

810-3-24.2-04 Composite Payment Relief. (NEW RULE)

(1) Notwithstanding the provisions of Ala. Admin. Code § 810-3-24.2-.01, a pass-through entity shall not be required to remit a composite payment on behalf of a nonresident member if any of the following applies:

(a) The nonresident member is a partner of a pass-through entity that: (1) qualifies for the capital credit, (2) has income that is solely derived from the capital credit project, and (3) has an allowable capital credit that is expected to completely offset any potential liability. **See Ala. Admin. Code § 810-2-7;**

(b) The nonresident member is a tax-exempt entity that does not have any unrelated business taxable income (“UBTI”) attributable to the pass-through entity. **See Ala. Admin. Code §§ 810-3-32-.03 & 810-3-24.2-.01; or**

(c) The nonresident member: (1) is a corporate taxpayer that has been in a loss position for the three most recent tax periods, (2) expects to be a loss position for the current tax period, and (3) does not have any separately stated income items that pass through to its nonresident members.

(2) A pass-through entity that operates at a loss for the tax year shall remit an Alabama composite payment on behalf of a nonresident member, if the nonresident partner is allocated any separately stated income items, as evidenced on the Alabama Schedule K-1. **See Ala. Admin. Code § 810-3-24.2-.01.**

Example: Partner A is a partner in XYZ partnership (a 100% Alabama partnership). XYZ incurred an operating loss for the tax period and issued K-1’s to each of the partner’s in XYZ partnership. Partner A’s K-1 reports the following:

Ordinary business income (loss)	(\$10,000)
Portfolio Income	\$1,500
Guaranteed Payments	\$8,000

XYZ must file a composite return on behalf of Partner A and pay tax on the \$9,500 (\$8,000 guaranteed payments + \$1,500 portfolio income).

(3) A pass-through entity that qualifies for relief from the composite payment requirement for one or more nonresident partners shall complete form PTE-R indicating which exemption the pass-through entity qualifies for. The original form PTE-R must be submitted separately for approval before the due date of the income tax return to the address listed on the form.

(4) Each non-resident member that is included in the request for exemption from the composite payment shall complete a non-resident agreement (“NRA”) which must be filed with the PTE-R requesting relief. The non-resident will be required to make estimated tax payments timely, and file any necessary returns by the appropriate due dates. If the exempt non-resident

member does not abide by the criteria outlined in this paragraph, then the Department shall void the exemption and seek payment from the pass-through entity as outlined in 40-18-24.2.

(5) If a pass-through entity has a unique or unusual situation that does not qualify for one of the exemptions mentioned above, it may complete form PTE-R requesting relief from the composite payment. The form should be submitted with a detailed explanation of the situation and any substantiating information before the due date of the income tax return to the address listed on the form PTE-R. The Department will review the taxpayer's facts and circumstances on a case-by-case basis.

Author: Dennice Hillard
Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-24.2(c)(3)
History: