

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 Alabama, 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 Alabama, 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 Alabama, 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 Alabama, 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 Alabama, 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 Alabama, 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 Alabama, 1975; or,
5. conducts the business of a financial institution, as defined in Section 40-16-1, Code of Alabama, 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 Alabama, 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 Alabama, 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 Alabama, 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 Alabama, 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.

Authors: Brenda J. Russ and Cathy McCary
Authority: Sections 40-2A-7(a)(5) and 40-14A-22, Code of Alabama 1975
History: New rule: Filed February 23, 2011, effective March 30, 2011.