

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 810 Department or Agency REVENUE

Rule Nos. 810-27-1-4-.09.01

Rule Title: Apportionment Formula: Double Weighting the Sales Factor

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? 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 Michael E. Mason

Date 3/20/12

APA-6
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-27-1-4-.09.01

Rule Title: Apportionment Formula : Double Weighting the Sales Factor

X New _____ Amend _____ Repeal _____ Adopt by Reference

- NO
 YES

This rule has no economic impact.

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
Tax Policy & Research Division**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-27-1-4-.09.01 Apportionment Formula: Double Weighting the Sales Factor

INTENDED ACTION: Adopt the above rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to adopt the above new rule to comply with the provisions of Act 2011-616 which requires taxpayers to double weight the sales factor. The provisions of the Act are effective for taxable years beginning on or after December 31, 2010. This rule establishes the operating rules of double weighting the sales factor.

RULE NO. & TITLE

810-27-1-4-.17 Sales Factor: Sales Other than Sales of Tangible Personal Property

INTENDED ACTION: Amend the above rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to comply with the provisions of Act 2011-616 which requires taxpayers to use the market based sourcing methodology to source sales other than sales of tangible personal property for taxable years beginning on or after December 31, 2010. This rule will no longer have an effect for future taxable years and the change is made to state the ending date of the rule's applicability.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 10:00 a.m. on Thursday, May 10, 2012, 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 **Deputy Commissioner 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:

Thursday, May 10, 2012

CONTACT PERSON AT AGENCY:

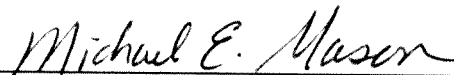
Patricia Toles

Alabama Department of Revenue

4131 Gordon Persons Building

Montgomery, Alabama 36132

(334) 242-1380



Michael E. Mason, Deputy Commissioner
Alabama Department of Revenue

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810-27-1-4-.09.01 Apportionment Formula: Double Weighting the Sales Factor. (NEW RULE)

(1) The provisions of this regulation are effective for taxable years beginning on or after December 31, 2010.

(2) All business income of the taxpayer shall be apportioned to this state by use of the three factor apportionment formula set forth in section 40-27-1, Article IV.9. The elements of the apportionment formula are the property factor (see Regulation 810-27-1-4-.10.), the payroll factor (see Regulation 810-27-1-4-.13.) and the sales factor (see Regulation 810-27-1-4-.15.). The apportionment formula gives double-weight to the sales factor and equal weight to both the property and payroll factors. If any factor is not utilized in the production of business income, it shall be eliminated and the denominator reduced accordingly. The taxpayer may request, or the Commissioner may require, the use of a replacement factor in lieu of the eliminated factor where appropriate. See regulation 810-27-1-4-.18.

(a) EXAMPLE: Company D is a multistate entity which does business both within and without the state. Company D shall apportion its income using the three factor apportionment formula as follows:

	<u>Alabama</u>	<u>Everywhere</u>
Property	500,000	600,000
Payroll	1,500,000	2,000,000
Sales	2,500,000	7,000,000

C must compute its apportionment formula as follows:

Property	(500,000)/ 600,000)	83.3333%
Payroll	(1,500,000)/ 2,000,000)	75.0000%
Sales	(2,500,000)/ 7,000,000)	71.4286% = (35.7143% * 2)

Sum of Factor Percentages	229.7619%
Divide by Number of Factors Used	_____ ÷ 4
Apportionment Factor Average Percentage:	<u>57.4405%</u>

(b) Company D is a multistate entity which does business both within and without the state. Company D has property and sales within the State but does not have any payroll within the State. Therefore, Company D shall eliminate the payroll factor and reduce the denominator. Company D shall apportion its income by doing the following:

	<u>Alabama</u>	<u>Everywhere</u>
Property	500,000	600,000
Payroll	000,000	000,000
Sales	2,500,000	7,000,000

C must compute its apportionment formula as follows:

Property	(500,000)/ 600,000)	83.3333%
Payroll	(0/0)	00.0000%

Sales (2,500,000)/ 7,000,000 71.4286% = (35.7143% x 2)

Sum of Factor Percentages 154.7619%
 Divide by Number of Factors Used ÷ 3
Apportionment Factor Average Percentage: 51.5873%

(3) For taxpayers with a business interest in an unincorporated entity (e.g., partnership, unincorporated joint-venture, limited liability company taxed as a partnership, etc.), the apportionment formula shall include the pro rata share of the unincorporated entity's factor data.

(a) EXAMPLE: Corporation C has a 20% distributive share of Partnership P's income which is included in C's apportionable business income. There are no transactions between C and P. C shall apportion his income as follows:

	<u>Alabama</u>	<u>Everywhere</u>
Property	550,000	600,000
Payroll	1,800,000	2,000,000
Sales	1,500,000	7,000,000

Using the regulations for computing the elements of the apportionment formula at the partnership level, C's 20% share of P's apportionment factor data is as follows:

		<u>Alabama</u>		<u>Everywhere</u>
Property	(20% of 100,000)	20,000	(20% of 275,000)	55,000
Payroll	(20% of 50,000)	10,000	(20% of 125,000)	25,000
Sales	(20% of 75,000)	15,000	(20% of 350,000)	70,000

C must compute its apportionment formula as follows:

		<u>Alabama</u>		<u>Everywhere</u>
Property	(550,000 + 20,000)	570,000	(600,000 + 55,000)	655,000
Payroll	(1,800,000 + 10,000)	1,810,000	(2,000,000 + 25,000)	2,025,000
Sales	(1,500,000 + 15,000)	1,515,000	(7,000,000 + 70,000)	7,070,000

Property	(570,000)/ 655,000)	87.0229%
Payroll	(1,810,000)/ 2,025,000)	89.3827%
Sales	(1,515,000)/ 7,070,000)	42.8572% = (21.4286% x 2)

Sum of Factor Percentages 219.2628%
 Divide by Number of Factors Used ÷ 4
Apportionment Factor Average Percentage 54.8157%

Author: Dennice L. Hillard

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