

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-27-1-4-17.01

Rule Title: Sales Factor: Sourcing Sales Derived from Services Rendered to Individual and Unrelated Business Customers

XX New; ___ Amend; ___ Repeal; ___ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?

N/A (See Attached)

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?

N/A

Is there another, less restrictive method of regulation available that could adequately protect the public?

N/A

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?

N/A

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?

N/A

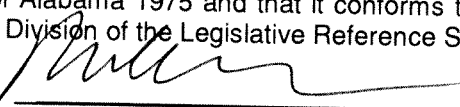
Does the proposed rule have any economic impact?

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 10/22/12

APA-1 ATTACHMENT

RULE 810-27-1-4-.17.01 Sales Factor: Sourcing Sales Derived from Services Rendered to Individual and Unrelated Business Customers

As the taxing agency for the State of Alabama and in accordance with Title 40 of the Code of Alabama, the Department of Revenue has the authority to issue rules to provide guidance to taxpayers regarding Alabama tax laws. This rule is not issued pursuant to the state's policing powers. This rule is issued pursuant to the Department's rule authority found in Title 40 to administer the tax laws of the state.

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-.17.01

Rule Title: Sales Factor: Sourcing sales derived from services rendered to individual and unrelated business customers

New Amend Repeal Adopt by Reference

NO

This rule has no economic impact.

YES

This rule has an economic impact, as explained below:

1. **NEED/EXPECTED BENEFIT OF RULE:**
Provides guidance to business taxpayers to clarify issues associated with 2011 legislation changing the law for sourcing sales of services. The rule provides a simplified process (compared to the statutory language) for sourcing certain classes of sales.
2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:**
The rule should reduce the administrative cost (for both taxpayers and the Department) of complying with the 2011 legislation changing the law for sourcing sales. It allows businesses to make initial sourcing decisions based on certain objective criteria, with a presumption of correctness, rather than having to rely on the more subjective statutory language
3. **EFFECT OF THIS RULE ON COMPETITION:**
No known effect 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:**
Small reduction in the cost of doing business associated with simplified tax compliance.
5. **EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:**
None

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:
No additional revenue needed to implement / enforce the 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:
Reduced tax compliance costs for business taxpayers and the Department are the only known economic impact – short or long term.
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:
No specific dollar figures can be associated with the cost reductions.
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
Not applicable
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
Not applicable
11. OTHER COMMENTS:

APA-2
11/96

**ALABAMA DEPARTMENT OF REVENUE
Individual & Corporate Tax Division**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-27-1-4-.17.01 Sales Factor: Sourcing Sales Derived from Services Rendered to Individual and Unrelated Business Customers

INTENDED ACTION: Adopt a new rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to adopt the above new rule to provide guidance for multistate business taxpayers when sourcing sales of services rendered to individual and unrelated business customers.

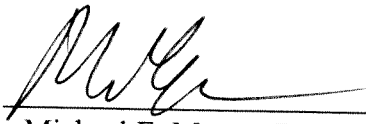
TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 2:00 p.m. on Thursday, December 6, 2012, in the Office of the Legal Division, Room 3114, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at www.revenue.alabama.gov/rulehear.html.

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, December 6, 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

0890APC.INT

810-27-1-4-.17.01 Sales Factor: Sourcing Sales Derived from Services Rendered to Individual and Unrelated Business Customers. (NEW RULE)

(1) Effective for tax years beginning after December 31, 2010, §40-27-1, Article IV, Paragraph 17, Code of Alabama 1975 has been amended to state that sales other than sales of tangible personal property pursuant to §40-27-1, Article IV, Paragraph 16, are to be sourced to this state if the taxpayer's market for the sale is in this state. This regulation sets forth the Alabama Department of Revenue's policy regarding the sourcing of sales derived from services rendered to individual and unrelated business customers.

(2) The taxpayer's market for a sale is in this state if and to the extent the service is delivered to a location in this state.

(a) **In the case where the taxpayer's customer is an individual, the taxpayer shall source receipts from the sale of a service consistent with this subparagraph.**

1. Services delivered to customers with an Alabama billing address should be sourced to this state, except as provided in 2. below.

(i) Example: A brokerage firm provides brokerage services to individuals located both inside and outside of Alabama. The firm's brokerage service receipts are sourced to this state if the customer's billing address is in this state.

2. In the case where a taxpayer's customer is an individual and the service provided is a direct personal service, the sale shall be sourced to the state where the customer received the direct personal service. "Direct personal services" are services that are delivered or rendered in person by or on behalf of the service provider to the customer. This type of service requires the service provider and the customer be together at one location. Direct personal services include, but are not limited to, salon services, medical and dental services including examinations and surgeries, dance lessons and other similar services.

(i) Example: Hair Cutting Corp, located in Alabama and other states, provides hair grooming services for individuals. Receipts from hair grooming services performed at Hair Cutting Corp locations in Alabama shall be sourced to this state. Receipts from hair grooming services performed at Hair Cutting Corp locations outside of Alabama shall be sourced to the state in which the services were performed.

3. In the case where the sourcing methodology specified by subparagraphs 1. or 2. is: (1) difficult to administer or (2) fails to reasonably reflect the taxpayers market in this state, the taxpayer may utilize, or the Department may require, the use of other

criteria and methodologies that will reasonably approximate the taxpayer's market in this state. If an alternate approach is utilized, the taxpayer must attach to each tax return a detailed explanation of why it was unreasonable to utilize the methodology specified by subparagraph 1. or 2. and an explanation of the methodology used.

(b) In the case where the taxpayer's customer is a business enterprise which is not affiliated with the taxpayer, the taxpayer shall source receipts from the sale of a service consistent with this subparagraph. "Business enterprise" includes any person other than an individual.

1. A business enterprise is affiliated with the taxpayer if it is a related member pursuant to §40-18-1(29), Code of Alabama 1975.

2. Sales from services delivered to unrelated business enterprises, commercially domiciled in Alabama, should be sourced to this state, except as provided in 3. below. A business enterprise is commercially domiciled in Alabama if its principal place of business is in Alabama.

(i) Example: CPA firm provides tax preparation services to Company A that is commercially domiciled in Alabama. Company A also operates business establishments in four other states. The CPA firm should source these sales solely to Alabama.

3. To the extent a service is provided to an unrelated business enterprise and the service being provided has a substantial connection to a specific geographic location, the income shall be sourced to Alabama if the geographic location is in this state. If the service receipts have a substantial connection to geographic locations in more than one state, the sales shall be reasonably sourced between those states.

(i) Example: Cleaning Company Inc. has a contract to provide cleaning services to Company B, an unrelated business enterprise. The contract specifies that cleaning services are to be provided to Company B's locations in Alabama and other states. Cleaning Company Inc. should source a portion of the total service receipts to Alabama based on the amount of services performed at Company B's locations in Alabama to the total amount of services performed at the other Company B locations.

(ii) Example: Hard Hat Inc. contracts with Company D, a multistate company commercially domiciled outside of Alabama, to design and build a building in Alabama. Hard Hat Inc. will source service receipts from this project to this state.

(iii) Example: Training Service Inc. contracts with Company A, an unrelated multistate business enterprise, to provide training services to Company A's employees located in Alabama and three other states. The training services are related to a specific geographic location, therefore they shall be sourced to the location where Company A's

employees received the training and not the location of Company A's commercial domicile. Training Service Inc. sources receipts from its contract with Company A by reasonably assigning those receipts between Alabama and other states using a formula based on the number of training hours provided to Company A locations in Alabama to the total number of training hours provided to all Company A locations.

4. In the case where the sourcing methodology specified by subparagraphs 2. or 3. is: (1) difficult to administer or (2) fails to reasonably reflect the taxpayer's market in this state, the taxpayer may utilize, or the Department may require, the use of other criteria and methodologies that will reasonably approximate the taxpayer's market in this state. If an alternate approach is utilized, the taxpayer must attach to each tax return a detailed explanation of why it was unreasonable to utilize the methodology specified by subparagraph 2. or 3. and an explanation of the methodology used.

(i) Example: Computer Fix It Company has a contract with Company C to provide on-site computer repair services to Company C's customers. Company C is an unrelated business enterprise which sells computers to customers in Alabama and many other states. Computer Fix It Company should assign a portion of the total service receipts to Alabama based on the portion of repair services performed for Company B's customers in Alabama as compared to the total portion of repair services performed for all of Company B's customers.

(3) The delivery of a tangible medium representing the output of a service does not control the sourcing of receipts from the underlying service.

(a) Example: Law Firm Inc. prepares a property deed for Corporation A, a multi-state corporation commercially domiciled in Alabama. Law Firm Inc. mails the property deed to an office of Corporation A in Delaware. The receipts from this service will be assigned to Alabama despite the property deed having been mailed to a Delaware address unless the taxpayer shows that it is unreasonable to source the receipts to the commercial domicile of its customer pursuant to (b)4. above.

(4) Whenever a taxpayer is subjected to different sourcing methodologies regarding intangibles or services, by the Department of Revenue and one or more other state taxing authorities, the taxpayer may petition for, and the Department of Revenue shall participate in, and encourage the other state taxing authorities to participate in, non-binding mediation in accordance with the mediation rules promulgated by the Multistate Tax Commission from time to time, regardless of whether all the state taxing authorities are members of the Multistate Tax Compact.

Author: Holly Coon and Dennice Hillard
Authority: Sections 40-2A-7(a)(5) and 40-27-1, Article IV(17.), Code of Alabama 1975

History: