

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-3-162-.01

Rule Title: Income to be Reported to Shareholders

New; Amend; Repeal; 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 might result from the absence of the proposed rule?

N/A

Are all 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?

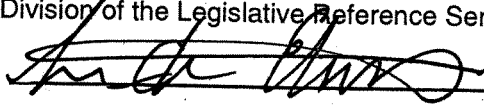
Yes

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 3-21-11

APA-6
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: **810-3-162-.01**

Rule Title: **Income to be Reported by Shareholders**

 New XX Amend Repeal Adopt by Reference

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

1. **NEED/EXPECTED BENEFIT OF RULE:**

To conform the regulation to the requirements of the underlying statute consistent with the Administrative Law Division's ruling in McNees v. Department of Revenue, DOCKET No. 06-523, December 12, 2006.

2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE: N/A**

3. **EFFECT OF THIS RULE ON COMPETITION: N/A**

4. **EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED: N/A**

5. **EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED: N/A**

6. **SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE: N/A**

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:**

The economic impact is substantial, but unquantifiable.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON: N/A
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH: N/A
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED: N/A
11. OTHER COMMENTS: None

APA-2
11/96

ALABAMA DEPARTMENT OF REVENUE
Individual & Corporate Tax Division

NOTICE OF INTENDED ACTION

RULE NO. & TITLE:

810-3-14-.01	Gross Income in General
810-3-28-.01	Partnership Returns
810-3-162-.01	Income to be Reported by Shareholders

INTENDED ACTION: Amend the above rules

SUBSTANCE OF PROPOSED ACTION: The purpose of the proposed action is to conform the regulations to the requirements of the underlying statute and associated case law (McNees v. Department of Revenue, DOCKET NO. 06-523, December 12, 2006).


TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **10:00 a.m.** on **Thursday, May 5, 2011**, in the **Office of the Legal Division, Room 3114**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at www.revenue.alabama.gov/rulehear.html.

All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4112, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time during the thirty-five (35) day period following publication of the notice or by appearing at the hearing.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
Friday, May 6, 2011

CONTACT PERSON AT AGENCY:

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


Lewis A. Easterly
Alabama Department of Revenue

810-3-162-.01 Income to be Reported by Shareholders.

(1) (a) For taxpayers who are shareholders of an Alabama S corporation with a tax year which began **after December 31, 1996 and** before January 1, **2011 1990**, each shareholder of an Alabama S corporation shall include in his individual Alabama income tax return each year his pro rata share of the:

1. separately stated items of income, loss, deduction or credit attributed to Alabama by the Alabama S corporation for the corporation's taxable year which ends with or during the individual's tax year; and

2. nonseparately stated items of income, loss, deduction or credit attributed to Alabama by the Alabama S corporation for the corporation's taxable year which ends with or during the individual's tax year.

(b) For taxpayers who are shareholders of an Alabama S corporation with a tax year which began after December 31, **2010 1989 and before January 1, 1997-**

1. Each resident shareholder shall include in his individual Alabama income tax return each year his pro rata share of the:

(i) separately stated items of income, loss, deduction or credit of the Alabama S corporation for the corporation's taxable year which ends with or during the individual's tax year;

(ii) nonseparately stated items of income, loss, deduction or credit of the Alabama S corporation for the corporation's taxable year which ends with or during the individual's tax year; and

(iii) the Alabama resident's inclusion of both the separately stated and nonseparately stated items shall be determined consistently with Alabama Code §§ 40-18-162 and 40-18-14 (1975) and without regard to (a) above.

2. Each nonresident shareholder shall include in his individual Alabama income tax return each year his pro rata share of the:

(i) separately stated items of income, loss, deduction or credit attributed to Alabama by the Alabama S corporation for the corporation's taxable year which ends with or during the individual's tax year.

(ii) nonseparately stated items of income, loss, deduction or credit attributed to Alabama by the Alabama S corporation for the corporation's taxable year which ends with or during the individual's tax year.

~~_____ (c) For taxpayers who are shareholders of an Alabama S corporation with a tax year which began after December 31, 1996, each shareholder of an Alabama S corporation shall include in his individual Alabama income tax return each year his pro rata share of the:~~

~~_____ 1. separately stated items of income, loss, deduction or credit attributed to Alabama by the Alabama S corporation for the corporation's taxable year which ends with or during the individual's tax year; and~~

~~_____ 2. nonseparately stated items of income, loss, deduction or credit attributed to Alabama by the Alabama S corporation for the corporation's taxable year which ends with or during the individual's tax year. _____~~

(2) Any item included in the shareholder's pro rata share shall retain the same character as if received directly by the shareholder from the source. For example, the shareholder's pro rata share of interest income earned by the Alabama S corporation from United States government obligations would be exempt to the shareholder as if received directly by that shareholder from the U.S. Government.

(3) If the sum of the separately stated and nonseparately stated items of income, loss and deduction is a net loss attributed to Alabama, that loss may be deducted on the individual return of the shareholder to the extent permitted below.

(a) The net loss to be deducted on the return may not exceed the shareholder's Alabama adjusted basis in the stock of the Alabama S corporation, plus the shareholder's Alabama adjusted basis in any indebtedness of the Alabama S corporation to the shareholder.

1. For each year, the limitation is the Alabama adjusted basis of the shareholder's stock as determined under Reg. 810-3-164-.01(1), plus the Alabama adjusted basis of any indebtedness due the shareholder as determined under Reg. 810-3-164-.01(2).

2. Any loss in excess of the Alabama adjusted basis of the stock and indebtedness may be carried forward to the next succeeding year.

3. The Alabama adjusted basis of the stock and/or any indebtedness due the taxpayer will not be less than zero.

~~(4) (a) For taxpayers who are shareholders of an Alabama S corporation with a tax year which began before January 1, 1990, no credit for income taxes paid other states provided in §40-18-21 is allowable with respect to a shareholder's pro rata share of an Alabama S corporation's separately stated and nonseparately stated income, as an Alabama S~~

~~corporation reports only income apportioned and/or allocated to Alabama and therefore includes no income derived from sources without Alabama. See also Reg. 810-3-21-01. It should also be noted that no deduction is allowable to either the Alabama S corporation or the shareholders for net income taxes paid other state, local and/or foreign governments. See §40-18-15(3)(h) and Reg. 810-3-15-04(4)(a).~~

(4) For taxpayers who are shareholders of an Alabama S corporation with a tax year which began after December 31, 1996 and before January 1, 2011 each shareholder shall include in gross income their deemed distributive share of the income or loss of the Alabama S corporation apportioned and allocated to Alabama. Therefore, no income from sources without Alabama is included and no credit or deduction is allowable to the shareholder or the Alabama S corporation for income taxes paid by the shareholder or the corporation to any other state, local or foreign government in connection with such income.

~~(b) (5) For taxpayers who are shareholders of an Alabama S corporation with a tax year which began after December 31, 2010 1989 and before January 1, 1997 -~~

~~1. (a) resident shareholders include in gross income their deemed distributive share of the entire income or loss of the Alabama S corporation. Therefore, resident shareholders are allowed a credit, computed in accordance with Ala. Code § 40-18-21(a), for income taxes paid by or on behalf of the shareholder (including composite return and withholding payments) to any other state in which the corporation is treated as an S corporation.~~

~~2. (b) nonresident shareholders include in gross income their deemed distributive share of the income or loss of the Alabama S corporation apportioned and allocated to Alabama. Therefore, no income from sources without Alabama is included and no credit is allowable to the nonresident shareholder for income taxes paid by the shareholder to any other state in connection with such income.~~

~~(c) For taxpayers who are shareholders of an Alabama S corporation with a tax year which began after December 31, 1996 each shareholder shall include in gross income their deemed distributive share of the income or loss of the Alabama S corporation apportioned and allocated to Alabama. Therefore, no income from sources without Alabama is included and no credit or deduction is allowable to the shareholder or the Alabama S corporation for income taxes paid by the shareholder or the corporation to any other state, local or foreign government in connection with such income.~~

(6) The amendments to this regulation which were filed with the Legislative Reference Service on March 21, 2011 are effective for tax years

beginning on or after January 1, 2011. These amendments are consistent with the Administrative Law Division's Ruling, *McNees v. Department of Revenue*, DOCKET NO. 06-523, entered December 12, 2006. The Department of Revenue will not enforce these regulatory changes for tax periods ending prior to January 1, 2011.

Authors: ~~Verlon Frost~~, Catherine McCary, CPA, and Ann F. Winborne, CPA, Individual and Corporate Tax Division; and Joe Garrett, Tax Policy Administrator

Authority: Sections 40-2A-7(a)(5) and 40-18-162, Code of Alabama 1975

History: Filed November 20, 1985.

Filed with LRS November 19, 1991, Amended June 19, 1992.

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

Amended: Proposal to amend rule filed February 18, 2005 – rule was not adopted.