

APA-1

### Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-3-175-.01

Rule Title: Passive Investment Income Tax

New;  Amended;  Repealed;  Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that result from the absence of the proposed rule? N/A

Are all the facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

\*\*\*\*\*  
Does the proposed rule have any economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

\*\*\*\*\*  
**Certification of Authorized Official**

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer 

Date 12/14/2016

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10/96

**ECONOMIC IMPACT STATEMENT  
FOR APA RULE  
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-3-175-.01

Rule Title: Passive Investment Income Tax

         New   X   Amend          Repeal          Adopt by Reference

- NO      This rule has no economic impact.  
 YES     This rule has an economic impact, as explained below:

1.            NEED/EXPECTED BENEFIT OF RULE:
  
2.            COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE,  
EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES  
AND ACHIEVING THE STATED PURPOSE:
  
3.            EFFECT OF THIS RULE ON COMPETITION:
  
4.            EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN  
THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE  
IMPLEMENTED:
  
5.            EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL  
AREA HERE THE RULE IS TO BE IMPLEMENTED:
  
6.            SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND  
ENFORCING THIS RULE:
  
7.            THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON  
AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL  
BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:
  
8.            UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND

**BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE  
BENEFITS AND BURDEN COMPARISON:**

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
11. OTHER COMMENTS:

**ALABAMA DEPARTMENT OF REVENUE  
Individual and Corporate Tax Division**

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE**

810-3-174-.02                      Built-in Gains Tax  
810-3-175-.01                      Passive Investment Income Tax

**INTENDED ACTION:**              Amend rule

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to amend the above rule to comply with Act 2016-412 concerning return due date conformity.

**RULE NO. & TITLE**

810-3-2-.03                      Estates, Trusts and Fiduciaries Subject to Alabama Income Tax

**INTENDED ACTION:**              Amend rule

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to amend the above rule to remove obsolete references. This rule was reviewed in compliance with the Red Tape Reduction Act.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** A public hearing will be held at **1:30 p.m. on Tuesday, February 14, 2017, Room 1203, First Floor**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/analysis/rules.cfm>.


All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also appear at the hearing to present their views.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, February 14, 2017

**CONTACT PERSON AT AGENCY:**

Timothy Sanders  
Alabama Department of Revenue  
4131 Gordon Persons Building  
Montgomery, Alabama 36132  
(334) 242-1380



Michael D. Gamble, Secretary  
Alabama Department of Revenue\

810-3-175-.01 Passive Investment Income Tax.

(1) Definitions-

(a) "Passive investment income" means gross receipts from royalties, rents, dividends, interest (excluding installment sales to customers and income of lending and financing companies), annuities, and sales or exchanges of stock or securities to the extent of any gains therefrom.

1. For any tax year in the recognition period, passive investment income shall not include any recognized built-in gain or loss. See §Section 40-18-174, Code of Ala-bama 1975.

(b) "Net passive income" means passive investment income less deductions directly connected with the production of such income.

(c) "Excess net passive income" means an amount which bears the same ratio to the net passive income as the amount by which the passive investment income exceeds 25 percent of the gross receipts bears to the passive investment income. Therefore,

$$\text{Excess npi} = \frac{\text{pii} - 25\%(\text{GR}) \times \text{npi}}{\text{pii}}$$

pii = passive investment income for the tax year

npi = net passive income for the tax year

GR = total gross receipts for the tax year

1. The amount of excess net passive income shall not exceed the S corporation's taxable income for the tax year as determined under §Section 40-18-161, Code of Ala-bama 1975.

(2) The tax is imposed upon S corporations which have Alabama accumulated C corporation earnings and profits. If, for the taxable year, such S corporations have passive investment income which constitutes more than 25 percent of gross receipts, then a tax is imposed on the income of the S corporation for that taxable year.

(3) The tax is computed by multiplying 5 percent times the Alabama excess net passive income.

(4) Those corporations subject to the tax should complete the appropriate schedules of Form 20S, which is due on the fifteenth day of the third month following the end of the tax year. See Rule 810-3-42-.01. The tax is due at the same time as the return.

~~(a) Those corporations which have liabilities and which want an extension for filing form 20S should file form 20-E on or before the due date of the return, together with remittance covering the liability.~~  
An automatic extension will be granted up to a maximum of six months to file the Alabama S corporation income tax return. An extension of time to file the return is not an extension of time for payment of the 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. Interest and penalties are due on all taxes not paid on or before the unextended due date. See Rules 810-3-39-.02 and 810-3-42-.01.

(5) The department may waive the excess net passive income tax if the S corporation establishes that it made a good-faith determination at the close of the tax year that it had no C corporation earnings and profits and that it distributed such earnings and profits within a reasonable time after determining that they existed.

(a) A request for waiver of the passive investment income tax shall be made in writing to the department. The request must contain a description of how and on what date the S corporation determined that it had no C corporation earnings and profits at the end of the tax year, a description of how and on what date it was determined that the S corporation had C corporation earnings and profits at the end of the tax year, and a description (including dates) of any steps taken to distribute such earnings and profits.

(b) If the earnings and profits have not been distributed, the request must contain a timetable for distribution and an explanation of why such timetable is reasonable. Before the waiver may be granted, all subchapter C earnings and profits must have been distributed.

(6) In administering and interpreting this rule, the Department will consider administrative rulings and decisions in respect to the similar provisions of the Internal Revenue Code and **Regulations Rules** thereunder.

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Authority: SS Sections 40-2A-7(a)(5) and 40-18-175, Code of Alabama 1975

History: Adopted December 4, 1992.

Amended: Filed March 26, 1998, effective date April 30, 1998.

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