

APA-1

Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-27-1-.18.06

Rule Title: Special Rules: Trucking Companies

New; Amended; Repealed; Adopt by Reference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-.18.06

Rule Title: Special Rules: Trucking Companies

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>.

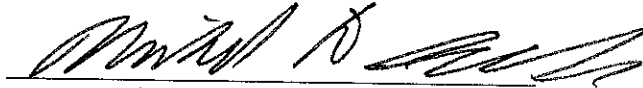
All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties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

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810-27-1-.18.06 Special Rules: Trucking companies. (New Rule)

The following special rules are established with respect to trucking companies.

(1) In General. As used in this rule, the term "trucking company" means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. Where a trucking company has income from sources both within and without Alabama, the amount of business income from sources within Alabama shall be determined pursuant to this rule. In such cases, the first step is to determine what portion of the trucking company's income constitutes "business" income and what portion constitutes "nonbusiness" income under Sections 40-27-1, Article IV.1 and 40-27-1.1, Code of Alabama 1975, and Alabama Rule 810-27-1-.01. Nonbusiness income is directly allocable to specific states pursuant to the provisions of Section 40-27-1, Article IV.5-8, Code of Alabama 1975, inclusive. Business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of (i) the items of nonbusiness income directly allocated to Alabama and (ii) the amount of business income attributable to Alabama constitutes the amount of the taxpayer's entire net income which is subject to tax in Alabama.

(2) Business and Nonbusiness Income. For definitions, rules, and examples for determining business and nonbusiness income, see Alabama Rule 810-27-1-.01. Business income is determined in accordance with Section 40-27-1.1, Code of Alabama 1975.

(3) Apportionment of Business Income.

(a) In General. The property factor shall be determined in accordance with Alabama Rules 810-27-1-.10 through 810-27-1-.12, inclusive, the payroll factor in accordance with Alabama Rules 810-27-1-.13 through 810-27-1-.14, and the sales factor in accordance with Alabama Rules 810-27-1-.15 through 810-27-1-.17, inclusive, except as modified by this rule.

(b) The Property Factor.

1. Property Valuation. Owned property shall be valued at its original cost and property rented from others shall be valued at eight (8) times the net annual rental rate in accordance with Section 40-27-1, Article IV.11, Code of Alabama 1975, and Alabama Rule 810-27-1-.11.

2. General Definitions. The following definitions are applicable to the numerator and denominator of the property factor, as well as other apportionment factor descriptions:

(i) "Average value" of property means the amount determined by averaging the values at the beginning and end of the income tax year, but the Commissioner may require the averaging of monthly values during the income year or such averaging as is necessary to reflect properly the average value of the trucking company's property. (See Section 40-

27-1, Article IV.12, Code of Alabama 1975, and Alabama Rule 810-27-1-.12.)

(ii) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(iii) A "mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

(iv) "Original cost" is deemed to be the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or, if the property has no such basis, the valuation of such property for Interstate Commerce Commission purposes. If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer. (Alabama Rule 810-27-1-.11(1).)

(v) "Property used during the course of the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(vi) The "value" of owned real and tangible personal property means its original cost. (See Section 40-27-1, Article IV.11, Code of Alabama 1975, and Alabama Rule 810-27-1-.11(1).)

(vii) The "value" of rented real and tangible personal property means the product of eight times the net annual rental rate. (See Section 40-27-1, Article IV.11, Code of Alabama 1975, and Alabama Rule 810-27-1-.11(2).)

3. The Denominator and Numerator of the Property Factor. The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in Alabama during the income year. In the determination of the numerator of the property factor, all property, except mobile property as defined in this rule, shall be included in the numerator of the property factor in accordance with Section 40-27-1, Article IV.10-.12, Code of Alabama 1975, inclusive and Alabama Rules 810-27-1-.10 through 810-27-1-.12, inclusive.

(i) Mobile property, as defined in this rule, which is located solely within Alabama during the income year shall be included in the numerator of the property factor.

(ii) Mobile property as defined in this rule, which is located within and without Alabama during the income year shall be included in the numerator of the property factor in the ratio which mobile property miles in the state bear to the total mobile property miles.

(c) The Payroll Factor. The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the income year for the production of business

income. (See Section 40-27-1, Article IV.13-.014, Code of Alabama 1975, and Alabama Rules 810-27-1-.13 and 810-27-1-.14.) The numerator of the payroll factor is the total compensation paid in Alabama during the income year by the taxpayer. With respect to all personnel, except those performing services within and without Alabama, compensation paid to such employees shall be included in the numerator as provided in Section 40-27-1, Article IV.13-.014, Code of Alabama 1975, and Alabama Rules 810-27-1-.13 and 810-27-1-.14.

1. With respect to personnel performing services within and without Alabama, compensation paid to such employees shall be included in the numerator of the payroll factor in the ratio which their services performed in Alabama bear to their services performed everywhere based on mobile property miles.

(d) The Sales (Revenue) Factor.

1. In General. All revenue derived from transactions or activities in the regular course of the taxpayer's trade or business which produce business income shall be included in the denominator of the revenue factor. (See Sections 40-27-1, Article IV.1 and 40-27-1.1, Code of Alabama 1975, and Alabama Rule 810-27-1-.01.)

(i) The numerator of the revenue factor is the total revenue of the taxpayer in Alabama during the income year. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to Alabama in accordance with Section 40-27-1, Article IV.15-.17, Code of Alabama 1975, and Alabama Rule 810-27-1-.15 through 810-27-1-.17.

2. Numerator of the Sales (Revenue) Factor from Freight, Mail, and Express. The total revenue of the taxpayer attributable to Alabama during the income year from hauling freight, mail, and express shall be:

(i) Intrastate: All receipts from any shipment which both originates and terminates within Alabama; and,

(ii) Interstate: That portion of the receipts from movements or shipments passing through, into, or out of Alabama as determined by the ratio which the mobile property miles traveled by such movements or shipments in Alabama bear to the total mobile property miles traveled by movements or shipments from points of origin to destination.

(4) Records. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by such mobile property as those terms are used in this rule. Such records are subject to review.

(5) De Minimis Nexus Standard. Notwithstanding any provision contained herein, subparagraph (f) of this rule (Special Rules relating Trucking Companies) shall not apply to require the apportionment of income to Alabama if the trucking company during the course of the income tax year did not meet the "substantial nexus" thresholds as stipulated by

Section 40-18.31.2, Code of Alabama 1975.

Author: Holly H. Coon

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

History: