

APA-1

Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-27-1-.18

Rule Title: Special Rules

New; Amended; Repealed; Adopt by Reference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

Rule Title: Special Rules

 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

810-27-1-.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 Special Rules.

(1) Special Rules: In General. **Section 40-27-1, Article IV.18, Code of Alabama 1975, §40-27-1, Article IV.18** provides that, if the allocation and apportionment provisions of **§Section 40-27-1, Article IV, Code of Alabama 1975,** do not fairly represent the extent of the taxpayer's business activity in Alabama, the taxpayer may petition for or the Commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (a) separate accounting;
- (b) the exclusion of any one or more of the factors;
- (c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(2) Taxpayer petition to employ an alternative method of allocation or apportionment:

(a) Before a taxpayer may employ the use of an alternative method of allocation or apportionment on a return pursuant to **§Section 40-27-1, Article IV.18, Code of Alabama 1975,** a taxpayer must file a petition and such petition must have been approved or denied by the Department.

(b) All petitions must be in written form and submitted directly to the attention of the Department Secretary. A petition attached to an original or amended return will not be considered a valid petition. Should the Department process an original or amended return which uses an unapproved alternative method, such action should not be construed as the Department's acceptance of the taxpayer's proposed alternative method.

(c) To the extent approved, the Department will notify the taxpayer, in writing, that an alternative method has been approved. The taxpayer may then file an amended or original return utilizing the approved alternative method.

(d) Proposed alternative methods not approved within ninety (90) days of the post mark date of the petition, described in subparagraph (b), are denied unless the taxpayer and the Department agree in writing to extend this period.

1. A taxpayer wishing to appeal the denial of a petition should file an amended return using the proposed alternative method. If such return constitutes a petition for refund, such refund petition must be filed in accordance with the time period prescribed by **§ Section 40-2A-7, Code of Alabama 1975. A taxpayer may file a petition for refund prior to the Department's notification in this subparagraph (d) if there is less than ninety-one days remaining to timely file such petition for refund in accordance with the time periods provided by Section 40-2A-7, Code of Alabama 1975.** The taxpayer

may appeal its denial or deemed denial of its petition for refund, as applicable, either to the Alabama Tax Tribunal or Circuit Court as provided in **§Section 40-2A-7(c)(5), Code of Alabama 1975.**

2. Taxpayers may not use an unapproved alternative method on an original return.

(e) The petition and approval requirements of this subparagraph (e) do not apply to situations where the Department and the taxpayer agree to an alternative allocation or apportionment methodology as part of an audit resolution.

(3) Special Rules: Property Factor. The following special rules are established in respect to the property factor of the apportionment formula:

(a) If the subrents taken into account in determining the net annual rental rate under **§ Section 40-27-1, Article IV.11, Code of Alabama 1975,** or any rules promulgated thereunder produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the Commissioner or requested by the taxpayer.

1. In no case, however, shall the value be less than an amount which bears the same ratio to the annual rental rate paid by the taxpayer for the property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.

EXAMPLE: The taxpayer rents a 10-story building at an annual rental rate of \$1,000,000. Taxpayer occupies two stories and sublets eight stories for \$1,000,000 a year. The net annual rental rate of the taxpayer must not be less than two-tenths of the taxpayer's annual rental rate for the entire year, or \$200,000.

(b) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for the property.

(4) Special Rules: Sales Factor. The following special rules are established in respect to the sales factor of the apportionment formula:

(a) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless their exclusion would materially affect the amount of income apportioned to Alabama. For example, the taxpayer ordinarily may include in or exclude from the sales factor gross receipts from transactions such as the sale of office furniture, business automobiles, etc.

(b) Where gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions under **§Section 40-27-1, Article IV.17-.18, Code of Alabama 1975,** or any rules promulgated thereunder, such gains or losses shall be treated as provided in this subparagraph. This subparagraph does not provide rules relating to the treatment of other receipts produced from holding or managing such assets. If a taxpayer

holds liquid assets in connection with one or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of this subparagraph, each treasury function will be considered separately.

1. For purposes of subparagraph (b), a liquid asset is an asset (other than functional currency or funds held in bank accounts) held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include foreign currency (and trading positions therein) other than functional currency used in the regular course of the taxpayer's trade or business; marketable instruments (including stocks, bonds, debentures, options, warrants, futures contracts, etc.); and mutual funds which hold such liquid assets. An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation which is unitary with the taxpayer, or which has a substantial business relationship with the taxpayer is not considered marketable stock.

2. For purposes of subparagraph (b), a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, business acquisitions, etc. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

3. Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

(5) Special Rules: Adoption of Multistate Tax Commission Special Industry Rules. In the case of certain industries, the general provisions of **§Section 40-27-1**, Article IV, **Code of Alabama 1975**, and the rules promulgated thereunder in respect to the apportionment formula do not set forth appropriate procedures for determining a taxpayer's business activity in Alabama.

(a) The following special rules will provide the appropriate procedures toThis paragraph sets out rules to properly determine such the industries' property, payroll and sales attributable to Alabama:-

1. Airlines- Alabama Rule 810-27-1-.18.01

2. Construction Contractors- Alabama Rule 810-27-1-.18.02

3. Publishing- Alabama Rule 810-27-1-.18.03

4. Railroads- Alabama Rule 810-27-1-.18.04

5. Television and Radio Broadcasting- Alabama Rule 810-27-1-.18.05

6. Trucking- Alabama Rule 810-27-1-.18.06

7. Telecommunications and Ancillary Service Providers- Alabama Rule 810-27-1-.18.07

(b) All business income shall be apportioned to Alabama in accordance with the calculation provided in § Section 40-27-1, Article IV.9, Code of Alabama 1975, and Alabama Rule 810-27-1-.09, which requires that the sales factor be given double weight.

(c) Nexus Determination: A business, whose property, payroll and sales attributable to Alabama are determined by a special rule shall also consistently apply such rule when measuring against nexus thresholds pursuant to Section 40-18-31.2, Code of Alabama 1975.

~~(a) Special Rules: Airlines. The following special rules are established with respect to airlines:~~

~~1. In General. Where an airline has income from sources both within and without Alabama, the amount of business income from sources within Alabama shall be determined pursuant to §40-27-1, Article IV and §40-27-1.1 except as modified by this rule.~~

~~(i) Apportionment of Business Income. Business income is determined in accordance with §40-27-1.1.~~

~~(l) General Definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions.~~

~~I. "Value" of owned real and tangible personal property shall mean its original cost. (See §40-27-1, Article IV.11 and Alabama Rule 810-27-1-.11)~~

~~II. "Cost of aircraft by type" means the average original cost or value of aircraft by type which are ready for flight.~~

~~III. "Original cost" means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it shall be assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property. (See Alabama Rule 810-27-1-.11(1))~~

~~IV. "Average value" of the property means the amount determined by averaging the values at the beginning and ending of the income year, but the Commissioner may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property. (See §40-27-1, Article IV.12 and Alabama Rule 810-27-1-.12)~~

~~V. The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (See §40-27-1, Article IV.11 and Alabama Rule 810-27-1-.11(2))~~

~~VI. "Net annual rental rate" means the annual rental rate paid by the taxpayer.~~

~~VII. "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.~~

~~VIII. "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.~~

~~IX. "Revenue service" means the use of aircraft ready for the production of revenue.~~

~~X. "Transportation revenue" means revenue earned by transporting passengers, freight and mail as well as revenue earned from liquor sales, pet crate rentals, etc.~~

~~XI. "Departures" means, for purposes of these rules, all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.~~

~~(II) Property Factor~~

~~I. Property valuation. Owned aircraft shall be valued at its original cost and rented aircraft shall be valued at eight (8) times the net annual rental rate in accordance with §40-27-1, Article IV.11 and Alabama Rule 810-27-1-.11. The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier will not constitute a rental of such aircraft by the airlines to the other participating airline. Such aircraft shall be accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, will be valued at cost.~~

~~II. 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.~~

~~III. In determining the numerator of the property factor, all property except aircraft ready for flight shall be included in the numerator of the property factor in accordance with §40-27-1, Article IV.10-12, inclusive. Aircraft ready for flight shall be included in the numerator of the property factor in the ratio calculated as follows: Departures of aircraft from locations in Alabama weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.~~

~~—— (III) — The Payroll Factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. (See §40-27-1, Article IV.13-14) The numerator of the payroll factor is the total amount paid in Alabama during the income year by the taxpayer for compensation. With respect to non-flight personnel, compensation paid to such employees shall be included in the numerator as provided in §40-27-1, Article IV.13-14. With respect to flight personnel (the air crew aboard an aircraft assisting in the operations of the aircraft or the welfare of passengers while in the air), compensation paid to such employees shall be included in the ratio of departures of aircraft from locations in this state, weighted as to the cost and value of aircraft by type compared to total departures similarly weighted, multiplied by the total flight personnel compensation.~~

~~—— (IV) — Sales (Transportation Revenue) Factor. The transportation revenue derived from transactions or activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the revenue factor. (See §40-27-1.1 and Alabama Rule 810-27-1-.01) Passive income items such as interest, rental income, dividends, etc., will not be included in the denominator nor will the proceeds or net gains or losses from the sale of aircraft be included. The numerator of the revenue factor is the total revenue of the taxpayer in Alabama during the income year. The total revenue of the taxpayer in Alabama during the income year is the result of the following calculation: The ratio of departures of aircraft in Alabama weighted as to the cost and value of aircraft by type, as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any non-flight revenues directly attributable to Alabama.~~

~~—— (ii) — Records. The taxpayer must maintain the records necessary to arrive at _____ departures by type of aircraft as used in these rules. Such records are to be subject to review by the respective state taxing authorities or their agents.~~

~~2. — Examples.~~

~~—— (i) — Example 1: Assume the following facts for an airline for a tax year:~~

~~—— (I) — It has ten 747s ready for flight and in revenue service at an average cost per unit of \$ 40,000,000 for nine of the aircraft. It rents the tenth 747 from another airline for \$9,000,000 per year. At eight times rents, the latter is valued at \$72,000,000 for apportionment purposes. The total 747 valuation is, therefore, \$432,000,000 for property factor denominator purposes.~~

~~—— (II) — It has twenty 727s ready for flight in revenue service at an average cost per unit of \$20,000,000. The total 727 valuation is, therefore, \$400,000,000 for property factor denominator purposes.~~

~~(III) It has nonflight tangible property (n.t.p.) valued at an original cost of \$200,000,000.~~

~~(IV) It has the following payroll:~~

Flight Personnel	\$60,000,000
NonFlight Personnel	\$40,000,000
Total	\$100,000,000

~~(V) From its operations, it has total receipts of \$50,000,000, business net income of \$1,000,000, and no nonbusiness income.~~

~~(VI) It has the following within Alabama:~~

I.	10% of its 747 flight departures (.10 x \$432M)	\$43,200,000
II.	20% of its 727 flight departures (.20 x \$400M)	\$80,000,000
III.	5% of its n.t.p. (.05 x \$200M)	\$10,000,000
IV.	15% of its n.p. payroll (.15 x \$40M)	\$6,000,000

~~(VII) Alabama has a corporate tax rate of 6.5% and requires that the sales factor be double weighted pursuant to §40-27-1, Article IV.9. The airline's tax liability to Alabama would be determined as follows:~~

	<i>Within AL</i>	<i>Everywhere</i>	
Property Factor:			
747s (.10 x \$432M)	43,200,000	432,000,000	
727s (.20 x \$400M)	80,000,000	400,000,000	
n.t.p. (.05 x \$200M)	10,000,000	200,000,000	
	<u>133,200,000</u>	<u>1,032,000,000</u>	12.9070%

Sales Factor:			
747s (.10 x \$432M)	43,200,000	432,000,000	
727s (.20 x \$400M)	80,000,000	400,000,000	
	<u>123,200,000</u>	<u>832,000,000</u>	14.8077%
			14.8077%

Payroll Factor:			
Flight Pers. (.148077 x \$60M)		8,884,620	60,000,000
Nonflight Pers.(n.p.)	6,000,000	40,000,000	
	<u>14,884,620</u>	<u>100,000,000</u>	<u>14.8846%</u>
Total of factor ratios			57.4070%

~~Alabama apportionment ratio~~
~~14.3518%~~

~~Business income~~ \$1,000,000
~~Amount apportioned to Alabama (.143518 x \$1M)~~ \$143,518

(ii) Example 2: Assume the same facts in subparagraph (i) except that subparagraph (i)(VI) is changed to read:

- I. 6% of its 747 flight departures (.06 x \$432M) \$25,920,000
- II. 31% of its 727 flight departures (.31 x \$400M) 124,000,000
- III. 3% of its n.t.p. (.03 x \$200M) \$6,000,000
- IV. 7% of its n.p. payroll (.07 x \$40M) \$2,800,000

(l) The airline's business income apportioned to Alabama would be determined as follows:

	Within AL	Everywhere	
Property Factor:			
747s (.06 x \$432M)	25,920,000	432,000,000	
727s (.31 x \$400M)	124,000,000	400,000,000	
n.t.p. (.03 x \$200M)	6,000,000	200,000,000	
	<u>155,920,000</u>	<u>1,032,000,000</u>	15.1085%

Sales Factor:			
747s (.10 x \$432M)	25,920,000	432,000,000	
727s (.20 x \$400M)	124,000,000	400,000,000	
	<u>149,920,000</u>	<u>832,000,000</u>	18.0192%
			18.0192%

Payroll Factor:			
Flight Pers. (.14077 x \$60M)	10,812,520	60,000,000	
Nonflight Pers.(n.p.)	2,800,000	40,000,000	
	<u>13,611,520</u>	<u>100,000,000</u>	13.6115%
Total of factor ratios			64.7584%

Alabama apportionment ratio
16.1896%

Business income \$1,000,000
Amount apportioned to Alabama (.161896 x \$1M) \$161,896

(b) Special Rules: Construction Contractors. The following special rules are established in respect to the apportionment of income of long-term construction contractors:

1. In General. When a taxpayer elects to use the percentage of completion method of accounting, or the completed contract method of accounting for long-term contracts (construction contracts covering a period in excess of one year from the date of execution of the contract to the date on which the contract is finally completed and accepted), and has income from sources both within and without Alabama from a trade or business, the amount of business income derived from such long-term contracts from sources within Alabama shall be determined pursuant to this rule. In such cases, the first step is to determine which portion of

~~the taxpayer's income constitutes "business income" and which portion constitutes "nonbusiness income". Nonbusiness income is directly allocated to specific states pursuant to the provisions of §40-27-1, Article IV.5-.8, inclusive. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of (1) the items of nonbusiness income directly allocated to Alabama and (2) the amount of business income attributable to Alabama constitutes the amount of the taxpayer's entire net income which is subject to tax by Alabama.~~

~~2. Business and Nonbusiness Income. For definitions, rules and examples for determining business and nonbusiness income, see Rule 810-27-1-.01. "Business income" shall be determined in accordance with §40-27-1.1.~~

~~3. Methods of Accounting and Year of Inclusion. For general rules of accounting, definitions and methods of accounting for long-term construction contracts see Code of Alabama, §40-18-13 and the rules promulgated thereunder.~~

~~4. Apportionment of Business Income.~~

~~(i) In General. Business income is apportioned to Alabama by a formula consisting of property, payroll and sales regardless of the method of accounting for long-term contracts elected by the taxpayer. The payroll factor and property factor are given equal weight while the sales factor is given double weight, see Alabama Rule 810-27-1-.09. The apportionment percentage is then applied to business income to determine the amount apportioned to Alabama.~~

~~(ii) Percentage of Completion Method. Under this method of accounting for long-term contracts, the amount to be included each year as business income from each contract is the amount by which the gross contract price which corresponds to the percentage of the entire contract which has been completed during the income year exceeds all expenditures made during the income year in connection with the contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.~~

~~(l) Example: A taxpayer using the percentage of completion method of accounting for long-term contracts, entered into a long-term contract to build a structure for \$9,000,000. The contract allowed three years for completion and, as of the end of the second income year, the taxpayer's books of account, kept on the accrual method, disclosed the following:~~

	Receipts	Expenditures
End of 1st income year	\$2,500,000	\$2,400,000
End of 2nd income year	4,500,000	4,100,000
Totals	\$7,000,000	\$6,500,000

~~(II) In computing the expenditures in subparagraph (l) above, consideration was given to material and supplies on hand at the beginning and end~~

of each income year. It was estimated that the contract was 30% completed at the end of the first income year and 80% completed at the end of the second income year. The amount to be included as business income for the first income year is \$300,000 (30% of \$9,000,000 or \$2,700,000 less expenditures of \$2,400,000 equals \$300,000). The amount to be included as business income for the second income year is \$400,000 (50% of \$9,000,000 or \$4,500,000 less expenditures of \$4,100,000 equals \$400,000).

(iii) ~~Completed Contract Method.~~ Under this method of accounting business income derived from long-term contracts is reported for the income year in which the contract is finally completed and accepted. Therefore, 3. to Alabama from each completed contract (see subparagraph 5. of this rule). Thus, all receipts and expenditures applicable to such contracts whether complete or incomplete as of the end of the income year are excluded from business income derived from other sources, as for example, short-term contracts, interest, rents, royalties, etc., which is apportioned by the regular factor formula of property, payroll and sales pursuant to Alabama Rule 810-27-1-.09.

(iv) ~~Property Factor.~~ In general the numerator and denominator of the property factor shall be determined as set forth in §40-27-1, Article IV.10-.12 and the rules promulgated thereunder, inclusive. However, the following special rules are also applicable:

(i) ~~The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent that such costs exceed progress billings (accrued or received, depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts) shall be included in the denominator of the property factor. The value of any such construction costs attributable to construction projects in Alabama shall be included in the numerator of the property factor.~~

i. ~~Example: Taxpayer commenced a long-term construction project in Alabama as of the beginning of a given year. By the end of its second year, its equity in the costs of production to be reflected in the numerator and denominator of its property factor for such year is computed as follows:~~

	1st Year		2nd Year	
	Beginning	Ending	Beginning	Ending
Construction Costs	0	\$1,000,000		
Progress billings		\$600,000		
Balance 12/31-(1/1)		\$400,000	\$400,000	
Construction Costs -				
Total from beg. of				

project	
\$5,000,000	
Progress billings-	
Total from beg. of	
project	\$4,000,000
Balance 12/31	\$1,000,000
Balance beg. of year	\$400,000
Total	\$1,400,000
Ave (1/2) - Value used	
In property factor	\$700,000

~~Note: It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity; see §40-27-1, Article IV.12 and Alabama Rule 810-27-1-.12.~~

~~II. Example: Same facts as the example in subparagraph I. above, except that progress billings exceeded construction costs. No value for the taxpayer's equity in the construction project is shown in the property factor.~~

~~(II) Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate even though such rental expense may be capitalized into the cost of construction.~~

~~(III) The property factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, business income is computed separately (see subparagraph 5. below).~~

~~(v) Payroll Factor. In general the numerator and denominator of the payroll factor shall be determined as set forth in §40-27-1, Article IV.13 and .14 and the rules promulgated thereunder. However, the following special rules are also applicable:~~

~~(I) Compensation paid employees which is attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.~~

~~(II) Compensation paid employees who in the aggregate perform most of their services in a state to which their employer does not report them for unemployment tax purposes, shall nevertheless be attributed to the state in which the services are performed.~~

~~Example: A taxpayer engaged in a long-term contract in Alabama sends several key employees to Alabama to supervise the project. The taxpayer, for unemployment tax purposes, reports these employees to the state where the main office is maintained~~

~~and where the employees reside. For payroll factor purposes and in accordance with §40-27-1, Article IV.14 and Alabama Rule 810-27-1.14, the compensation is assigned to the numerator of Alabama.~~

~~(III) The payroll factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though, under the completed contract method of accounting, business income is computed separately (see subparagraph 5. below).~~

~~(vi) Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in §40-27-1, Article IV.15-17 and the rule promulgated thereunder, inclusive. However, the following special rules are also applicable:~~

~~(l) Gross receipts derived from the performance of a contract are attributable to Alabama if the construction project is located in Alabama. If the construction project is located partly within and partly without Alabama, the gross receipts attributable to Alabama are based upon the ratio which construction costs for the project in Alabama incurred during the income year bear to the total of construction costs for the entire project during the income year, or upon any other method, such as engineering cost estimates, which will provide a reasonable apportionment.~~

