rule: Filed December 27, 2006, effective January 31, 2007.

810-3-25-.12 Computation of Alabama Distributable Net Income (DNI) for Tax Years Beginning after December 31, 2004.

(1) For tax years beginning after December 31, 2004, the computation of Alabama Distributable Net Income (DNI) shall be determined in accordance with 26 U.S.C. § 643(a); in accordance with §40-18-1.1, Code of Alabama 1975, concerning the adoption of federal Internal Revenue Code sections in Alabama income tax law; and, in accordance with Title 40, Chapter 18, Code of Alabama 1975, Income Taxes.

(2) Purpose of Alabama DNI. Alabama DNI serves the same purpose as the federal DNI.

(a) Alabama DNI, adjusted for items not included in the gross income of the estate or trust in accordance with 26 U.S.C. §§ 651 and 661, limits the amount of deduction an estate or trust may claim for distributions to beneficiaries.

(b) Alabama DNI may also limit the amount of Alabama income a beneficiary or trust owner must report.

(3) Computation of Alabama DNI. Alabama DNI is computed in a similar manner as federal DNI. In computing Alabama DNI for an estate or trust the Alabama taxable income of the estate or trust is modified as follows:

(a) The amount of the deductions for distributions to beneficiaries allowed by 26 U.S.C. §§ 651 and 661, but adjusted to comply with Title 40, Chapter 18, Code of Alabama 1975, are added to the Alabama taxable income.

(b) The amount of the personal exemption deducted in computing Alabama taxable income is added to the Alabama taxable income.

(c) Gains from the sale of capital assets are subtracted from the Alabama taxable income if the gains are allocated to corpus and are:

1. not paid, credited, or required to be distributed to any beneficiary during the taxable year., or

2. not paid, permanently set aside, or to be used for the purposes specified in 26 U.S.C. § 642(c).

(d) Losses from the sale of capital assets are added to the Alabama taxable income if the losses are allocated to corpus and are not considered in the determination of the amount to be paid, credited, or required to be distributed to any beneficiary during the taxable year.

(e) The amount of income specified in 26 U.S.C. §§ 643(a)(4), but adjusted to comply with Title 40, Chapter 18, Code of Alabama 1975, is subtracted from the Alabama taxable income.

(f) The amount of tax exempt interest income excluded in accordance with Title 40, Chapter 18, Code of Alabama 1975, is added to the Alabama taxable income.

(g) The amount of adjustment required by 26 U.S.C. §§ 643(a)(6), concerning foreign trusts, but adjusted to comply with Title 40, Chapter 18, Code of Alabama 1975, is added to the Alabama taxable income.

Author: Voncile Catledge, Joe Garrett, and Ed Cutter, CPA

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

History: New Rule: Filed December 27, 2006, effective January 31, 2007.

810-3-25-.13 Applicability of the Subchapter J and Business Trust Conformity Act to Business Trusts.

(1) For tax years beginning after December 31, 2004, the classification of a business trust for the purposes of determining the Alabama income tax due shall be in the same manner as the business trust is classified for federal income tax purposes.

(2) Generally, the Internal Revenue Code classifies a business trust or a commercial trust as a corporation or a partnership, even if the organization is technically cast in the trust form – see U.S. Treasury Department Regulation §301.7701-4.

Author: Voncile Catledge, Joe Garrett, and Ed Cutter, CPA

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

History: New Rule: Filed December 27, 2006, effective January 31, 2007.

810-3-25-14 Alabama Grantor Trust Reporting Requirements.

(1) For tax years beginning after December 31, 2004, grantor trusts, as described in 26 U.S.C. § 671, have an Alabama return filing requirement specified by §§40-18-25 (g) and 40-18-29, Code of Alabama 1975.

(2) Grantor trusts, as described in 26 U.S.C. §671, required to comply with U.S. Treasury Department Regulation §1.671-4(a) must file returns as prescribed by the Alabama Department of Revenue in accordance with §40-18-29, Code of Alabama 1975.

(a) The information return for a grantor trust will require: the sources and amounts of income for the trust; the types and amounts of deductions for the trust; an identification of the beneficiaries or owners with the applicable social security numbers or federal employer identification numbers; the amount of income reportable on the federal income tax return for the same tax year for each beneficiary or owner; and, the amount of deductions to be claimed on the federal income tax return for the same tax year for each beneficiary or owner

(3) Grantor trusts, as described in 26 U.S.C. §671, allowed to use the simplified filing methods specified in U.S. Treasury Department Regulation §1.671-4(b) and which comply with the simplified filing methods of the regulation, are deemed to have complied with the filing requirements of §§40-18-25(g) and 40-18-29, Code of Alabama 1975.

(a) The grantor or other person treated as the owner of the grantor trust must report the income and the deductions of the grantor trust on its Alabama income tax return, in accordance with Title 40, Chapter 18, Code of Alabama 1975.

(b) The grantor or other person treated as the owner of the grantor trust must disclose on its Alabama income tax return:

1. The name of the grantor trust;
2. The total income from the grantor trust that was reported on the federal income tax return of the grantor or owner for the same tax year as the Alabama return; and,
3. The total deductions from the grantor trust that were claimed on the federal income tax return of the grantor or owner for the same tax year as the Alabama return.

Author: Voncile Catledge, Joe Garrett, and Ed Cutter, CPA

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

History: New Rule: Filed December 27, 2006, effective January 31, 2007.

810-3-25-.15 Computation of Alabama Taxable Income for a Foreign Trust, for Tax Years Beginning after December 31, 2004.

(1) The term “foreign trust” will have the same meaning for Alabama income tax purposes, as is used in with Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code, 26 U.S.C. §§ 641 through 692.

(2) Determination of Foreign Trust. The determination as to whether a trust is a foreign trust or a United States trust will be made for Alabama income tax purposes in the same manner the determination is made for federal income tax purposes.

(3) Computation of Alabama Taxable Income. The Alabama taxable income of a foreign trust will be computed in the same manner as the Alabama taxable income of a nonresident trust is computed.

(4) Withholding Requirement. Any withholding applicable to a foreign trust for federal income tax purposes applies equally to Alabama income tax. The rate of Alabama income tax withholding would be equal to the maximum tax rate the owner or grantor is subject to under Alabama income tax law.

(5) Required Reporting. Any foreign trust; foreign trust owner; grantor of a foreign trust; beneficiary of a foreign trust; transferor or property to a foreign trust; or, distributor of property from a foreign trust to a United States person; subject to special reporting by Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code, 26 U.S.C. §§ 641 through 692, will have similar special reporting requirements under Alabama income tax law.

Author: Voncile Catledge, Joe Garrett, and Ed Cutter, CPA

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

History: New Rule: Filed December 27, 2006, effective January 31, 2007.

810-3-25-.16 Credit for Income Taxes Paid to Another State or Territory by a Resident Estate or Trust.

(1) For tax years beginning after December 31, 2004, if a resident estate or trust conducts a trade or business both in Alabama and in one or more other states or territories, the resident estate or trust is entitled to a credit to be applied to the Alabama income tax for the amount of income tax actually paid to another state or territory on income earned from the conduct of the trade or business in the other states or territories.

(2) The credit for income taxes paid to another state or territory shall be computed in accordance with §40-18-21, Code of Alabama 1975.

Author: Voncile Catledge, Joe Garrett, and Ed Cutter, CPA

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

History: New Rule: Filed December 27, 2006, effective January 31, 2007.