

**TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION**

Control 810 Department or Agency REVENUE

Rule Nos. 810-3-21-.03

Rule Title: Maximum Credit for Tax Paid Other Jurisdictions

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 Michael E. Mann  
Date 9/21/12

## **APA-1 ATTACHMENT**

### **RULE 810-3-21-.03 Maximum Credit for Tax Paid Other Jurisdictions**

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: 810-3-21-.03

Rule Title: Maximum Credit For Tax Paid Other Jurisdictions

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:**  
The rule provides needed guidance enforcing a statutory limitation on certain income tax credits. The rule explains the statutory limitation in some detail bridging the gap between the statute and the Department's forms and instructions.
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 explains the statutory limitation in some detail bridging the gap between the statute and the Department's forms and instructions.
3. **EFFECT OF THIS RULE ON COMPETITION:**  
If this rule has any effect on competition, it serves to equalize the income tax treatment of Alabama residents that own Alabama based businesses with the treatment of those residents that own out of state businesses.
4. **EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:**  
This rule and the statutory limitation it enforces will increase income tax cost associated with out of state business activity equalizing its treatment to that of in state business activity.
5. **EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:**  
No impact or very small positive impact on in-state employment. No impact or very small negative impact on out of state employment.

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

There is no additional administrative cost expected because of this rule. If there is any additional cost, its source will be the Income Tax Fund through the DOR budget.

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:

This rule serves to enforce statutory rules that equalize the income tax treatment of Alabama residents that own Alabama based businesses with the treatment of those residents that own out of state businesses. Alabama residents that own out of state businesses will bear most of the increased income tax cost associated with this rule - which is estimated to be \$5 to \$10 million.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

The DOR lacks specific information necessary to estimate the revenue impact of the rule with specificity. The \$10 million positive revenue estimate is made with anecdotal information and with the understanding that the revenue impact is limited to a fraction that is a larger number of only \$20 to \$30 million.

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

None.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

None.

11. OTHER COMMENTS:

APA-2  
11/96

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

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE**

810-3-21-.03                      Maximum Credit for Tax Paid Other Jurisdictions

**INTENDED ACTION:**        Adopt a new rule

**SUBSTANCE OF PROPOSED ACTION:**    The department proposes to adopt a new rule to provide guidance enforcing a statutory limitation on the income tax credit for tax paid other jurisdictions.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:**    A public hearing will be held at 10:00 a.m. on Wednesday, November 7, 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](http://www.revenue.alabama.gov/rulehear.html).

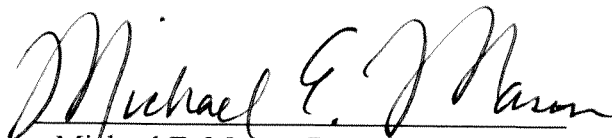
All interested parties may present their views in writing to the **Deputy Commissioner of the Alabama Department of Revenue, Room 4112, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time during the thirty-five (35) day period following publication of the notice or by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

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Wednesday, November 7, 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

810-3-21-.03 Maximum Credit for Tax Paid other Jurisdictions. (NEW RULE)

(1) The credit for tax paid or incurred to other jurisdictions shall not be used to offset that portion of a taxpayer's income tax liability which is attributable to Alabama sources. The credit for tax paid or incurred to other jurisdictions shall only be utilized against that portion of the taxpayer's income tax liability which is attributable to income from other jurisdictions.

(2) As a general rule, that portion of a taxpayer's income tax liability which is attributable to non-Alabama sources shall be determined by multiplying the taxpayer's Alabama income tax liability before consideration of any credit described in Ala. Code § 40-18-21 by a fraction, the numerator of which is total non-Alabama source adjusted gross income and the denominator of which is total Alabama adjusted gross income.

(a) Example. Taxpayer reports \$120,000 of adjusted gross income on his Alabama income tax return, of which \$80,000 is attributable to another jurisdiction; his Alabama income tax liability before credits is \$4,000. Taxpayer paid the other jurisdiction \$4,000 of income tax on the \$80,000 of income from the other jurisdiction.

Because one-third (\$1,333) of Taxpayer's liability is attributable to Alabama sources, it is not subject to the credit for tax paid to other jurisdictions. The maximum credit that Taxpayer may utilize is \$2,667, which is the portion of his liability attributable to other jurisdictions.

(b) Example. Taxpayer reports \$120,000 of adjusted gross income on his Alabama income tax return, of which \$80,000 is from non-Alabama sources. Of this \$80,000 non-Alabama source income, \$40,000 is attributable to State A and \$40,000 is attributable to State B. Taxpayer's Alabama income tax liability before credit is \$4,000. Taxpayer paid State A \$2,000 of income tax on the \$40,000 of income from State A; Taxpayer paid State B no income tax on the \$40,000 of income from State B.

Because one-third (\$1,333) of Taxpayer's liability is attributable to Alabama sources, it is not subject to the credit for tax paid to other jurisdictions; Taxpayer's remaining income tax liability of \$2,667 is creditable. However, because the total of income tax paid by Taxpayer to both States A and B (\$2,000) is less than the creditable portion of Taxpayer's income tax liability (\$2,667), the maximum credit for tax paid to other jurisdictions does not limit Taxpayer's use of the credit.

(3) As an exception to the general rule described in (2), taxpayers with foreign (non U.S.) source income and federal foreign tax credits may use the following alternative methodology to determine the portion of the Alabama income tax liability attributable to Alabama and non-Alabama sources. The taxpayer may multiply Alabama source taxable income by his or her effective Alabama income tax rate to determine the portion of his or her liability attributable to Alabama and therefore not creditable. For purposes of this calculation: the taxpayer's effective Alabama income tax rate equals the statutory rate of five percent (5%) multiplied by one (1) minus the taxpayer's effective federal income tax rate; the taxpayer's effective federal income tax rate equals the taxpayer's federal income tax liability before foreign

tax credit divided by his or her federal taxable income; and Alabama source income equals total Alabama adjusted gross income less income attributable to non-Alabama sources.

(a) Example. Taxpayer reports \$200,000 of adjusted gross income on his Alabama income tax return, of which \$30,000 is attributable to a foreign (non-U.S.) jurisdiction; his Alabama income tax liability before credit is \$8,500. Taxpayer's federal taxable income is also \$200,000; his federal income tax liability before subtracting any foreign tax credit is \$40,000. Taxpayer paid the foreign jurisdiction \$10,000 of income tax.

In determining the overall limit on the credit available for taxes paid to other jurisdictions, Taxpayer multiplies his Alabama source income of \$170,000 by his effective Alabama income tax rate. Taxpayer determines the effective Alabama income tax rate by multiplying the five percent (5%) statutory Alabama income tax rate by one minus his or her effective federal income tax rate. His effective federal income tax rate before foreign tax credit is twenty percent (20%) or  $(\$40,000 / \$200,000)$  and his Alabama effective tax rate is four percent (4%) or  $(5\% \times (1 - 20\%))$  or 80%). Taxpayer then multiplies his Alabama source income (\$170,000) by his effective Alabama income tax rate (4%), which equals \$6,800. The credit for tax paid to other jurisdictions cannot be used to reduce Taxpayer's liability below \$6,800. Taxpayer's credit for tax paid to other jurisdictions cannot exceed \$1,700  $(\$8,500 - \$6,800)$ .

(4) In addition to the methodologies described above, the taxpayer may use an alternative methodology by obtaining written approval from the Department before the original due date of the taxpayer's income tax return.

(5) This rule is applicable to tax years beginning on or after January 1, 2013.

Author: Brandee B. Tickle, CPA  
Authority: Sections 40-2A-7(a)(5), 40-18-21, Code of Alabama 1975  
History: