

APA-1

Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-27-1-.18.04

Rule Title: Special Rules: Railroads

New; Amended; Repealed; Adopt by Reference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-.18.04

Rule Title: Special Rules: Railroads

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
Individual and Corporate Tax Division**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-27-1-.18 Special Rules

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to allow taxpayers to file a valid refund petition when seeking an alternative allocation or apportionment method for a tax year with less than 91 days left in the statute of limitations period for refund.

RULE NO. & TITLE

810-27-1-.18.01 Special Rules: Airlines
810-27-1-.18.02 Special Rules: Construction Contractors
810-27-1-.18.03 Special Rules: Publishing
810-27-1-.18.04 Special Rules: Railroads
810-27-1-.18.05 Special Rules: Television and Radio Broadcasting
810-27-1-.18.06 Special Rules: Trucking Companies
810-27-1-.18.07 Special Rules: Telecommunications and Ancillary Service Providers

INTENDED ACTION: Adopt new rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to adopt the above rules to move special rules for allocation and apportionment into separate rules in order to make the information more readily available to taxpayers.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **2:30 p.m. on Wednesday, August 10, 2016, Room 1203, First Floor**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/analysis/rules.cfm>.

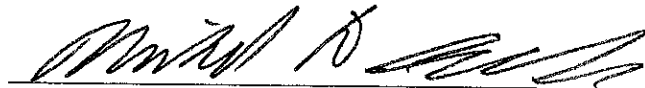
All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties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

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Wednesday, August 10, 2016

CONTACT PERSON AT AGENCY:

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



Michael D. Gamble, Secretary
Alabama Department of Revenue

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810-27-1-.18.04 Special Rules: Railroads. (New Rule)

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 Section 40-27-1, Article IV.5 to .8, Code of Alabama 1975, 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 Section 40-27-1.1, Code of Alabama 1975. Nonbusiness income is defined in Section 40-27-1, Article IV.1(e), Code of Alabama 1975.

(3) Apportionment of Business Income.

(a) 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.

(b) The Property Factor.

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

2. 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 Section 40-27-1, Article IV.11, Code of Alabama 1975, 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 Section 40-27-1, Article IV.12, Code of Alabama 1975 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 Section 40-27-1, Article IV.11, Code of Alabama 1975, 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.

3. The Denominator and Numerator of the Property Factor. The denominator of the property factor shall be the average value of all of the taxpayer's real and tangible personal property owned or rented and used during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used in Alabama during the income year.

(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 Section 40-27-1, Article IV.11-.12, Code of Alabama 1975 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.

(c) 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 Section 40-27-1, Article IV.13-.14, Code of Alabama 1975, 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 Section 40-27-1, Article IV.13-.14, Code of Alabama 1975, and Alabama Rules 810-27-1-.13 and 810-27-1-.14.

1. 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.

(d) The Sales (Revenue) Factor.

1. 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 Sections 40-27-1, Article IV.1 and 40-27-1.1, Code of Alabama 1975, 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 Section 40-27-1, Article IV.15-.17, Code of Alabama 1975, and Alabama Rules 810-27-1-.15 and 810-27-1-.17.

2. 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.

3. 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.

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

History: