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 whichever 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 whichever 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.
Author: 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) All entities other than financial institutions as discussed in paragraph (2) below required under §40-14A-25 to file an Alabama Business Privilege Tax ("BPT") Return with the department shall file no later than the due date of the corresponding Federal Income Tax Return as required to be filed under federal law, without regard to any extension.

(2) BPT Returns for all members of a financial institution group shall be granted an automatic extension consistent with the extension allowed for the taxpayer's corresponding Federal Income Tax Return plus one month.

(3) An extension for filing the returns above shall be granted if the corresponding Federal Income Tax Return was extended for the same length of time.

(4) There is no provision in the Alabama Business Privilege Tax law to allow an extension of time to pay the amount of tax due. 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). Any payment that exceeds $750 must be made via EFT. Please refer to Rules 810-13-1-.01 and 810-13-1-.03.

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

Author: Jameka Elder, Christina Hall
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. **Repealed and New Rule:** Filed April 27, 2018; effective June 11, 2018. **Amended:** Published August 30, 2024; effective October 14, 2024.

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.

Author: 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.

Author: Brenda J. Russ, Cathy McCary
Statutory 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.

Author: 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 (Repealed 1/13/16).

(REPEALED)
Author: Neal Hearn, Brenda J. Russ, Cathy McCary, CPA
Statutory Authority: Code of Ala. 1975, §§ 40-2A-7(a)(5), 40-2A-10.
History: **New Rule:** Filed May 25, 2011; effective June 29, 2011.
Repealed: Filed December 9, 2015; effective January 13, 2016.

810-2-8-.12 Requirements For The Alabama Electronic Business Privilege Tax Return.

(1) SCOPE – This rule defines certain terms used in connection with the Alabama Business Modernized E-File Program.

(2) Definitions:

(a) XML Schema – A single file or collection of files that describe the structure of an XML instance document along with rules for data content and semantics such as what fields an element can contain, which sub elements it can contain and how many items can be present. It can also describe the type and values that can be placed into each element or attribute.

(b) XML instance document – The actual return data defined by the XML Schema. This document is validated against the XML schema to ensure the contents and structures are correct.

(c) Business Rules – A document that defines the criteria that needs to be met for an electronic return to be accepted based on the filing instructions and system requirements for a specific tax return.

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

(e) Software Developer - An authorized IRS Provider that develops software for the purposes of (a) formatting the electronic portions of returns according to IRS Publication 4164 or Department specifications and/or (b) transmitting the electronic portion of returns directly to the IRS or the Department. A Software Developer may also sell its software.

(f) Electronic Return Originator (ERO) - A firm, organization or individual who is an authorized IRS e-file provider that originates the electronic submission of returns. Because the electronic filing process is a joint program between the IRS and the Department, an ERO must be approved by the Internal Revenue Service to qualify for this program.

(g) AL8453-B - A document used to satisfy signature requirements for electronically filed business privilege tax returns submitted to the State of Alabama by an Electronic Return Originator (ERO).

(h) Accepted return – An Alabama electronic Business Privilege Tax return that has successfully completed the schema and business rules validation process and the Department has sent an acknowledgement with an Acceptance Status of "Accepted" for MeF (Modernized e-File) returns.

(i) Rejected Return – An Alabama electronic Business Privilege Tax return that was received but failed to complete the schema and or business rule validation process and the Department has sent an acknowledgement with an Acceptance Status of "Rejected" for MeF returns.

(j) Transmission Perfection Period – A ten (10) calendar day period from the date of the first transmission of an MeF (Modernized E-file) Business Privilege Tax return that a taxpayer has to correct and resubmit a rejected electronically transmitted MeF Business Privilege Tax return that was originally timely filed.

(k) Electronic Postmark – A record of the date and time (in a particular time zone) that an authorized electronic return transmitter receives the transmission of a taxpayer's electronically filed document on its host system. However, if the taxpayer and the electronic return transmitter are located in different time zones, it is the taxpayer's time zone that controls the timeliness of the electronically filed document.

(l) Timely Filed return – For all entities, excluding all members of a Financial Institution Group, an electronic return that is received and accepted by the due date or within an extension of time for filing the Business Privilege Tax Return according to the same manner as allowed by federal law. For all members of a Financial Institution Group, an electronic return that is received and accepted no later than the

corresponding Alabama Financial Institution Excise Tax return due date, including any extensions allowed. It also includes a timely filed rejected return that is resubmitted and accepted during the transmission perfection period.

(m) Electronic Return Transmitter – An authorized IRS e-file Provider that transmits the electronic portion of a return directly to the IRS or the Department. An entity that provides a "bump up" service is also a Transmitter. A bump up service provider increases the transmission rate or line speed of formatted or reformatted information that it is sending to the IRS.

(n) Standard Letter of Intent (LOI) – A form which must be completed to request approval from the Department to provide tax preparation software for electronic forms submissions. By completing this form, the software developer agrees to comply with all national security summit standards and requirements in addition to the specific Alabama requirements included in the LOI.

(o) Submission Error Rate – A Software Developer's percentage of business rule rejections compared to the total amount of returns submitted. This will be calculated by taking the total amount of business rule rejections per form type for a particular form year divided by the total amount of returns transmitted for that same form type with regards to the form year in question.

(p) Original Business Privilege Tax Return - Any return that is required to be filed with respect to the tax imposed as defined by Section 40-14A-22, Code of Ala. 1975.

(q) Acceptable Business Privilege Tax return - Any original Business Privilege Tax return that is authorized by the Department to be filed solely using electronic technology as defined in Section 40-30-3(2), Code of Ala. 1975.

(r) Tax Preparation Software – Any computer software program intended for accounting, tax preparation and or tax compliance.

(s) Electronic Signature Pad – An electronic device with a touch sensitive LCD screen which allows users to acquire and register a signature or any other physical signature capture device that captures and converts a signature into an electronic format.

(t) Suitability – A check conducted on all software developers including rebranded and white labeled products, when an application is initially processed and on a regular basis thereafter. The suitability check may include background and personal tax compliance checks conducted by the department to

ensure the software developers are eligible for participation in the Department's E-file program.

(u) Business Acceptance or Assurance Testing (BATS) – Required testing for software developers that participate in the Department's Business e-file program. This testing is used to assess their software and transmission capability with the department prior to live processing.

Author: Melissa Gillis, Veronica Jennings, Michaelyn N. Adams
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-30-5.
History: New Rule: Filed April 9, 2013; effective May 14, 2013.
Repealed and New Rule: Filed February 6, 2018; effective March 23, 2018.

810-2-8-.13 Requirements For The Business Privilege Tax Declaration For Electronic Filing.

(1) SCOPE - This rule defines the information required for the Business Privilege Tax declaration for electronic filing through the Alabama Business Modernized E-File Program (MeF).

(2) The Business Privilege Tax Declaration for Electronic Filing requires the following information and authorizations:

(a) The Business Entity/Company name.

(b) The Business Entity/Company Federal Employer Identification Number.

(c) The Business Entity/Company Business Privilege Account Number.

(d) The Business Entity/Company address.

(e) The net annual report fee due reported by the electronic return.

(f) The total Business Privilege Tax Due reported by the electronic return.

(g) The amount of refund reported by the electronic return.

(h) The amount due reported by the electronic return.

(i) The amount of payment remitted electronically.

(j) If applicable, authorization for the Department and its designated financial agent to initiate an electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment

of the entity's Alabama taxes owed on this return, and the financial institution to debit the entry to this account.

(k) Authorization for the Department to discuss the return and attachments with the preparer.

(l) Consent to the disclosure of all information pertaining to the user of the computer system and software used to create the business return and to the electronic transmission of the business tax return to the Department.

(m) The signature of an officer/partner of the Business Entity/Company, their title and date of the signature. The Department will accept a signature made on a signature pad (defined in Rule 810-2-8-.12).

(n) The signature of the electronic return originator and date of the signature.

(o) An indication whether the electronic return originator is self-employed.

(p) The firm name of the electronic return originator.

(q) The address, including the zip code, of the electronic return originator.

(r) The federal employer identification number of the electronic return originator.

(s) If the paid preparer is different from the electronic return originator, the following information is required:

1. The signature of the paid preparer and date of the signature.

2. An indication whether the paid preparer is self-employed.

3. The firm name of the paid preparer.

4. The address, including the zip code, of the paid preparer.

(3) The signatures of the officer/partner, the electronic return originator, and the paid preparer (if the paid preparer is different from the electronic return originator) must be affixed to the Alabama Form AL8453-B – Business Privilege Tax Declaration for Electronic Filing before the return is electronically transmitted.

(a) Members of the firm or designated employees may sign for the electronic return originator.

(b) If the taxpayer is unable to obtain the paid preparer's signature on the Alabama Form AL8453-B, in lieu of the paid preparer's signature the electronic return originator may attach to the Alabama Form AL8453-B a copy of the appropriate pages of the paper return with the paid preparer's signature.

(c) Electronic return originators and electronic return preparers are prohibited from allowing taxpayers to sign a blank Alabama Form AL8453-B.

(4) The completed and signed Alabama Form AL8453-B will serve as the filing declaration for the electronic Business Privilege Tax Return.

(5) The completed and signed Alabama Form AL8453-B must be retained by the electronic return originator for a period of three years from the due date of the return or three years from the date the return was filed, whichever is later. The electronic return originator will provide the Department with the original Alabama Form AL8453-B within five business days of receiving a written request for the documents from the Department.
Author: Melissa Gillis, Michaelyn N. Adams
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-30-5.
History: **New Rule:** Filed April 9, 2013; effective May 14, 2013.
Amended: Filed April 9, 2018; effective May 24, 2018.

810-2-8-.14 **Acceptance, Monitoring, And Revocation Of Acceptance Into The Alabama Business Modernized E-File Program For Software Developers - Business Privilege Tax.**

(1) SCOPE - This rule explains the requirements for software developers to obtain and sustain active approval to provide software that allows business privilege tax returns to be electronically filed through the Alabama Business Modernized E-File program.

(2) Software developers must be approved on an annual basis and maintain good standing with the Department. The Department has the right to deny any applicant acceptance into the Alabama Business Modernized E-File Program. To obtain approval, software developers must adhere to the following guidelines:

(a) Be accepted by and in good standing with the Internal Revenue Service (IRS) Electronic Filing Program.

(b) Have satisfactorily completed the Department's software developer suitability approval process.

(c) Have an approved Letter of Intent, with original officer signature, on file with the Department.

(d) Have satisfactorily completed the Business Acceptance Testing System (BATS) with the Department.

(3) XML Schemas (record layouts), specifications, and business rules for a complete Alabama electronic business privilege tax return are issued annually by the Department. In addition, the Department annually releases the Alabama Business Modernized E-file Program: Handbook for Software Developers and Transmitters (Publication AL4164) which provides supplemental information pertinent to electronic return development.

(4) Software developer testing will occur in conjunction with IRS testing in accordance with Alabama Business MeF Test Package (Publication AL4162).

(5) Alabama electronic business privilege tax returns received by the Department that are prepared by a software developer that has not completed the Department's software developer testing and that has not been approved by the Department will be rejected by the Department. Paper Alabama business privilege tax returns must then be submitted by the taxpayer or the taxpayer may electronically file the tax return using an approved software from another software developer.

(6) The Department will conduct random monitoring visits with software developers to verify that the requirements of the Alabama Electronic Filing Program are being met.

(7) The Department reserves the right to request a copy of the most current copy of the software product that is utilized in production.

(8) The Department reserves the right to revoke the acceptance of a software developer for cause. Failure to comply with the guidelines set forth in the Alabama Business Modernized E-file Program: Handbook for Software Developers and Transmitters (Publication AL4164) is considered cause.

(9) Any of the following can result in the revocation of a software developer's acceptance into the Alabama Business Modernized E-File Program:

(a) Conviction of a criminal offense under the revenue laws of any state or of any offense involving dishonesty or breach of trust.

(b) Failure to file timely and accurate personal tax returns or business tax returns.

(c) Failure to pay personal tax liabilities or business tax liabilities.

(d) Failure or refusal to effect corrective action as required by the Department.

(e) Other facts or conduct of a disreputable nature that would reflect adversely on the Alabama Business Modernized E-File Program.

(f) Unethical practices in return preparation.

(g) Suspension by IRS.

(h) Prior year submission error rate of 70% or greater.

(i) Failure to comply with any of the items listed in section 2 of this rule.

Author: Melissa Gillis, Michaelyn N. Adams
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-30-6.
History: New Rule: Filed April 9, 2013; effective May 14, 2013. **Repealed and New Rule:** Filed April 9, 2018; effective May 24, 2018.

810-2-8-.15 Acceptance, Monitoring, And Revocation Of Acceptance Into The Alabama Business Modernized E-File Program For Electronic Return Originators And Transmitters - Business Privilege Tax.

(1) SCOPE - This rule explains the requirements for electronic return originators and transmitters (not to include software developers – See Rule 810-2-8-.14) to obtain and sustain active approval to serve as a Department electronic filing agent in order to transmit returns through the Alabama Business Modernized E-File Program.

(2) Electronic return originators and transmitters accepted by and in good standing with the Internal Revenue Service (IRS) Electronic Filing Program are automatically accepted into the Alabama Electronic Filing Program. This does not include software developers. They must complete the approval process with the Department (See Rule 810-2-8-.14).

(3) Electronic return originators and transmitters accepted into the Alabama Electronic Filing Program serve as agents of the Department and must comply with the requirements of the program as stated in the Alabama Business Modernized E-file Program: Software Developers and Transmitters Guidelines and Schemas (Publication AL4164).

(4) The Department will conduct random monitoring visits with Electronic Return Originators and Transmitters to verify that the requirements of the Alabama Electronic Filing Program are being met.

(5) The Department reserves the right to revoke the acceptance of an electronic return originator or transmitter for cause. Failure to comply with the guidelines set forth in the Alabama Business Modernized E-file Program: Handbook for Software Developers and Transmitters (Publication AL4164) is considered just cause.

(6) Any of the following can result in the revocation of an electronic return originator's or transmitter's acceptance into the program:

(a) Conviction of a criminal offense under the revenue laws of any state or of any offense involving dishonesty, or breach of trust.

(b) Failure to file timely and accurate tax returns, both personal and business.

(c) Failure to pay personal tax liabilities or business tax liabilities.

(d) Failure or refusal to effect corrective action as required by the Department.

(e) Other facts or conduct of a disreputable nature that would reflect adversely on the Alabama Electronic Filing Program.

(f) Unethical practices in return preparation.

(g) Suspension by IRS.

Author: Melissa Gillis, Veronica Jennings, Michaelyn N. Adams
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-30-6.
History: **New Rule:** Filed April 9, 2013; effective May 14, 2013.
Amended: Filed April 9, 2018; effective May 24, 2018.

810-2-8-.16 Alabama Requirements For Mandatory E-File Of Business Privilege Tax Returns Prepared By Financial Institution Groups.

(1) Scope – This rule explains the electronic filing mandate requirements for Business Privilege Tax returns prepared by Financial Institution Groups.

(2) Definitions.

(a) "Financial Institution Group" as defined in Section 40-14A-22(f), Code of Alabama 1975.

(b) "Financial Institution" as defined in Section 40-16-1, Code of Ala. 1975.

(c) "Fiscal Year". The annual period used by a taxpayer to determine its federal income tax, financial institution excise tax, or report its financial results.

(d) "Taxable Year" is the fiscal year used by the taxpayer to file returns required under the income tax levied by Chapter 18 or the financial institution excise tax levied by Chapter 16, or, in the case of an insurance company subject to the premium tax levied by Chapter 4A of Title 27, the calendar year.

(e) "Determination Period" is the taxpayer's taxable year that precedes the taxpayer's current taxable year.

(3) Financial Institution Group Mandate.

(a) For determination periods beginning on and after January 1, 2015, Financial Institution groups are mandated to electronically file all Alabama original business privilege tax returns for that calendar year and all subsequent tax years.

(b) Paragraph (3)(a) of this rule may not be interpreted to require electronic filing of acceptable Business Privilege Tax returns that are required to be filed before January 1, 2016.

Author: Michaelyn Adams, Veronica Jennings
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-14A-2, 40-14A-22, 40-16-1, 40-30-1 through 6.
History: **New Rule:** Filed November 10, 2015, effective December 15, 2015. **Amended:** Filed April 9, 2018; effective May 24, 2018.

810-2-8-.17 Requirements For The Alabama Electronic Business Privilege Tax Return.

(1) **SCOPE** - To define the filing and payment requirements for an Alabama electronic business privilege tax return filed through the Alabama Business Modernized E-File program. Terms are defined to clarify when an electronic return is considered to be timely filed for accepted and rejected returns.

(2) **Return Filing and Payment Requirements**

(a) A complete Alabama electronic business privilege tax return will consist of XML data transmitted electronically and supporting binary documents (such as .pdf documents) as required by the Alabama Business Privilege Tax Modernized Electronic Filing (MeF) schemas, business rules, and Handbook for Software Developers and Transmitters (Publication 4164). A complete Alabama electronic return must contain the same information as a comparable Alabama business privilege tax return as if filed entirely on paper.

(b) All entities that electronically file their Alabama business privilege tax return must also pay their tax liability electronically.

(c) This rule applies to and allows business privilege tax returns to be electronically filed through the Department's Internet-based electronic filing program or the Alabama Business Modernized e-filing Program (MeF) or their successors and as they may exist from time to time. Rules 810-2-8-.12 through 810-2-8-.15 apply to returns that are transmitted through the Alabama Business Modernized e-filing Program (MeF).

(3) **Timely Filed Information for Accepted and Rejected Returns**

(a) The electronic postmark or IRS received date of an accepted Alabama electronic business privilege tax return will be used to determine timely filing of an electronic return in the same manner that the postmarked date is used to determine timely filing of a paper Alabama Business Privilege Tax return.

(b) The electronic postmark (based on the taxpayer's time zone) will be used as the received date of the electronic transmission if the electronic postmark is within three (3) days of the IRS received date. However, if there is no electronic postmark date or if the electronic postmark date is greater than three (3) days of the IRS received date, then the IRS received date will be used.

(c) If a timely filed electronic return is rejected, the filer has the later of 10 calendar days from the date of the first transmission or the due date of the return (with extensions) to correct the errors and resubmit the return. In order for the Department to acknowledge the transmission date of the original return, the submission ID of the original return must be transmitted in each subsequent filing. If the return is resubmitted and accepted after the due date (with extensions) or the transmission perfection period, the received date will be the transmission date of the accepted resubmitted (perfected) return and not the date that the original rejected return was submitted.

(d) Perfection of a return for electronic re-transmission is generally required when the original timely filed electronic return had errors in the XML format, or errors that caused the return to fail Alabama Business Privilege Tax MeF schema validation and or business rules. Therefore, the transmission perfection period is not an extension of time to file; it is a period of time to correct errors in the electronic file.

(e) If a filer is unable to correct a rejected Alabama Business Privilege Tax electronic return to an accepted

status, the filer must submit their paper return with a copy of the last rejection notification from the Department. To be considered timely filed, this paper return must be postmarked by the later of the due date of the return (including extensions) or 10 calendar days after the date that Alabama last gives notification that the return was rejected. If the paper return is received after the due date or the transmission perfection period, the received date will be the postmark date of the paper return.

Author: Michaelyn N. Adams, Melissa A. Gillis Sttutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-30-5.
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-30-5.
History: New Rule: Filed April 27, 2018; effective June 11, 2018.

810-2-8-A **Appendix A.**

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: _____

FEIN: _____

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

Part 1 – 90% Ownership Test

Partners' 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: 90% 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)(3)(C).

Signature: _____ Date: _____

Title: _____

Form BPT-E - Family Limited Liability Entity Election Form

See Master Code for Copy of form
Author: 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.