~~I. Example: A construction project was undertaken in Alabama by a calendar year taxpayer which had elected one of the long-term contract methods of accounting. The following gross receipts (progress billings) were derived from the contract during the three income years that the contract was in progress.~~

	<u>1st Year</u>	<u>2nd Year</u>	<u>3rd Year</u>
Gross receipts	\$1,000,000	\$4,000,000	\$3,000,000

~~The gross receipts to be reflected in both the numerator and denominator of the sales factor for each of the three years are the amounts shown.~~

~~II. Example: A taxpayer contracts to build a dam on a river at a point which lies half within Alabama and half within another state. During the taxpayer's first income year, construction costs in Alabama were \$2,000,000. Total construction costs for the project during the income year were \$3,000,000. Gross receipts (progress billings) for the year were \$2,400,000. Accordingly, gross receipts of \$1,600,000 ($\$2,000,000/\$3,000,000 \times \$2,400,000$) are included in the numerator of the Alabama sales factor.~~

~~(II) If the percentage of completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year.~~

~~Example: A taxpayer which had elected the percentage of completion method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project), it estimated that the project was 30% completed. The bid price for the project was \$9,000,000 and it had received \$2,500,000 from progress billings as of the end of its current income year. The amount of gross receipts to be included in the sales factor for the current income year is \$2,700,000 (30% of \$9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.~~

~~(III) If the completed contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the income year attributable to each contract.~~

~~I. Example: A taxpayer which had elected the completed contract method of accounting entered into a long-term construction contract. By the end of its current income year (the second since starting the project), it had billed and had accrued on its books a total of \$5,000,000 of which \$2,000,000 had accrued in the first year in which the contract was undertaken and \$3,000,000 had accrued in the current (second) year. The amount of gross receipts to be included in the sales factor for the current income year is \$3,000,000.~~

~~II. Example: Same facts as the example in subparagraph I. above except that the taxpayer keeps its books on the cash basis and, as of the end of its current income year, had received only \$2,500,000 of the \$3,000,000 billed during the current year. The amount of gross receipts to be included in the sales factor for the current income year is \$2,500,000.~~

~~(IV) The sales factor, except as noted above in subparagraphs (II) and (III), is computed in the same manner, regardless of which long-term method of accounting the taxpayer has elected, and is computed for each income year even though, under the completed contract method of accounting, business income is computed separately.~~

~~(vii) Apportionment Percentage. The total of the property, payroll and double sales percentages is divided by four to determine the apportionment percentage. The apportionment percentage is then applied to business income to establish the amount apportioned to Alabama.~~

~~5. Completed Contract Method - Special Computation. The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the year in which the construction project is completed or accepted. Accordingly, a separate computation is made for each such contract completed during the income year, regardless of whether the project is located within or without Alabama, in order to determine the amount of income which is attributable to sources within Alabama. The amount of income from each contract completed during the income year apportioned to Alabama, plus other~~

~~business income apportioned to Alabama by the regular four-factor formula such as interest income, rents, royalties, income from short-term contracts, etc., plus all nonbusiness income allocated to Alabama is the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within Alabama using the completed contract method of accounting is computed as follows:~~

~~(i) In the income year in which the contract is completed, the income (or loss) therefrom is determined.~~

~~(ii) The income (or loss) determined at subparagraph (i) above is apportioned to Alabama by the following method:~~

~~(I) A fraction is determined for each year during which the contract was in progress. The numerator is the amount of construction costs paid or accrued in each year during which the contract was in progress and the denominator is the total of all such construction costs for the project.~~

~~(II) Each percentage determined in subparagraph (I) is multiplied by the apportionment formula percentage for that particular year as determined in subparagraph 4.(vii) of this rule above.~~

~~(III) The percentages determined at subparagraph (II) for each year during which the contract was in progress are totaled. The amount of total income (or loss) from the contract determined at subparagraph 5.(i) of this rule is multiplied by the total percentage. The resulting income (or loss) is the amount of business income from such contract derived from sources within Alabama.~~

~~I. Example: A taxpayer using the completed contract method of accounting for long-term contracts is engaged in three long-term contracts; Contract L in this state, Contract M in state X and Contract N in state Y. In addition, it has other business income (less expenses) during the income year 1972 from interest, rents and short-term contracts amounting to \$500,000, and nonbusiness income allocable to this state of \$8,000. During 1972, it completed Contract M in state X at a profit of \$900,000. Contracts L and N in this state and state Y, respectively, were not completed during the income year. The apportionment percentages of the taxpayer as determined in subparagraph 4.(vii) of this rule and the percentages of contract costs as determined in subparagraph 5.(ii) above for each year during which Contract M in state X was in progress are as follows:~~

1970 1971 1972

Apportionment %	30%	20%	40%
% of Construction Costs of Contract M each year to total construction costs (100%)	20%	50%	30%

The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business Income	\$500,000
Apportion 40% to this state	\$200,000
Add: Income from Contract M*	\$252,000
Total business income derived from sources within this state	452,000
Add: Nonbusiness income allocated to this state	8,000
Net income subject to tax in this state	\$460,000

~~*Income from Contract M apportioned to this state:~~

	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>Total</u>
Apportionment %	30%	20%	40%	
% of Construction	20%	50%	30%	100%
Product	6%	10%	12%	28%

~~28% of \$900,000 = \$252,000~~

~~II. Example: Same facts as the example in subparagraph I. above except that Contract L was started in 1972 in this state, the first year in which the taxpayer was subject to tax in this state. Contract L in this state and Contract N in state Y are incomplete in 1972.~~

The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business Income	\$500,000
Apportion 40% to this state	\$200,000
Add: Income from Contract M*	108,000
Total business income derived from sources within this state	\$308,000
Add: Nonbusiness income allocated to this state	8,000
Net income subject to tax	\$316,000

~~*Income from Contract M apportioned to this state:~~

	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>Total</u>
Apportionment %	0	0	40%	
% of Construction	<u>20%</u>	<u>50%</u>	<u>30%</u>	<u>100%</u>
Product	<u>0</u>	<u>0</u>	<u>12%</u>	<u>12%</u>

12% of \$900,000 = \$108,000

Note: Only 12% is used to determine the income derived from sources within this state since the corporation was not subject to tax in this state prior to 1972.

III. Example 3: Same facts as in example 1 except that the figures relate to Contract L in this state and 1972 is the first year the corporation was taxable in another state (See §40-27-1, Article IV.10-2 and .3 and rules promulgated thereunder. Contracts M and N in states X and Y were started in 1972 and are incomplete).

The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business Income	<u>\$500,000</u>
Apportion 40% to this state	\$200,000
Add: Income from Contract L*	<u>738,000</u>
Total business income derived from sources within	\$938,000
Add: Nonbusiness income allocated to this state	8,000
Net income subject to tax	<u>\$946,000</u>

*Income from Contract L apportioned to this state:

	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>Total</u>
Apportionment %	100%	100%	40%	↓
% of Construction Costs		<u>20%</u>	<u>50%</u>	
	<u>30%</u>			<u>100%</u>
Product	<u>20%</u>	<u>50%</u>	<u>12%</u>	<u>82%</u>

82% of \$900,000 =
\$738,000

6. Computation for Year of Withdrawal, Dissolution or Cessation of Business - Completed Contract Method. Use of the completed contract method of accounting for long-term contracts requires that income derived from sources within Alabama from incomplete contracts in progress outside Alabama on the date of withdrawal, dissolution or cessation of business in Alabama be included in the measure of tax for the taxable year during which the corporation

~~withdraws, dissolves or ceases doing business in Alabama. The amount of income (or loss) from each such contract to be apportioned to Alabama by the apportionment method set forth in subparagraph 6.(ii) of this rule shall be determined as if the percentage of completion method of accounting were used for all such contracts on the date of withdrawal, dissolution or cessation of business. The amount of business income (or loss) for each such contract shall be the amount by which the gross contract price from each such contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution or cessation of business exceeds all expenditures made during such period in connection with each such contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.~~

~~Example: A construction contractor qualified to do business in this state had elected the completed contract method of accounting for long-term contracts. It was engaged in two long-term contracts. Contract L in this state was started in 1971 and completed at a profit of \$900,000 on 12/16/73. The taxpayer withdrew on 12/31/73. Contract M in state X was started in 1972 and was incomplete on 12/31/73. The apportionment percentages of the taxpayer, as determined at subparagraph 4. of this rule, and percentages of construction costs, as determined in subparagraph 5.(ii) of this rule, for each year during which Contract M in state X was in progress are as follows:~~

Apportionment %	<u>1971</u>	— <u>1972</u>	— <u>1973</u>	— <u>Total</u>
	30%	20%	40%	
% of Construction Costs:				
Contract L, this state	20%	50%	30%	100
Contract M, state X	0	10%	25%	35%

~~The corporation had other business income (net of expenses) of \$500,000 during 1972 and \$300,000 during 1973. The gross contract price of Contract M (state X) was \$1,000,000, and it was estimated to be 35% completed on 12/31/73. Total expenditures to date for Contract M (state X) were \$300,000 for the period ended 12/31/73.~~

~~The measure of tax for the taxable year ended 12/31/73 is computed as follows:~~

	Taxable Year 1973	
	<u>Income Year 1972</u>	<u>Income Year 1973</u>
Business Income	\$500,000	\$300,000
Apportionment % to this state	20%	40%
Amount Apportioned to this state	\$100,000	\$120,000

_____ Add: Income from contracts:		
L* (this state)	_____	\$252,000
M**(state X)	_____	<u>6,000</u>
Total business income derived from sources		
within this state	\$100,000	\$378,000

~~*Income from Contract L apportioned to this state:~~

	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>Total</u>
Apportionment %	30%	20%	40%	
% of Construction Costs	<u>20%</u>	<u>50%</u>	<u>30%</u>	<u>100%</u>
Product	<u>6%</u>	<u>10%</u>	<u>12%</u>	<u>28%</u>
	28% of \$900,000=\$252,000			

~~**Income from Contract M apportioned to this state:~~

	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>Total</u>
Apportionment %	0	20	40%	
% of Construction Costs	<u>0</u>	<u>10%</u>	<u>25%</u>	<u>35%</u>
Product	<u>0</u>	<u>2%</u>	<u>10%</u>	<u>12%</u>
	12% of 50,000***= \$6,000			

~~*** Computation of apportionable income from Contract M based on percentage of completion method:~~

Total Contract Price	\$1,000,000
Estimated to be 35% completed	<u>\$350,000</u>
Less: total expenditures to date	<u>300,000</u>
Apportionable income	<u>\$50,000</u>

~~(c) Special Rules: Publishing. 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 §40-27-1, Article IV, §40-27-1.1 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.~~

~~(i) "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.~~

~~(ii) "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.~~

~~(iii) "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.~~

~~(iv) "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.~~

~~(i) The Property Factor.~~

~~(I) 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.~~

~~(II) 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.~~

~~A. 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.~~

~~B. 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:	\$1,041,096
— 95/365 or (.260274) x \$4,000,000:	
Value of leased satellite property used in state:	\$2,000,000
(.02) x 100,000,000:	
Total value of property attributable to state:	\$6,041,096
Total property factor %: \$6,041,096/(\$500,000,000):	1.2082%

~~(ii) The Payroll Factor. The payroll factor shall be determined in accordance with §40-27-1, Article IV.13 and .14 and the rules promulgated thereunder.~~

~~(iii) The Sales Factor.~~

~~(i) 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.~~

~~(ii) 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.(iii)(II)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.(iii)(II)III. 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.~~

~~(d) Special Rules: Railroads. The following special rules are established in respect to railroads:~~

~~1. In General. Where a railroad 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 railroad's income constitutes "business" income and which portion~~

~~constitutes "nonbusiness" income. Nonbusiness income is directly allocable to specific states pursuant to the provisions of §40-27-1, Article IV.5 to .8, inclusive. Business income is apportioned among the states in which the business is conducted pursuant to the property, payroll and sales apportionment factors set forth in this rule. The sum of (1) the items of nonbusiness income directly allocated to Alabama and (2) the amount of business income attributable to Alabama constitutes the amount of the taxpayer's entire net income which is subject to tax by 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" shall be determined in accordance with §40-27-1.1. Nonbusiness income is defined in §40-27-1, Article IV.1(e).~~

~~3. Apportionment of Business Income.~~

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

~~(ii) The Property Factor.~~

~~(i) 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 §40-27-1, Article IV.11 and Alabama Rule 810-27-1-.11. Railroad cars owned and operated by other railroads and temporarily used by the taxpayer in its business and for which a per diem or mileage charge is made are not included in the property factor as rented property. Railroad cars owned and operated by the taxpayer and temporarily used by other railroads in their business and for which a per diem charge is made by the taxpayer are included in the property factor of the taxpayer.~~

~~(ii) General Definitions. The following definitions are applicable to the numerator and denominator of the property factor:~~

~~I. "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)).~~

~~II. "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.~~

~~III. The "value" of owned real and tangible personal property shall mean its original cost. (See §40-27-1, Article IV.11 and Alabama Rule 810-27-1-.11(1)).~~

~~IV. "Average value" of property means the amount determined by averaging the values at the beginning and ending of the income tax year, but the Commissioner may require the averaging of monthly values during the income year or such averaging as necessary to effect properly the average value of the railroad's property. (See §40-27-1, Article IV.12 and Alabama Rule 810-27-1-.12.)~~

~~V. The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (See §40-27-1, Article IV.11 and Alabama Rule 810-27-1-.11(2)).~~

~~VI. "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.~~

~~VII. "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.~~

~~VIII. A "locomotive-mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of one mile under its own power.~~

~~IX. A "car-mile" is a movement of a unit of car equipment a distance of one mile.~~

~~(III) 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.~~

~~I. In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without Alabama during the income year shall be included in the numerator of the property factor in accordance with §40-27-1, Article IV.11-.12 inclusive, and Alabama Rule 810-27-1-.11 through 810-27-1-.12., inclusive.~~

~~II. Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers which are located within and without Alabama during the income year shall be included in the numerator of the property factor~~

~~in the ratio which "locomotive-miles" and "car-miles" in Alabama bear to the total everywhere.~~

~~—— (iii) — The Payroll Factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year for the production of business income. (See §40-27-1, Article IV.13-.14 and Alabama Rule 810-27-1-.13 through 810-27-1-.14) The numerator of the payroll factor is the total amount paid in Alabama during the income year by the taxpayer for compensation. With respect to all personnel except enginemen and trainmen performing services on interstate trains, compensation paid to such employees shall be included in the numerator as provided in §40-27-1, Article IV.13-.14 and Alabama Rules 810-27-1-.13 and 810-27-1-.14.~~

~~—— (l) — With respect to enginemen and trainmen performing services on interstate trains, 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. Compensation for services performed in Alabama should be deemed to be the compensation reported or required to be reported by such employees for determination of their income tax liability to Alabama.~~

~~—— (iv) — The Sales (Revenue) Factor.~~

~~—— (l) — In General. All revenue derived from transactions or activities in the regular course of the trade or business of the taxpayer which produces business income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the revenue factor. (See §40-27-1, Article IV.1, §40-27-1.1, and Alabama Rule 810-27-1-.01) The numerator of the revenue factor is the total revenue of the taxpayer in Alabama during the income year. The total revenue of the taxpayer in Alabama during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to Alabama in accordance with §40-27-1, Article IV.15-.17 and Alabama Rules 810-27-1-.15 and 810-27-1-.17.~~

~~—— (II) — Numerator of Sales (Revenue) Factor: From Freight, Mail and Express. The total revenue of the taxpayer in Alabama during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to Alabama as follows:~~

~~—— I. — All receipts from shipments which both originate and terminate within Alabama; and~~

~~—— II. — That portion of the receipts from each movement or shipment passing through, into, or out of Alabama is determined by the ratio which the miles traveled by such movement or shipment in Alabama bear to the total miles traveled by such movement or shipment from point of origin to destination.~~

~~—— (III) — Numerator of Sales (Revenue) Factor from Passengers. The numerator of the sales (revenue) factor shall include:~~

~~I. All receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate within Alabama; and~~

~~II. That portion of the receipts from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in Alabama bear to the total everywhere.~~

~~(e) Special Rules: Television and Radio Broadcasting. The following special rules are established in respect to the apportionment of income from television and radio broadcasting by a broadcaster that is taxable both in Alabama and in one or more other states.~~

~~1. In General. When a person in the business of broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission or any other means of communication, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated or independent television or radio broadcasting station, has income from sources both within and without Alabama, the amount of business income from sources within Alabama shall be determined pursuant to §40-27-1, Article IV and §40-27-1.1 and the rules promulgated thereunder by Alabama, except as modified by this rule.~~

~~2. Business and Nonbusiness Income. For definitions, rules and examples for determining whether income shall be classified as "business" or "nonbusiness" income, see Alabama Rule 810-27-1-.01. Business income is determined in accordance with §40-27-1.1.~~

~~3. Definitions. The following definitions are applicable to the terms contained in this rule, unless the context clearly requires otherwise.~~

~~(i) "Film" or "film programming" means any and all performances, events or productions telecast on television, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of video tape, disc or any other type of format or medium.~~

~~(i) Each episode of a series of films produced for television shall constitute a separate "film" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.~~

~~(ii) "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 telecasting or broadcasting, but which are not physically located in any particular state.~~

~~(iii) "Radio" or "radio programming" means any and all performances, events or productions broadcast on radio, including but not limited to news, sporting events,~~

~~plays, stories or other literary, commercial, educational or artistic works, through the use of an audio tape, disc or any other format or medium.~~

~~(l) Each episode of a series of radio programming produced for radio broadcast shall constitute a separate "radio programming" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.~~

~~(iv) "Release" or "in release" means the placing of film or radio programming into service. A film or radio program is placed into service when it is first broadcast to the primary audience for which the program was created. Thus, for example, a film is placed in service when it is first publicly telecast for entertainment, educational, commercial, artistic or other purpose. Each episode of a television or radio series is placed in service when it is first broadcast. A program is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for broadcast or, merely because it is previewed to prospective sponsors or purchasers.~~

~~(v) "Rent" shall include license fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.~~

~~(vi) A "subscriber" to a cable television system is the individual residence or other outlet which is the ultimate recipient of the transmission.~~

~~(vii) "Telecast" or "broadcast" (sometimes used interchangeably with respect to television) means the transmission of television or radio programming, respectively, by an electronic or other signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions directly or indirectly to viewers and listeners or by any other means of communications.~~

~~4. Apportionment of Business Income.~~

~~(i) In General. The property factor shall be determined in accordance with Alabama Rules 810-27-1.10 through 810-27-1.12, 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, except as modified by this rule.~~

~~(ii) The Property Factor.~~

~~(l) In General~~

~~l. In the case of rented studios, the net annual rental rate shall include only the amount of the basic or flat rental charge by the studio for the use of a stage or other permanent equipment such as sound recording equipment and the like; except~~

~~that additional equipment rented from other sources or from the studio not covered in the basic or flat rental charge and used for one week or longer (even though rented on a day-to-day basis) shall be included. Lump-sum net rental payments for a period which encompasses more than a single income year shall be assigned ratably over the rental period.~~

~~II. — No value or cost attributable to any outer-jurisdictional, film or radio programming property shall be included in the property factor at any time.~~

~~(II) — Property Factor Denominator.~~

~~I. — All real property and tangible personal property (other than outer-jurisdictional and film or radio programming property), whether owned or rented, which is used in the business shall be included in the denominator of the property factor.~~

~~II. — Audio or video cassettes, discs or similar medium containing film or radio programming and intended for sale or rental by the taxpayer for home viewing or listening shall be included in the property factor at their original cost. To the extent that the taxpayer licenses or otherwise permits others to manufacture or distribute such cassettes, discs or other medium containing film or radio programming for home viewing or listening, the value of said cassettes, discs or other medium shall include the license, royalty or other fees received by the taxpayer capitalized at a rate of eight times the gross receipts derived therefrom during the income year.~~

~~III. — Outer-jurisdictional, film and radio programming property shall be excluded from the denominator of the property factor.~~

~~(III) — Property Factor Numerator.~~

~~I. — With the exception of outer-jurisdictional, film and radio programming property, 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 as provided in Alabama Rule 810-27-1-.10(4).~~

~~II. — Outer-jurisdictional, film and radio programming property shall be excluded from the numerator of the property factor.~~

~~Example: XYZ Television Co. has a total value of all of its property everywhere of \$500,000,000, including a satellite valued at \$50,000,000 that was used to telecast programming into Alabama and \$150,000,000 in film property of which \$1,000,000's worth was located in Alabama the entire year. The total value of real and tangible personal property, other than film programming property, located in Alabama for the entire income year was valued at \$2,000,000; and the movable and mobile property described in subparagraph (III)I. was determined to be of a value of \$4,000,000 and~~

~~such movable and mobile property was used in Alabama for 100 days. The total value of property to be attributed to Alabama would be determined as follows:~~

~~Value of property permanently in state: \$2,000,000~~

~~Value of mobile and movable property:
(100/365 or .2739 x \$4,000,000): \$1,095,600~~

~~Total value of property to be included in the
state's property factor numerator (outer-
jurisdictional and film property excluded): \$3,095,600~~

~~Total value of property to be used in the
denominator (\$500,000,000-\$200,000,000) \$300,000,000~~

~~Total property factor (\$3,095,600/\$300,000,000): .0103~~

~~(iii) The Payroll Factor.~~

~~(I) Payroll Factor Denominator. The denominator of the payroll factor shall include all compensation, including residual and profit participation payments, paid to employees during the income year, including that paid to directors, actors, newscasters and other talent in their status as employees.~~

~~(II) Payroll Factor Numerator. Compensation for all employees shall be attributed to the state or states as may be determined by the application of the provisions of Alabama Rules 810-27-1-13 and 810-27-1-14.~~

~~(iv) The Sales Factor.~~

~~(I) 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 excluded under Paragraph (3) of this rule.~~

~~(II) 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, including advertising revenue, from television film or radio programming in release to or by television and radio stations located in Alabama.~~

~~II. Gross receipts, including advertising revenue, from television film or radio programming in release to or by a television station (independent or unaffiliated) or network of stations for broadcast shall be attributed to Alabama in the ratio (hereafter "audience factor") that the audience for such station (or~~

~~owned and affiliated stations in the case of networks) located in Alabama bears to the total audience for such station (or owned and affiliated stations in the case of networks). The audience factor for television or radio programming shall be determined by the ratio that the taxpayer's in-state viewing (listening) audience bears to its total viewing (listening) audience. Such audience factor shall be determined either by reference to the books and records of the taxpayer or by reference to published rating statistics, provided the method used by the taxpayer is consistently used from year to year for such purpose and fairly represents the taxpayer's activity in Alabama.~~

~~III.— Gross receipts from film programming in release to or by a cable television system shall be attributed to Alabama in the ratio (hereafter "audience factor") that the subscribers for such cable television system located in Alabama bears to the total subscribers of such cable television system. If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, such audience factor ratio shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided that the source selected is consistently used from year to year for that purpose.~~

~~IV.— Receipts from the sale, rental, licensing or other disposition of audio or video cassettes, discs, or similar medium intended for home viewing or listening shall be included in the sales factor as provided in Alabama Rule 810-27-1-.16.~~

~~(f) — Special Rules: Trucking companies. 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 §40-27-1, Article IV.1, §40-27-1.1, and Alabama Rule 810-27-1-.01. Nonbusiness income is directly allocable to specific states pursuant to the provisions of §40-27-1, Article IV.5-8, 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 §40-27-1.1.~~

~~3. Apportionment of Business Income.~~

~~(i) 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.~~

~~(ii) The Property Factor.~~

~~(I) 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 §40-27-1, Article IV.11 and Alabama Rule 810-27-1-.11.~~

~~(II) 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 [insert here the title of the appropriate administrative agency] 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 §40-27-1, Article IV.12 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 §40-27-1, Article IV.11 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 §40-27-1, Article IV.11 and Alabama Rule 810-27-1-.11(2).)~~

~~(III) — 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 §40-27-1, Article IV.10-.12, 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.~~

~~(iii) — 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 §40-27-1, Article IV.13-.014 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 §40-27-1, Article IV.13-.014 and Alabama Rules 810-27-1-.13 and 810-27-1-.14.~~

~~(I) — 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.~~

~~(iv) — The Sales (Revenue) Factor.~~

~~(I) — 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 §40-27-1, Article IV.1, §40-27-1.1 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 §40-27-1, Article IV.15-17 and Alabama Rule 810-27-1-.15 through 810-27-1-.17.~~

~~(II) — 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 Code of Alabama 1975, §40-18.31.2.~~

~~(g) — Special Rules: Telecommunications and ancillary service providers. The following special rules are established with respect to the apportionment of income from the sale of telecommunications and ancillary services by a person that is taxable both in Alabama and in one or more other states.~~

~~1. — In general, A person providing telecommunications or ancillary~~

~~services whose business activity is taxable both within and without Alabama shall allocate and apportion its net income as provided in §40-27-1, Article IV and rules issued thereunder, exclusive of §40-27-1, Article IV.2, except as modified by this special rule. However, business income shall be determined in accordance with §40-27-1.1.~~

~~2. Definitions.~~

~~(i) "800 service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.~~

~~(ii) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.~~

~~(iii) "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.~~

~~(iv) "Ancillary service" means services that are associated with or incidental to the provision of telecommunications services, including but not limited to the following subcategories: detailed telecommunications billing, directory assistance, vertical service, conference bridging service and voice mail services. The term "ancillary service" is defined as a broad range of services and is broader than the sum of the subcategories.~~

~~(v) "Bundled transaction" means the retail sale of two or more products where (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price. For purposes of this special rule, a "bundled transaction" does not include the sale of any products in which the "sales price" varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. A transaction that otherwise meets the definition of a "bundled transaction" is not a "bundled transaction" if it is: (1) the "retail sale" of two products where the first product is essential to the use of the second product, and the first product is provided exclusively in connection with the second, and the true object of the transaction is the second; (2) the "retail sale" of more than one product, but the~~

~~products are sourced the same under this special rule; or (3) the "retail sale" of more than one product, but the sum of the "purchase price" or "sales price" of products which are sourced differently under this special rule is de minimis.~~

~~(vi) "Call-by-call Basis" means any method of charging for telecommunications services where the price is measured by individual calls.~~

~~(vii) "Coin-operated telephone service" means a "telecommunications service" paid for by inserting money into a telephone accepting direct deposits of money to operate.~~

~~(viii) "Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.~~

~~(ix) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.~~

~~(x) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.~~

~~(xi) "Customer Channel Termination Point" means the location where the customer either inputs or receives the communications.~~

~~(xii) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.~~

~~(xiii) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.~~

~~(xiv) "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.~~

~~(xv) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.~~

~~(xvi) "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).~~

~~(xvii) "International" means a "telecommunications service" that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.~~

~~(xviii) "Interstate" means a "telecommunications service" that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.~~

~~(xix) "Intrastate" means a "telecommunications service" that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.~~

~~(xx) "Mobile telecommunications service" means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).~~

~~(xxi) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.~~

~~(xxii) "Network access service" means the provision by a local exchange telecommunication service provider of the use of its local exchange network by an inter-exchange telecommunication service provider to originate or terminate the inter-exchange telecommunication service provider's traffic carried to or from a distant exchange.~~

~~(xxiii) "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications or ancillary service business, but that are not physically located in any particular state.~~

~~(xxiv) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.~~

~~(xxv) — “Pay telephone service” means a telecommunications service provided through any pay telephone.~~

~~(xxvi) — “Place of primary use” means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, “place of primary use” shall be within the licensed service area of the home service provider.~~

~~(xxvii) — “Post-paid calling service” means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunication service.~~

~~(xxviii) — “Prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.~~

~~(xxix) — “Prepaid wireless calling service” means the sale of a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.~~

~~(xxx) — “Private communications service” means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.~~

~~(xxxi) — “Product” means tangible personal property, digital good or service.~~

~~(xxxii) — “Service address” means:~~

~~(i) — The location of the customer's telecommunications equipment,~~

~~to which the customer's call is charged, and from which the call originates or terminates, regardless of where the call is billed or paid.~~

~~(II) — If the location in subparagraph (I) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.~~

~~(III) — If the location in subparagraph (I) and subparagraph (II) are not known, the service address means the location of the customer's place of primary use.~~

~~(xxxiii) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.~~

~~(I) — The term "telecommunication service" is defined as a broad range of services. The term includes, but is broader than the sum of, the following subcategories: 800 service, 900 service, fixed wireless service, mobile wireless service, paging service, prepaid calling service, prepaid wireless calling service, private communication service, value-added non-voice data service, coin-operated telephone service, international telecommunications service, interstate telecommunications service, intrastate telecommunications service, network access service and pay telephone service.~~

~~(II) — The term "telecommunications service" does not include:~~

~~I. — Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;~~

~~II. — Installation or maintenance of wiring or equipment on a customer's premises;~~

~~III. — Tangible personal property;~~

~~IV. Advertising, including but not limited to directory advertising.~~

~~V. Billing and collection services provided to third parties;~~

~~VI. Internet access service;~~

~~VII. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;~~

~~VIII. "Ancillary services"; or~~

~~IX. Digital products "delivered electronically", including but not limited to software, music, video, reading materials or ring tones.~~

~~(III) Examples of Included and Excluded Services.~~

~~I. Example: An entity provides dedicated network service to an entity which will resell that service as intrastate telecommunications service. Both entities are providing a telecommunications service.~~

~~II. Example: An entity provides an interstate telecommunications service to an internet service provider which will use that service in the provision of internet access service. The entity providing interstate telecommunications service is providing a telecommunications service. The entity providing internet access service is not providing a telecommunications service.~~

~~III. Example: An entity primarily engaged in the provision of cable television provides an interstate telecommunications service. The entity is engaged in the provision of telecommunications service.~~

~~(xxxiv) "Value-added non-voice data service" means a service that otherwise meets the definition of "telecommunications services" in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.~~

~~(xxxv) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging~~

services.

~~(xxxvi) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.~~

~~3. Apportionment and Allocation~~

~~(i) Property Factor: Outerjurisdictional property that is used by a taxpayer in providing a telecommunications or ancillary service shall be excluded from the numerator and from the denominator of the property factor.~~

~~(ii) Sales Factor: Sales of telecommunications and ancillary services in Alabama.~~

~~(I) Gross receipts from the sale of telecommunications services, other than those defined in subparagraphs (III) through (VII), which are sold on a call-by-call basis are in Alabama when (a) the call originates and terminates in Alabama or (b) the call either originates or terminates and the service address is also located in Alabama.~~

~~(II) Gross receipts from the sale of telecommunications services, other than those defined in subparagraphs (III) through (VII), which are sold on other than a call-by-call basis, are in Alabama when the customer's place of primary use is in Alabama.~~

~~(III) Gross receipts from the sale of mobile telecommunications services, other than air-to-ground radiotelephone service and prepaid calling service, are in Alabama when the customer's place of primary use is in Alabama pursuant to the Mobile Telecommunications Sourcing Act.~~

~~(IV) Gross receipts from the sale of pre-paid calling service, prepaid wireless calling service and post-paid calling service are in Alabama when the origination point of the telecommunications signal is first identified in Alabama by either (1) the seller's telecommunications system, or (2) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.~~

~~(V) Gross receipts from the sale of a private communication service are in Alabama:~~

~~1. if such service is for a separate charge related to a customer channel termination point, when the customer channel termination point is located in Alabama;~~

~~II. if under such service all customer termination points are located entirely within one state, when the customer channel termination points are located in Alabama;~~

~~III. if such service is for segments of a channel between two customer channel termination points located in different states and such segments of channel are separately charged, when one of the customer channel termination points is in Alabama, provided however that only fifty percent of such gross receipts shall be sourced to Alabama; and~~

~~IV. if such service is for segments of a channel located in more than one state and such segments are not separately billed, when the customer channel termination points are in Alabama, provided however that only a percentage of such gross receipts, determined by dividing the number of customer channel termination points in the state by the total number of customer channel termination points, are in Alabama.~~

~~(VI) A portion of the total gross receipts from sales of telecommunication services to other telecommunication service providers for resale is in Alabama in an amount determined by multiplying such total gross receipts by a fraction, the numerator of which is "total carrier's carrier service revenues" for Alabama and the denominator of which is the sum of "total carrier's carrier service revenues" for all states in which the taxpayer is doing business, as reported by the Federal Communications Commission [in its report titled Telecommunications Revenues by State, Table 15.6, or successor reports which include such information,] for the most recent year available as of the due date of the return, determined without regard to extensions.~~

~~(VII) Gross receipts attributable to the sale of an ancillary service are in Alabama when the customer's place of primary use is in Alabama.~~

~~(VIII) Gross receipts attributable to the sale of a telecommunication or ancillary service sold as part of a bundled transaction are in Alabama when such gross receipts would be Alabama in accordance with the provisions of subparagraphs (ii)(I) through (VII).~~

~~I. The amount of gross receipts attributable to the sale of a telecommunication or ancillary service which is sold as part of a bundled transaction shall be equal to the price charged by the taxpayer for such service when sold separately, adjusted by an amount equal to the quotient of a) the difference between 1) the price charged by the taxpayer for the bundled transaction, and 2) the sum of the prices charged by the taxpayer for each of the included products when sold separately, and b) the number of products included in the bundled transaction;~~

~~II. If the amount of such gross receipts is not determinable under~~

~~subparagraph (VIII)l., then it may be determined by reasonable and verifiable standards from taxpayer's books and records that are kept in the regular course of business for purposes including, but not limited to, non-tax purposes.~~

~~(IX) — Gross receipts from the sale of telecommunication services which are not taxable in the State to which they would be apportioned pursuant to subparagraphs (ii)(I) through (VII), shall be excluded from the denominator of the sales factor.~~

Author: Holly H. Coon.

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

History: New Rule: Filed May 11, 2016, effective June 25, 2016.