

APA-1

Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-27-1-.18.03

Rule Title: Special Rules: Publishing

New; Amended; Repealed; Adopt by Reference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 06/15/2016

APA-6
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-27-1-.18.03

Rule Title: Special Rules: Publishing

New 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

810-27-1-.18 Special Rules

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to allow taxpayers to file a valid refund petition when seeking an alternative allocation or apportionment method for a tax year with less than 91 days left in the statute of limitations period for refund.

RULE NO. & TITLE

810-27-1-.18.01 Special Rules: Airlines
810-27-1-.18.02 Special Rules: Construction Contractors
810-27-1-.18.03 Special Rules: Publishing
810-27-1-.18.04 Special Rules: Railroads
810-27-1-.18.05 Special Rules: Television and Radio Broadcasting
810-27-1-.18.06 Special Rules: Trucking Companies
810-27-1-.18.07 Special Rules: Telecommunications and Ancillary Service
Providers

INTENDED ACTION: Adopt new rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to adopt the above rules to move special rules for allocation and apportionment into separate rules in order to make the information more readily available to taxpayers.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **2:30 p.m. on Wednesday, August 10, 2016, 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>.

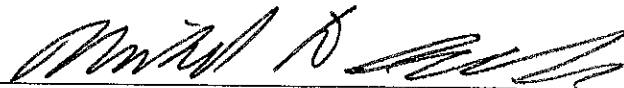
All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties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

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Wednesday, August 10, 2016

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

0995APC.INT

810-27-1-.18.03 Special Rules: Publishing. **(New Rule)**

The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material.

(1) In General. Except as specifically modified by this rule, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without Alabama, the amount of business income from sources within Alabama from such business activity shall be determined pursuant to Sections 40-27-1, Article IV and 40-27-1.1, Code of Alabama 1975, and the rules promulgated thereunder.

(2) Definitions. The following definitions are applicable to the terms contained in this rule, unless the context clearly requires otherwise.

(a) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but which are not physically located in any particular state.

(b) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

(c) "Purchaser" and "Subscriber" mean the individual, residence, business or other outlet which is the ultimate or final recipient of the print or printed material. Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

(d) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(3) Apportionment of Business Income.

(a) The Property Factor.

1. Property Factor Denominator. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

2. Property Factor Numerator.

(i) All real and tangible personal property owned or rented by the taxpayer and used in Alabama during the tax period shall be included in the numerator of the property factor.

(ii) Outer-jurisdictional property owned or rented by the taxpayer and used in Alabama during the tax period shall be included in the numerator of the property factor in the ratio which the value of such property that is attributable to its use by the taxpayer in business activities in Alabama bears to the total value of such property that is attributable to its use in the taxpayer's business activities everywhere.

(I) The value of outer-jurisdictional property to be attributed to the numerator of the property factor of Alabama shall be determined by the ratio that the number of uplinks and downlinks (sometimes referred to as "half-circuits") that were used during the tax period to transmit from Alabama and to receive in Alabama any data, voice, image or other information bears to the total number of uplinks and downlinks or half-circuits that the taxpayer used for transmissions everywhere.

(II) Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outer-jurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of Alabama shall be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from Alabama and to receive in Alabama any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

(III) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within Alabama when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material and any data, voice, image or other information is transmitted to or from Alabama either through an earth station or terrestrial facility located in Alabama.

Example: One example of the use of outer-jurisdictional property is where the taxpayer either owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees in a state. The state or states in which any printing facility that receives the satellite communications is located and the state

from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of said satellite to its total usage everywhere.

Assume that ABC Newspaper Co. owns a total of \$400,000,000 of property everywhere and that, in addition, it owns and operates a communication satellite for the purpose of sending news articles to its printing plant in Alabama, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in Alabama for the entire income year was valued at \$3,000,000. Assume also that the total original cost of the satellite is \$100,000,000 for the tax period and that of the 10,000 uplinks and downlinks of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from Alabama. Assume further that the company's mobile property that was used partially within Alabama, consisting of 40 delivery trucks, were determined to have an original cost of \$4,000,000 and such mobile property was used in Alabama for 95 days. The total value of property to be attributed to Alabama would be determined as follows:

Value of property permanently in state:	\$3,000,000
Value of mobile property: 95/365 or (.260274) x \$4,000,000:	\$1,041,096
Value of leased satellite property used in-state: (.02) x 100,000,000:	<u>\$2,000,000</u>
Total value of property attributable to state:	\$6,041,096
Total property factor %: \$6,041,096/(\$500,000,000):	1.2082%

(b) The Payroll Factor. The payroll factor shall be determined in accordance with Section 40-27-1, Article IV.13 and .14, Code of Alabama 1975, and the rules promulgated thereunder.

(c) The Sales Factor.

1. Sales Factor Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions or activity in the regular course of its trade or business, except receipts that may be excluded under Alabama Rules 810-27-1-.15 through 810-27-1-.18.

2. Sales Factor Numerator. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within Alabama, including, but not limited to, the following:

(i) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in Alabama.

(ii) Except as provided in subparagraph (3)(c)2.(iii), gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to Alabama as determined by the taxpayer's "circulation factor" during the tax period. The circulation factor shall be determined for each individual publication by the taxpayer of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere. The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

(iii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which Alabama is located, the taxpayer may petition, or the Commissioner may require, that a portion of such receipts be attributed to the sales factor numerator of Alabama on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by subparagraph (3)(c)2.(ii). Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in Alabama of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

(iv) In the event that the purchaser or subscriber is the United States Government or that the taxpayer is not taxable in a State, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such State, shall be included in the numerator of the sales factor

of Alabama if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in Alabama.

Author: Holly H. Coon

Authority: Sections 40-2A-7(a)(5) and 40-18-57, Code of Alabama 1975.

History: