

APA-1

Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-27-1-.18.05

Rule Title: Special Rules: Television and Radio Broadcasting

New; Amended; Repealed; Adopt by Reference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-.18.05

Rule Title: Special Rules: Television and Radio Broadcasting

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:
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>.

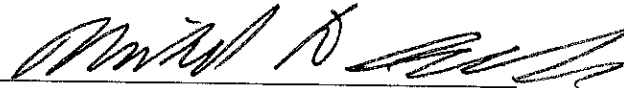
All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties 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-.18.05 Special Rules: Television and Radio Broadcasting. (New Rule)

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

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

(a) "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.

1. 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.

(b) "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.

(c) "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.

1. 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.

(d) "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.

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

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

(g) "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.

(a) 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.

(b) The Property Factor.

1. In General

(i) 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.

2. 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.

3. 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 3.(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):	<u>\$1,095,600</u>
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

(c) The Payroll Factor.

1. 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.

2. 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.

(d) The Sales Factor.

1. 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 Alabama Rule 810-27-1-.18(4).

2. 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.

Author: Holly H. Coon.

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

History: