ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-27-1
MULTISTATE TAX COMPACT

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810-27-1-.01 Multistate Tax Compact Rule Definitions.

(1) *Scope*. These Rules are intended to set forth guidance concerning the application of the apportionment and allocation provisions of §40-27-1, Code of Ala. 1975, titled "Multistate Tax Compact". The apportionment guidelines set forth in these rules are applicable to any taxpayer having business income, regardless of whether or not it has nonbusiness income, and the allocation rules set forth in these rules are applicable to any taxpayer

having nonbusiness income, regardless of whether or not it has business income.

(a) The only exceptions to the allocation and apportionment guidelines contained in these rules are those allowed pursuant to the authority of §40-27-1, Code of Ala. 1975, and the rules promulgated there under.

(b) These rules are not intended to modify existing guidelines concerning jurisdictional standards. Business and Nonbusiness Income Defined.

(2) *Business and Nonbusiness Income Defined*. "Business income" was originally defined by §40-27-1, Code of Ala. 1975. This definition has been superseded by Act 2001-1113 which codified Code of Ala. 1975, §40-27-1.1 and provides that "business income" is income arising from or transactions activity in the taxpayer's trade or business. "Business income" also includes a gain or loss resulting from the sale, exchange, or other disposition of stock in another corporation if the activities of the other corporation were operationally related to the taxpayer's trade or business carried on in Alabama while the stock was owned by the taxpayer.

(a) Nonbusiness income means all income other than business income.

(b) The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., is of no aid in determining whether income is business or non-business income. Income of any type or class and from any source is business income if it arises from transactions or activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is "business income" or "nonbusiness income" is the identification of the transactions or activity which are the elements of a particular trade or business. In general all transactions or activities of the taxpayer which are dependent upon or contribute to the operations of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions or activity arising in the regular course of, and will constitute integral parts of, a trade or business.

(3) *Business and Nonbusiness Income: Application of Definitions.* The following are rules for determining whether particular income is business or nonbusiness income. Rents and Royalties from real and tangible

(a) *Rents and Royalties from real and tangible personal property*. Rental and royalty income from real and tangible property is business income if the property with respect to

which the income was received is used in the taxpayer's trade or business, or if the property while owned by the taxpayer was operationally related to the taxpayer's trade or business, or incidental thereto.

(b) *Gains or losses from sales of assets*. Gain or loss from the sale, exchange or other disposition of real property or of tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business, operationally related to the taxpayer's trade or business carried on in Alabama or operationally related to sources within Alabama, or the property was operationally related to sources outside this state and to the taxpayer's trade or business carried on in Alabama; or gain or loss resulting from the sale, exchange, or other disposition of stock in another corporation if the activities of the other corporation were operationally related to the taxpayer's trade or business carried on in Alabama while the stock was owned by the taxpayer.

(c) *Interest*. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to such trade or business operations.

(d) *Dividends*. Dividends are business income where the stock, with respect to which the dividends are received, arises out of or was acquired in the regular course of the taxpayer's trade or business operations, or where the purpose of acquiring and holding the stock is related to, or incidental to, such trade or business operations.

(e) *Patent and copyright royalties*. Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring or holding the patent or copyright is related to or incidental to such trade or business operations.

(4) *Proration of Deductions*. In most cases, an allowable deduction of a taxpayer will be applicable to only the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases, an allowable deduction may be applicable to business income or several items of nonbusiness income. In such cases, the deduction shall be prorated among those items of nonbusiness income in a manner which fairly distributes the deduction among the classes of income to which it is applicable. Any allowable deduction that is applicable both to business and nonbusiness income of the taxpayer shall be prorated

to each class of income in determining income subject to tax as provided below:

(a) *Interest Expense*. Interest expense shall be prorated to nonbusiness assets by multiplying total interest expense by the ratio of average cost of the nonbusiness assets to the average cost of the total assets. If any assets were acquired with stock of the taxpayer's corporation, the value of such assets to the extent attributed to the taxpayer's stock shall be excluded from the computations.

(b) *Other Expenses*. Other type expenses applicable both to business and nonbusiness income shall be prorated in such a manner as to equitably assign such expenses to business or nonbusiness categories, as appropriate.

(c) *Year to year consistency*. In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(d) *State to state consistency*. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under Article IV of this Compact or the Uniform Division of Income for Tax Purposes Act or §40-27-1.1, are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

Author: Holly H. Coon, Jennifer Reynolds, Christina Hall, CPA
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-57, 40-27-1.
History: **New Rule:** Filed May 11, 2016, effective June 25, 2016. **Amended:** Published February 28, 2022, effective April 14, 2022.

810-27-1-.02 Application Of Apportionment And Allocation.

(1) *Definitions*:

(a) Taxpayer. Any corporation, Subchapter K entity, firm, association, governmental unit or agency or other person acting as a business entity in more than one state, but does not include any individual.

(b) Apportionment refers to the division of net income between states by the use of a formula containing apportionment factors.

(c) Allocation refers to the assignment of nonbusiness income to a particular state.

(d) Business activity refers to the transactions or activity occurring in the regular course of a trade or business of a taxpayer or to the acquisition, management, and disposition of property that constitute integral parts of the taxpayer's trade or business operations or to the sale, exchange, or disposition of real property or tangible or intangible personal property or the sale, exchange or disposition of stock of another corporation. Income from business activity includes business and nonbusiness income.

(e) Employee means (A) any officer of a corporation, or (B) any individual who, under the usual common-1aw rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if included by an employer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, for purposes of determining a taxpayer's payroll factor, a leased employee is an employee of the client (lessee) organization. A leased employee is also treated as an employee of the employee leasing company.

(f) Gross Receipts are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange or property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction which produced business income, in which the income or loss is recognized (or would be recognized if the taxpayer were required to file a separate entity return) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold. Gross Receipts, even if business income, do not include such items as, for example:

1. Repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument.

2. The principal amount received under a repurchase agreement or other transaction properly characterized as a loan.

3. Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock.

4. Damages and other amounts received as the result of litigation.

5. Property acquired by an agent on behalf of another.

6. Tax refunds and other tax benefit recoveries.

7. Pension reversions.

8, Contributions to capital (except for sales of securities by securities dealers).

9. Income from forgiveness of indebtedness.

10. Amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code. Application:

(2) *Application:*

(a) *Apportionment*. If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined by apportionment in accordance with §40-27-1, Code of Ala. 1975.

(b) *Allocation*. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with §40-27-1.

(c) *Public utility election*. If a taxpayer has income from business activity as a public utility which is not permitted to allocate and apportion net income pursuant to § 40-27-1, Code of Ala. 1975, but derives more than 50 percent of income from business activities otherwise subject to this rule, the taxpayer may elect, with a timely filed original return, to allocate and apportion the entire net income as provided for in §40-27-1, Code of Ala. 1975. The taxpayer must determine "business income" in accordance with, §40-27-1.1, Code of Ala. 1975. If a taxpayer engaged in multistate business does not elect the reporting option available in this subparagraph or is not eligible to make the election then the taxpayer shall use separate (direct) accounting to determine income earned in this state.

(3) *Consistency and Uniformity in Reporting*: Year to year consistency. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
Author: Holly H. Coon, Christina Hall, CPA, Jennifer Reynolds
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-57), 40-27-1.
History: **New Rule:** Filed May 11, 2016, effective June 25, 2016.
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810-27-1-.09 Apportionment Formula.

(1) All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Code of Ala. 1975, §40-27-1, §40-27-1, Article IV.9, as amended.

(2) 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.

(3) For taxable years beginning on or after January 1, 2021, all business income shall be apportioned to this state by multiplying the income by the sales factor.

(4) For taxable years beginning before January 1, 2021, the elements of the apportionment formula include the property factor, the payroll factor and the sales factor. 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 as provided for in §40-27-1, Article IV.18 and any rules promulgated thereunder.

(a) For taxable years beginning on or after December 31, 2010 and taxable years beginning on or before January 1, 2021. The apportionment formula gives double-weight to the sales factor and equal weight to both the property and payroll factors.

1. EXAMPLE: Company A is a multistate entity which does business both within and without of Alabama. Company A shall apportion its income using the apportionment formula as follows:

	Alabama	**Everywhere**
Property	500,000	600,000
Payroll	1,500,000	2,000,000
Sales	2,500,000	7,000,000

Company A 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% X 2) Sum of Factor Percentages 229.7619%

Divide by Number of Factors Used ÷ 4

Apportionment Factor Average

Percentage: 57.4405%

2. EXAMPLE: Company B is a multistate entity which does business both within and without of Alabama. Company B has property and sales within Alabama but does not have any payroll within Alabama. Therefore, Company B shall eliminate the payroll factor and reduce the denominator. Company B shall apportion its income by doing the following:

	Alabama	**Everywhere**
Property	500,000	600,000
Payroll	0	0
Sales	2,500,000	7,000,000

Company B 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%

(b) For taxable years beginning prior to December 31, 2010, the sales factor was evenly weighted with property factor and payroll factor in calculating a taxpayer's apportionment factor in Alabama.

Author: Kathleen F. Abrams, Holly H. Coon
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-57, 40-27-1.
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810-27-1-.10 Property Factor.

(1) ***Property Factor: In General.*** The property factor of the apportionment formula for each trade or business of the taxpayer shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of the trade or business. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property used in connection with the production of business income but does not include coin or currency. Property used in connection

with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent that the property is used in the regular course of the taxpayer's trade or business. The method of determining that portion of the value to be included in the factor will depend upon the facts of each case. The property factor shall include the average value of property includable in the factor.

(2) ***Property Factor: Property Used for the Production of Business Income*. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, (except inventoriable goods in process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time (normally, five years) during which the property is no longer held for use in the trade or business.**

(a) EXAMPLE: Taxpayer closed its manufacturing plant in State X and held the property for sale. The property remained vacant until its sale one year later. The value of the manufacturing plant is included in the property factor until the plant is sold.

(b) EXAMPLE: Same as above except that the property was rented until the plant was sold. The plant is included in the property factor until the plant is sold.

(c) EXAMPLE: Taxpayer closed its manufacturing plant and leased the building under a five-year lease. The plant is included in the property factor until the commencement of the lease.

(d) EXAMPLE: The taxpayer operates a chain of retail grocery stores. Taxpayer closed Store A, which was then remodeled into three small retail stores such as a dress shop, dry cleaning, and barber shop, which were leased to unrelated parties. The

property is removed from the property factor on the date on which the remodeling of Store A commenced. .

(3) **Property Factor: Consistency in Reporting.**

(a) *Year to year consistency*. In filing an Alabama return, if the taxpayer departs from or modifies the manner of valuing property or of excluding property from or including property in the property factor used in returns for prior years, the taxpayer shall disclose in the Alabama return for the current year the nature and extent of the modification. State to state consistency

(b) *State to state consistency*. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the valuation of property and in the exclusion of property from or the inclusion of property in the property factor, the taxpayer shall disclose in its return to Alabama the nature and extent of the variance.

(4) ***Property Factor: Numerator.*** The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in Alabama during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without Alabama during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

(5) Applicability:

(a) For tax periods beginning on or after January 1, 2021, the property factor is no longer considered in calculating a taxpayer’s Alabama apportionment factor.

(b) The provisions of this rule are applicable for tax periods beginning on or after January 1, 2021, when:

1. A taxpayer petitions and is granted approval from the department to employ an alternative apportionment method in accordance with 40-27-1, Code of Ala. 1975.

2. Measuring against nexus thresholds pursuant to §40-18-31.2, Code of Ala. 1975.

Author: Holly H. Coon, Jennifer Reynolds, Christina Hall, CPA, Kathleen Abrams
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-57.
History: **New Rule:** Filed May 11, 2016, effective June 25, 2016. **Amended:** Published February 28, 2022, effective April 14, 2022.

810-27-1-.11 Property Factor: Valuation.

(1) *Property Factor: Valuation of Owned Property.*

(a) Property owned by the taxpayer shall be valued at its original cost. As a general rule, "original cost" is deemed to be the basis of the property at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc. However, intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes. See §40-18-6, Code of Ala. 1975, and the rules promulgated thereunder for basis determination rules.

1. EXAMPLE: The taxpayer acquired a factory building in Alabama at a cost of $500,000 and, 18 months later, expended $100,000 for major remodeling of the building. Taxpayer files its return for the current taxable year on the calendar-year basis. Depreciation deduction in the amount of $22,000 was claimed with respect to the building on the return for the current taxable year. The value of the building includable in the numerator and denominator of the property factor is $600,000; the depreciation deduction is not taken into account in determining the value of the building for purposes of the factor.

2. EXAMPLE: During the current taxable year, Corporation X merges into Corporation Y in a tax-free reorganization under the Internal Revenue Code. At the time of the merger, Corporation X owns a factory which X built five years earlier at a cost of $1,000,000. X has been depreciating the factory at the rate of two percent per year, and its basis in X's hands at the time of the merger is $900,000. Since the property is acquired by Y in a transaction in which, under the Internal Revenue

Code, its basis in Y's hands is the same as its basis in X's hands, Y includes the property in Y's property factor at X's original cost, without adjustment for depreciation, i.e. $1,000.000.

3. EXAMPLE: Corporation Y acquires the assets of Corporation X in a liquidation by which Y is entitled to use its stock cost as the basis of the X assets under Internal Revenue Code 1954, §334(b)(2) (i.e. stock possessing 80 percent control is purchased and liquidated within two years). Under these circumstances, Y's cost of the assets is the purchase price of the X stock, prorated over the X assets. If the original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

(b) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

(c) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.

(2) *Property Factor: Valuation of Rented Property*.

(a) *Multiplier and Subrentals*. Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property less the aggregate annual subrental rates paid by subtenants of the taxpayer. (See Rule 810-27-1-.18(3)) for special rules when the use of such net annual rental rate produces a negative or clearly inaccurate value or when property is used by the taxpayer at no charge or is rented at a nominal rental rate.) Subrents are not deducted when they constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly there is no reduction in its value.

1. EXAMPLE: The taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Since the subrents are business income, they are not deducted from rent paid by the taxpayer for the food market.

2. EXAMPLE: The taxpayer rents a 5-story office building primarily for use in its multistate business, uses three floors for its offices and subleases two floors to various other businesses on a short-term basis because it anticipates it will need those two floors for future

expansion of its multistate business. The rental of all five floors is integral to the operation of the taxpayer's trade or business. Since the subrents are business income, they are not deducted from the rent paid by the taxpayer.

3. EXAMPLE: The taxpayer rents a 20-story office building and uses the lower two stories for its general corporation headquarters. The remaining 18 floors are subleased to others. The rental of the eighteen floors is not incidental to but rather is separate from the operation of the taxpayer's trade or business. Since the subrents are nonbusiness income they are to be deducted from the rent paid by the taxpayer.

(b) Annual rental rate. The amount paid as rental for property for a 12-month period (i.e., the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

1. EXAMPLE: Taxpayer A, which ordinarily files its returns based on a calendar year, is merged into Taxpayer B on April 30. The net rent paid under a lease with 5 years remaining is $2,500 a month. The rent for the tax period January 1 to April 30 is $10,000. After the rent is annualized the net rent is $30,000 ($2,500 x 12).

2. EXAMPLE: Same facts as in Example 1. except that the lease would have terminated on August 31. In this case, the annualized rent is $20,000 ($2,500 x 8).

(c) Annual rent. The actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

1. Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(i) EXAMPLE: A taxpayer, pursuant to the terms of a lease, pays a lessor $1,000 per month as a base rental and at the end of the year pays the lessor one percent of its gross sales of $400,000. The annual

rent is $16,000 ($12,000 plus one percent of $400,000 or $4,000).

2. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

(i) EXAMPLE: A taxpayer, pursuant to the terms of a lease, pays the lessor $12,000 a year rent plus taxes in the amount of $2,000 and interest on a mortgage in the amount of $1,000. The annual rent is $15,000.

(ii) EXAMPLE: A taxpayer stores part of its inventory in a public warehouse. The total charge for the year was $1,000 of which $700 was for the use of storage space and $300 for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is $700.

(d) *Exclusions*: Annual rent does not include:

1. Incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

2. Royalties. Based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property which constitutes a sharing of current or future production of natural resources from such property, irrespective of the method of payment or how such consideration may be characterized, whether as a royalty, advance royalty, rental or otherwise.

(e) Leasehold improvements. For the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements, or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor. Factor: Under Completed Contract Method of

(3) *Factor: Under Completed Contract Method of Accounting*.

(a) Taxpayers using the completed contract method of accounting shall assign the values of property owned and utilized in the performance of such contracts to Alabama in

the ratio of gross receipts from contracts completed in Alabama during the tax period to gross receipts from all completed contracts during the tax period. Such property not utilized in the performance of the completed contracts shall be assigned as otherwise provided in this rule.

(d) For property rented and utilized in the performance of completed contracts, such property shall be valued at eight (8) times the rental rate for the completed contract period.

(4) Applicability:

(a) For tax periods beginning on or after January 1, 2021, the property factor is no longer considered in calculating a taxpayer's Alabama apportionment factor.

(b) The provisions of this rule are applicable for tax periods beginning on or after January 1, 2021, when:

1. A taxpayer petitions and is granted approval from the department to employ an alternative apportionment method in accordance with §40-27-1, Code of Ala. 1975.

2. Measuring against nexus thresholds pursuant to §40-18-31.2, Code of Ala. 1975.

Author: Holly H. Coon, Jennifer Reynolds, Christina Hall, CPA, Kathleen Abrams
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810-27-1-.12 Property Factor: Averaging Property Values.

(1) As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the Commissioner may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

(a) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or if property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

1. EXAMPLE: The monthly value of the taxpayer's property was as follows:

January	$2,000	July	$15,000
February	2,000	August	17,000

March	3,000	September	23,000
April	3,500	October	25,000
May	4,500	November	13,000
June	10,000	December	2,000
	$25,000		$95,000
		Total	120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$$\frac{\$120,000}{12} = \$10,000$$

(b) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property as set forth in Rule 810-27-1-.11.

(2) Applicability.

(a) For tax periods beginning on or after January 1, 2021, the property factor is no longer considered in calculating a taxpayer's Alabama apportionment factor.

(b) The provisions of this rule are applicable for tax periods beginning on or after January 1, 2021, when:

1. A taxpayer petitions and is granted approval from the department to employ an alternative apportionment method in accordance with §40-27-1, Code of Ala. 1975.

2. Measuring against nexus thresholds pursuant to §40-18-31.2, Code of Ala. 1975.

Author: Holly H. Coon, Jennifer Reynolds, Christina Hall, CPA, Kathleen Abrams
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-57.
History: **New Rule:** Filed May 11, 2016, effective June 25, 2016. **Amended:** Published February 28, 2022, effective April 14, 2022.

810-27-1-.13 Payroll Factor: In General.

(1) The payroll factor of the apportionment formula for each trade or business of the taxpayer shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(2) Definitions: For purposes of Rule 810-27-1-.13, the following terms have the following meanings unless the context requires otherwise.

(a) Employee. Any person who, under the usual common-1aw rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be presumed to be an employee if such person is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, for purposes of this rule, a leased employee is an employee of the client (lessee) organization. A leased employee is also treated as an employee of the employee leasing company.

(b) Employee Leasing Company. A business that contracts with a client company to supply workers to perform services for the client company. The term "employee leasing company" does not include private employment agencies that provide workers to employers on a temporary help basis or entities such as driver-1easing companies which lease employees to another business to perform a specific service unless the total amount of compensation paid to the employee leasing company during the tax period exceeds 5% of compensation paid everywhere during the tax period. This threshold should be calculated excluding the amount of compensation paid to the employee leasing company.

(c) Independent contractor. Any person who performs services for a taxpayer but who is not an employee of the taxpayer, and who is not otherwise subject to the supervision or control of the taxpayer in the performance of the services. In general, a person is treated as an independent contractor with respect to a taxpayer if that person's actions would not represent an employer- employee relationship for federal tax purposes.

(3) The total amount paid to employees: The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, compensation paid to employees may, at the election of the taxpayer, be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under that method for unemployment compensation purposes. The compensation of any employee on account of activities which are connected with the production of nonbusiness income shall be excluded from the factor.

(4) Payroll Factor: Denominator: The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, Public Law 86- 272, is included in the denominator of the payroll factor.

(a) EXAMPLE: A taxpayer has employees in its state of legal domicile (State A) and is taxable in State B. In addition the

taxpayer has other employees whose services are performed entirely in State C where the taxpayer is exempt from taxation under the provisions of Public Law 86 272. As to these latter employees, the compensation will be assigned to State C where their services are performed (i.e., included in the denominator but not the numerator of the payroll factor) even though the taxpayer is not taxable in State C.

(5) Payroll Factor: Numerator. The numerator of the payroll factor is the total amount paid in Alabama during the tax period by the taxpayer for compensation in the production of business income. The tests in §40-27-1, Code of Ala. 1975, Rule 810-27-1-.14 should be applied in determining whether compensation is paid in Alabama.

(6) Items Included: Compensation in the payroll factor includes wages, salaries, commissions, and any other form of remuneration paid to employees for personal services rendered.

(7) Treatment of Leased and Temporary Employees:

(a) Leased Employees. Compensation paid for personal services rendered by leased employees is includible in the payroll factor of the taxpayer if the taxpayer is the recipient of the services of the leased employee. Compensation for personal services rendered by leased employees to client companies is also included in the payroll factor of employee leasing companies.

(b) Temporary Employees. Compensation paid for personal services rendered to client companies by employees of temporary help agencies is included in the payroll factor of the temporary agency and is generally excluded from the payroll factor of the client company. If compensation paid to temporary employees is included in the payroll factor of a client company (see subparagraph (2)(b)), such compensation shall be eighty-five percent of the payments during the taxable year by the client company to the temporary help agency or agencies providing the temporary employees. Any adjustment to the payroll factor of a client company shall not affect the payroll factor of the temporary help agency or agencies providing the temporary employees.

(8) Items Excluded: For purposes of the payroll factor, compensation excludes payments that are not made by a taxpayer to its employees for personal services rendered. The following items are excluded without limitation:

(a) Payments to or on behalf of employees (including amounts paid for insurance or annuities) for sickness or accident disability, hospitalization, or death.

(b) Payments to or from qualified trusts under 26 U.S.C. §401(a) (other than employer contributions under qualified

cash or deferred arrangements as defined in 26 U.S.C. §401(k)), payments to or from qualified annuity plans or contracts under 26 U.S.C. §403, and payments to or from simplified employee pensions under 26 U.S.C. §408(k).

(c) Employer's payments of employee's FICA taxes.

(d) Tips paid in any medium other than cash, and cash tips which are less than $20 a month and not reported to the employer pursuant to 26 U.S.C. §6053(a).

(e) Non-cash payments to employees for services not in the course of the taxpayer's trade or business.

(f) Payments made to independent contractors, retirees, or other persons not properly classified as employees.

(9) Affiliated Corporations. In order to prevent distortions in the payroll factor, the Commissioner may require compensation paid to a related member's employee to be included in the payroll factor of a taxpayer regardless of which entity actually paid the compensation or if the related member was reimbursed if there is evidence that a related member's employees provided services to or maintained the property of a taxpayer and the payroll factor is inconsistent with the other components of the apportionment factor. A related member is any person considered a "related member" pursuant to, §40-18-1; Code of Ala. 1975.

(10) Payroll Consistency: A taxpayer must use the same rules for determining compensation paid in both the numerator and the denominator of the payroll factor. If a taxpayer changes its method of determining compensation paid, including, but not limited to, its method of accounting of such compensation, from the method used in its return for the prior year, the taxpayer must disclose in the return for the current year the presence of the change, the nature and extent of the change, and the reason for the change. The Commissioner may disregard changes in the current year or in future tax years if they have not been adequately disclosed.

(11) *Payroll Factor: Under the Completed Contract Method of Accounting: For taxpayers utilizing the completed contract method of accounting, the payroll factor shall include all payroll costs attributed to the contracts completed during the tax period. Payroll costs not directly attributed to the completed contract projects, such as administrative salaries, shall be reported as otherwise provided in this rule.*

(12) Applicability:

(a) For tax periods beginning on or after January 1, 2021, the payroll factor is no longer considered in calculating a taxpayer's Alabama apportionment factor.

(b) The provisions of this rule are applicable for tax periods beginning on or after January 1, 2021, when:

1. A taxpayer petitions and is granted approval from the Commissioner to employ an alternative apportionment method in accordance with §40-27-1, Code of Ala.1975.

2. Measuring against nexus thresholds pursuant to §40-18-31.2, Code of Ala. 1975.

Author: Holly H. Coon, Jennifer Reynolds, Christina Hall, CPA, Kathleen Abrams
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-57; U.S.C. §401,26 U.S.C. §401(k), U.S.C. §403, 26 U.S.C. §408(k), 26 U.S.C. §6053.
History: **New Rule:** Filed May 11, 2016, effective June 25, 2016.
Amended: Published February 28, 2022, effective April 14, 2022.

810-27-1-.14 **Payroll Factor: Compensation Paid In This State.**

(1) Compensation is paid in Alabama if any one of the following tests, applied consecutively, are met if:

(a) The employee's service is performed entirely within Alabama.

(b) The employee's service is performed both within and outside Alabama, but the service performed outside of Alabama is incidental to the employee's service within Alabama. Service is "incidental" when it is temporary or transitory in nature, or when the service is rendered in connection with an isolated transaction.

(c) The employee's services are performed both within and outside of Alabama, the employee's compensation will be attributed to Alabama if:

1. the employee's base of operations is in Alabama; or

2. there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in Alabama; or

3. the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in Alabama.

(i) The "place from which the service is directed or controlled" is the place from which the power to direct or control is exercised by the taxpayer.

(ii) The "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points.

(2) The payroll factor should be determined in accordance with Rule 810-27-1-.13.
Author: Holly H. Coon
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-57.
History: **New Rule:** Filed May 11, 2016, effective June 25, 2016.

810-27-1-.15 Sales Factor.

(1) *Sales Factor: In General.*

(a) Code of Ala. 1975, §40-27-1, Article IV.1(g) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under paragraphs through (8) of §40-27-1, Article IV.1(g). Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term "sales" means all gross receipts derived by the taxpayer from transactions or activity in the regular course of the trade or business. The following are rules for determining "sales" in various situations:

1. In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if the taxes are passed on to the buyer or included as part of the selling price of the product.

2. In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost plus the fee.

3. In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency or the performance of equipment service contracts or research and development contracts, "sales" includes the gross receipts from the performance of such services, including fees, commissions, and similar items.

4. In the case of a taxpayer engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.

5. In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

6. If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(b) *Exceptions*. In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to Alabama the income of the taxpayer's trade or business. See Rule 810-27-1-.18(4).

(c) *Year to year consistency*. In filing returns with Alabama, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(2) *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 Rule 810-27-1-.18(4).

(3) *Sales Factor: Numerator*. The numerator of the sales factor shall include gross receipts from sales attributable to Alabama and derived by the taxpayer from transactions or activity in the regular course of its trade or business. All interest income, service charge, carrying charges, or time-price differential charges incidental to such gross receipts shall be included regardless of (1) the place where the accounting records are

maintained or (2) the location of the contract or other evidence of indebtedness.

(4) *Sales Factor: Under the Completed Contract Method of Accounting*. For taxpayers utilizing the completed contract method of reporting income, the receipts from such contracts completed during the tax period shall be included in the sales factor. Other receipts not directly attributable to the completed contracts shall be included in the sales factor as otherwise provided in this rule.
Author: Holly H. Coon
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-57.
History: **New Rule:** Filed May 11, 2016, effective June 25, 2016.

810-27-1-.16 Sales Factor: Tangible Personal Property.

(1) *Sales Factor: Sales of Tangible Personal Property in this State*.

(a) Gross receipts from sales of tangible personal property (except sales to the United States Government are in this state; see subparagraph (b)) are in this state:

1. If the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale.

2. For tax periods beginning before January 1, 2021, if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

(b) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

1. EXAMPLE: The taxpayer, with inventory in State A, sold $100,000 of its products to a purchaser having branch stores in several states, including this state. The order for the purchase was placed by the purchaser's central purchasing department located in State B. $25,000 of the purchase order was shipped directly to purchaser's branch store in this state. The branch store in this state is the purchaser within this state with respect to $25,000 of the taxpayer's sales.

(c) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even

though the property is subsequently transferred by the purchaser to another state.

1. EXAMPLE: The taxpayer makes a sale to a purchaser who maintains a central warehouse in this state at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's warehouse in this state constitute property delivered or shipped to a purchaser within this state.

(d) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

1. EXAMPLE: A taxpayer in this state sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in this state pursuant to purchaser's instructions. The sale by the taxpayer is in this state.

(e) When property being shipped by a seller from the state of origin to a consignee in another state is en route diverted while to a purchaser in this state, the sales are in this state.

1. EXAMPLE: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the en routepurchaser's place of business in State B. While , the produce is diverted to the purchaser's place of business in this state in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to this state.

(f) For tax periods beginning before January 1, 2021, if the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

1. EXAMPLE: The taxpayer has its head office and factory in State A. It maintains a branch office and inventory in this state. Taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in this state for approval and are filled by shipment from the inventory in this state. Since the taxpayer is immune under Public Law 86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to

this state, the state from which the merchandise was shipped.

(g) For tax periods beginning before January 1, 2021, if a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

1. If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

2. If the taxpayer is not taxable in the state from which the property is shipped, then the sale is in this state.

(i) EXAMPLE: The taxpayer in this state sold merchandise to a purchaser in State A. Taxpayer is not taxable in State A. Upon direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the sale is in State B. If the taxpayer is not taxable in State B, the sale is in this state.

(2) *Sales Factor: Sales of Tangible Personal Property to United States Government in this State*.

(a) For the purposes of this rule, only sales for which the United States Government makes a direct payment to the seller pursuant to the terms of a contract constitute as sales to the United States Government.

1. A sale by a subcontractor to the primary contractor that holds a contract with the United States Government, does not constitute as sales to the United States Government.

(i) EXAMPLE: The taxpayer, as a subcontractor to a primary contractor with the National Aeronautics and Space Administration, contracts to build a component of a rocket for $1,000,000. The sale by the subcontractor to the primary contractor is not a sale to the United States Government.

(b) The following applies to tax periods beginning before January 1, 2021.

1. Gross receipts from sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store,

warehouse, factory, or other place of storage in this state.

(i) EXAMPLE: A taxpayer contracts with General Services Administration to deliver X number of trucks which were paid for by the United States Government. The sale is a sale to the United States Government.

2. When the United States Government is the purchaser of property which remains in the possession of the taxpayer in this state for further processing under another contract, or for other reasons, "shipment" is deemed to be made at the time of acceptance by the United States Government.

Author: Kathleen Abrams, Holly H. Coon, Christina Hall, CPA, Jennifer Reynolds
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-57.
History: **New Rule:** Filed May 11, 2016, effective June 25, 2016. **Amended:** Published February 28, 2022, effective April 14, 2022.

810-27-1-.17 **Sales Factor: Sourcing Sales Derived From Services Rendered To Individual And Unrelated Business Customers.**

(1) Effective for tax years beginning after December 31, 2010, §40-27-1, Code of Ala. 1975, has been amended to state that sales other than sales of tangible personal property are to be sourced to this state if the taxpayer's market for the sale is in this state. For previous tax years, §40-27-1, Code of Ala. 1975, sourced these sales to this state if the "income producing activity" was performed in this state based on "cost of performance". This rule 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. This rule interprets when and to what extent a service will be considered delivered to a location in this state under certain situations.

(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. 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.

2. Services delivered to customers which are individuals with an Alabama billing address that are not direct personal services should be sourced to this state.

(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.

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 conspicuously note on the return that an alternate approach was utilized for sourcing its sales. If the taxpayer fails to make such a conspicuous disclosure on the return, it will be deemed the taxpayers consent to the sourcing as detailed in subparagraph 1. or 2. above as applicable. Although not required, it is highly recommended that in addition to the conspicuous notation required above, the taxpayer 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.

1. A business enterprise is affiliated with the taxpayer if it is a related member pursuant to, §40-18-1(29), Code of Ala. 1975. "Business enterprise" includes any person other than an individual.

2. 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.

3. To the extent a service is provided to an unrelated business enterprise and the service being provided does not have a substantial connection to a specific geographic location, sales from services delivered to unrelated business enterprises, commercially domiciled in Alabama, should be sourced to Alabama. A business

enterprise is commercially domiciled in Alabama if its principal place of business is in Alabama. If the "Principal place of business" or the nerve center of the business is unknown or it is cost prohibitive to determine, the taxpayer should source the sale to the "Principal Address" of the entity as noted on the public records of the corporations section of the Alabama Secretary of State or the equivalent in the taxpayer's state of domicile.

(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.

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 conspicuously note on the return that an alternate approach was utilized for sourcing its sales. If the taxpayer fails to make such a conspicuous disclosure on the return, it will be deemed the taxpayer's consent to the sourcing as detailed in subparagraph 2. or 3. above as applicable. Although not required, it is highly recommended that in addition to the conspicuous notation required above, the taxpayer 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.

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

1. Example: Law Firm Inc. prepares a bond opinion for refinancing the corporate debts of Corporation A, a multi-state corporation commercially domiciled in Alabama. Law Firm Inc. mails the opinion 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.

(d) 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 H. Coon, Christina Hall, CPA, Jennifer Reynolds
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-27-1.
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810-27-1-.18 Special Rules.

(1) Special Rules: In General. If the allocation and apportionment provisions of §40-27-1, Code of Ala. 1975, do not fairly represent the extent of the taxpayer's business activity in Alabama, the taxpayer may petition for or the Commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(2) Taxpayer petition to employ an alternative method of allocation or apportionment:

(a) Before a taxpayer may employ the use of an alternative method of allocation or apportionment on a return a taxpayer must file a petition and such petition must have been approved or denied by the Department.

(b) All petitions must be in written form and submitted directly to the attention of the Department Secretary. A petition attached to an original or amended return will not be considered a valid petition. Should the Department process an original or amended return which uses an unapproved alternative method, such action should not be construed as the Department's acceptance of the taxpayer's proposed alternative method.

(c) To the extent approved, the Department will notify the taxpayer, in writing, that an alternative method has been approved. The taxpayer may then file an amended or original return utilizing the approved alternative method.

(d) Proposed alternative methods not approved within ninety (90) days of the post mark date of the petition, described in subparagraph (b), are denied unless the taxpayer and the Department agree in writing to extend this period.

1. A taxpayer wishing to appeal the denial of a petition should file an amended return using the proposed alternative method. If such return constitutes a petition for refund, such refund petition must be filed in accordance with the time period prescribed by §40-2A-7, Code of Ala. 1975. A taxpayer may file such petition for refund prior to the Department's notification in this subparagraph (d) if there is less than ninety-one days remaining to timely file such petition for refund in accordance with the time periods provided by §40-2A-7, Code of Ala. 1975. The taxpayer may appeal its denial or deemed denial of its petition for refund, as applicable, either to the Alabama Tax Tribunal or Circuit Court as provided in §40-2A-7(c)(5), Code of Ala. 1975.

2. Taxpayers may not use an unapproved alternative method on an original return.

(e) The petition and approval requirements of this subparagraph (e) do not apply to situations where the Department and the taxpayer agree to an alternative allocation or apportionment methodology as part of an audit resolution.

(3) Special Rules: Payroll Factor. If the petition to employ an alternative apportionment method includes the addition of the payroll factor, Rules 810-27-1-.13 and 810-27-1-.14 apply.

(4) Special Rules: Property Factor. If the petition to employ an alternative apportionment method includes the addition of the

property factor, Rules 810-27-1-.10, 810-27-1-.11, and 810-27-1-.12 apply and the following special rules are established in respect to the property factor of the apportionment formula:

(a) If the subrents taken into account in determining the net annual rental rate under Section 40-27-1, Article IV.11, Code of Ala. 1975, or any rules promulgated thereunder produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the Commissioner or requested by the taxpayer.

1. In no case, however, shall the value be less than an amount which bears the same ratio to the annual rental rate paid by the taxpayer for the property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.

EXAMPLE: The taxpayer rents a 10-story building at an annual rental rate of $1,000,000. Taxpayer occupies two stories and sublets eight stories for $1,000,000 a year. The net annual rental rate of the taxpayer must not be less than two-tenths of the taxpayer's annual rental rate for the entire year, or $200,000.

(b) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for the property.

(5) Special Rules: Sales Factor. The following special rules are established in respect to the sales factor of the apportionment formula:

(a) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless their exclusion would materially affect the amount of income apportioned to Alabama. For example, the taxpayer ordinarily may include in or exclude from the sales factor gross receipts from transactions such as the sale of office furniture, business automobiles, etc.

(b) Where gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions under §40-27-1, Code of Ala. 1975, or any rules promulgated thereunder, such gains or losses shall be treated as provided in this subparagraph. This subparagraph does not provide rules relating to the treatment of other receipts produced from holding or managing such assets. If a taxpayer holds liquid assets in connection with one or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net

gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of this subparagraph, each treasury function will be considered separately.

1. For purposes of subparagraph (b), a liquid asset is an asset (other than functional currency or funds held in bank accounts) held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include foreign currency (and trading positions therein) other than functional currency used in the regular course of the taxpayer's trade or business; marketable instruments (including stocks, bonds, debentures, options, warrants, futures contracts, etc.); and mutual funds which hold such liquid assets. An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation which is unitary with the taxpayer, or which has a substantial business relationship with the taxpayer is not considered marketable stock.

2. For purposes of subparagraph (b), a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, business acquisitions, etc. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

3. Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

(6) Special Rules: Adoption of Multistate Tax Commission Special Industry Rules. In the case of certain industries, the general provisions of §40-27-1, Code of Ala. 1975, and the rules promulgated thereunder in respect to the apportionment formula do not set forth appropriate procedures for determining a taxpayer's business activity in Alabama.

(a) The following Alabama administrative rules will provide the appropriate procedures to determine the industries' property, payroll, and sales attributable to Alabama:

1. Airlines - 810.27-1-.18.01

2. Construction Contractors - 810-27-1-.18.02

3. Publishing - 810-27-1-.18.03

4. Railroads - 810-27-1-.18.04

5. Television and Radio Broadcasting - 810-27-1-.18.05

6. Trucking - 810-27-1-.18.06

7. Telecommunications and Ancillary Service Providers - 810-27-1-.18.07

(b) All business income shall be apportioned to Alabama in accordance with the calculation provided in §40-27-1, Code of Ala. 1975, and Rule 810-27-1-.09.

(c) Nexus Determination: A business, whose property, payroll and sales attributable to Alabama are determined by a special rule shall also consistently apply such rule when measuring against nexus thresholds pursuant to §40-18-31.2, Code of Ala. 1975.

Author: Kathleen Abrams, Holly H. Coon, Christina Hall, CPA, Jennifer Reynolds
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-27-1, 40-18-57.
History: **New Rule:** Filed May 11, 2016; effective June 25, 2016.
Amended: Filed October 6, 2016; effective November 20, 2016.
Amended: Published February 28, 2022, effective April 14, 2022.

810-27-1-.18.01 Special Rules: Airlines.

(1) In General. Where an airline has income from sources both within and without Alabama, the amount of business income from sources within Alabama shall be determined pursuant to §§40-27-1 and 40-27-1.1, Code of Ala. 1975, except as modified by this rule.

(a) Apportionment of Business Income. Business income is determined in accordance with §40-27-1.1, Code of Ala. 1975.

(b) All business income must be apportioned to Alabama in accordance with the calculation provided in §40-27-1, Code of Ala. 1975, and Rule 810-27-1-09.

1. For tax periods beginning on or after January 1, 2021, the property factor and the payroll factor are no longer considered in calculating a taxpayer's Alabama apportionment factor.

2. The industry specific definitions and guidance provided in this rule for property and payroll are

applicable for tax periods beginning on or after January 1, 2021, when:

(i) A taxpayer petitions and is granted approval from the department to employ an alternative apportionment method in accordance with 40-27-1, Code of Ala. 1975.

(ii) Measuring against nexus thresholds pursuant to §40-18-31.2, Code of Ala. 1975.

(2) General Definitions. The following definitions are applicable to the terms used in the apportionment factor descriptions.

(a) "Value" of owned real and tangible personal property shall mean its original cost. (See Section 40-27-1, Article IV.11, Code of Ala. 1975, and Alabama Rule 810-27-1-.11)

(b) "Cost of aircraft by type" means the average original cost or value of aircraft by type which are ready for flight.

(c) "Original cost" means the initial federal tax basis of the property plus the value of capital improvements to such property, except that, for this purpose, it shall be assumed that Safe Harbor Leases are not true leases and do not affect the original initial federal tax basis of the property. (See Rule 810-27-1-.11)

(d) "Average value" of the property means the amount determined by averaging the values at the beginning and ending of the income year, but the Commissioner may require the averaging of monthly values during the income year if such averaging is necessary to reflect properly the average value of the airline's property. (See §40-27-1, Code of Ala. 1975, and Alabama Rule 810-27-1-.12)

(e) The "value" of rented real and tangible personal property means the product of eight (8) times the net annual rental rate. (See §40-27-1, Code of Ala. 1975, and Rule 810-27-1-.11)

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer.

(g) "Property used during the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(h) "Aircraft ready for flight" means aircraft owned or acquired through rental or lease (but not interchange) which are in the possession of the taxpayer and are available for service on the taxpayer routes.

(i) "Revenue service" means the use of aircraft ready for the production of revenue.

(j) "Transportation revenue" means revenue earned by transporting passengers, freight and mail as well as revenue earned from liquor sales, pet crate rentals, etc.

(k) "Departures" means, for purposes of these rules, all takeoffs, whether they be regularly scheduled or charter flights, that occur during revenue service.

(3) Sales (Transportation Revenue) Factor. The transportation revenue derived from transactions or activities in the regular course of the trade or business of the taxpayer and miscellaneous sales of merchandise, etc., are included in the denominator of the revenue factor. (See §40-27-1.1, Code of Ala. 1975, and Rule 810-27-1-.01) Passive income items such as interest, rental income, dividends, etc., will not be included in the denominator nor will the proceeds or net gains or losses from the sale of aircraft be included. 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 is the result of the following calculation: The ratio of departures of aircraft in Alabama weighted as to the cost and value of aircraft by type, as compared to total departures similarly weighted multiplied by the total transportation revenue. The product of this calculation is to be added to any non-flight revenues directly attributable to Alabama.

(4) Property Factor. The following applies for tax years prior to January 1, 2021, or if the taxpayer is granted approval from the Commissioner to employ an alternative apportionment method that includes the use of the property factor.

(a) Property valuation. Owned aircraft shall be valued at its original cost and rented aircraft shall be valued at eight (8) times the net annual rental rate in accordance with Alabama Rule 810-27-1-.11. The use of the taxpayer's owned or rented aircraft in an interchange program with another air carrier will not constitute a rental of such aircraft by the airlines to the other participating airline. Such aircraft shall be accounted for in the property factor of the owner. Parts and other expendables, including parts for use in contract overhaul work, will be valued at cost.

(b) 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.

(c) Determining the numerator of the property factor. In determining the numerator of the property factor, all property except aircraft ready for flight shall be included in the

numerator of the property factor in accordance with Section 40-27-1, Code of Ala. 1975, inclusive. Aircraft ready for flight shall be included in the numerator of the property factor in the ratio calculated as follows: Departures of aircraft from locations in Alabama weighted as to the cost and value of aircraft by type compared to total departures similarly weighted.

(5) The Payroll Factor. The following applies for tax years prior to January 1, 2021, or if the taxpayer is granted approval from the Commissioner to employ an alternative apportionment method that includes the use of the payroll factor. The denominator of the payroll factor is the total compensation paid everywhere by the taxpayer during the income year. 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 non-flight personnel, compensation paid to such employees shall be included in the numerator as provided. With respect to flight personnel (the air crew aboard an aircraft assisting in the operations of the aircraft or the welfare of passengers while in the air), compensation paid to such employees shall be included in the ratio of departures of aircraft from locations in this state, weighted as to the cost and value of aircraft by type compared to total departures similarly weighted, multiplied by the total flight personnel compensation.

(6) Records. The taxpayer must maintain the records necessary to arrive at departures by type of aircraft as used in these rules. Such records are to be subject to review by the respective state taxing authorities or their agents.
Author: Kathleen Abrams, Holly H. Coon
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5); 40-18-57.
History: **New Rule:** Filed October 6, 2016; effective November 20, 2016. **Amended:** Published February 28, 2022, effective April 14, 2022.

810-27-1-.18.02 Special Rules: Construction Contractors.

The following special rules are established in respect to the apportionment of income of long-term construction contractors:

(1) In General. When a taxpayer elects to use the percentage of completion method of accounting, or the completed contract method of accounting for long-term contracts (construction contracts covering a period in excess of one year from the date of execution of the contract to the date on which the contract is finally completed and accepted), and has income from sources both within and without Alabama from a trade or business, the amount of business income derived from such long-term contracts from sources within Alabama shall be

determined pursuant to this rule. In such cases, the first step is to determine which portion of the taxpayer's income constitutes "business income" and which portion constitutes "nonbusiness income". Nonbusiness income is directly allocated to specific states pursuant to the provisions of §40-27-1, Code of Ala. 1975, inclusive. Business income is apportioned among the states in which the business is conducted. 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 Rule 810-27-1-.01. "Business income" must be determined in accordance with §40-27-1.1, Code of Ala. 1975.

(3) Methods of Accounting and Year of Inclusion. For general rules of accounting, definitions and methods of accounting for long-term construction contracts see §40-18-13, Code of Ala. 1975, and the rules promulgated thereunder.

(4) Apportionment of Business Income.

(a) In General. Business income is apportioned to Alabama in accordance with the calculation provided in §40-27-1, Code of Ala. 1975, and Rule 810-27-1-.09, regardless of the method of accounting for long-term contracts elected by the taxpayer. The apportionment percentage is then applied to business income to determine the amount apportioned to Alabama.

1. For tax periods beginning on or after January 1, 2021, the property factor and the payroll factor are no longer considered in calculating a taxpayer’s Alabama apportionment factor.

2. The industry specific definitions and guidance provided in this rule for property and payroll are applicable for tax periods beginning on or after January 1, 2021, when:

(i) A taxpayer petitions and is granted approval from the department to employ an alternative apportionment method in accordance with §40-27-1, Code of Ala. 1975.

(ii) Measuring against nexus thresholds pursuant to §40-18-31.2, Code of Ala. 1975.

(b) Percentage of Completion Method. Under this method of accounting for long-term contracts, the amount to be included each year as business income from each contract

is the amount by which the gross contract price which corresponds to the percentage of the entire contract which has been completed during the income year exceeds all expenditures made during the income year in connection with the contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

1. Example: A taxpayer using the percentage of completion method of accounting for long-term contracts, entered into a long-term contract to build a structure for $9,000,000. The contract allowed three years for completion and, as of the end of the second income year, the taxpayer's books of account, kept on the accrual method, disclosed the following:

	Receipts	Expenditures
End of 1st income year	$2,500,000	$2,400,000
End of 2nd income year	4,500,000	4,100,000
Totals	$7,000,000	$6,500,000

2. In computing the expenditures in subparagraph 1. above, consideration was given to material and supplies on hand at the beginning and end of each income year. It was estimated that the contract was 30% completed at the end of the first income year and 80% completed at the end of the second income year. The amount to be included as business income for the first income year is $300,000 (30% of $9,000,000 or $2,700,000 less expenditures of $2,400,000 equals $300,000). The amount to be included as business income for the second income year is $400,000 (50% of $9,000,000 or $4,500,000 less expenditures of $4,100,000 equals $400,000).

(c) Completed Contract Method. Under this method of accounting business income derived from long-term contracts is reported for the income year in which the contract is finally completed and accepted. Therefore, a special computation is required to compute the amount of business income attributable to Alabama from each completed contract (see Paragraph (5) of this rule). Thus, all receipts and expenditures applicable to such contracts whether complete or incomplete as of the end of the income year are excluded from business income derived from other sources, as for example, short-term contracts, interest, rents, royalties, etc., which is apportioned pursuant to Alabama Rule 810-27-1-.09.

(d) Property Factor. For tax years prior to January 1, 2021 or if the taxpayer is granted approval from the Department to employ an alternative apportionment method that includes the use of the property factor, the numerator and denominator of the property factor shall be determined as set forth in rules 810-27-1-.10, 810-27-1-.11 and 810-27-1-.12. However, the following special rules are also applicable:

1. The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent that such costs exceed progress billings (accrued or received, depending on whether the taxpayer is on the accrual or cash basis for keeping its accounts) shall be included in the denominator of the property factor. The value of any such construction costs attributable to construction projects in Alabama shall be included in the numerator of the property factor.

(i) Example: Taxpayer commenced a long-term construction project in Alabama as of the beginning of a given year. By the end of its second year, its equity in the costs of production to be reflected in the numerator and denominator of its property factor for such year is computed as follows:

	1st Year		2nd Year	
	Beginning	Ending	Beginning	Ending
Construction Costs	0	$1,000,000		
Progress billings		$ 600,000		
Balance 12/31-(1/1)		$ 400,000	$400,000	
Construction Costs -				
Total from beg. of project				$5,000,000
Progress billings - Total from beg. of project				$4,000,000
Balance 12/31				$1,000,000
Balance beg. of year				$ 400,000
Total				$1,400,000

	1st Year		2nd Year	
	Beginning	Ending	Beginning	Ending
Ave (1/2) - Value used In property factor				$ 700,000

Note: It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity; see Section 40-27-1, Article IV.12, Code of Ala. 1975, and Alabama Rule 810-27-1-.12.

(ii) Example: Same facts as the example in subparagraph (i) above, except that progress billings exceeded construction costs. No value for the taxpayer's equity in the construction project is shown in the property factor.

2. Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate even though such rental expense may be capitalized into the cost of construction.

3. The property factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though under the completed contract method of accounting, business income is computed separately (see Paragraph (5) below).

(e) Payroll Factor. For tax years prior to January 1, 2021, or if the taxpayer is granted approval from the department to employ an alternative apportionment method that includes the use of the payroll factor, the numerator and denominator of the payroll factor shall be determined as set forth in Rules 810-27-1-.13 and 810-27-1-.14. However, the following special rules are also applicable:

1. Compensation paid employees which is attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

2. Compensation paid employees who in the aggregate perform most of their services in a state to which their employer does not report them for unemployment

tax purposes, shall nevertheless be attributed to the state in which the services are performed.

Example: A taxpayer engaged in a long-term contract in Alabama sends several key employees to Alabama to supervise the project. The taxpayer, for unemployment tax purposes, reports these employees to the state where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Section 40-27-1, Code of Ala. 1975, and Alabama Rule 810-27-1-.14, the compensation is assigned to the numerator of Alabama.

3. The payroll factor is computed in the same manner for all long-term contract methods of accounting and is computed for each income year even though, under the completed contract method of accounting, business income is computed separately (see Paragraph (5) below).

(f) Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in §40-27-1, Code of Ala. 1975, and the rules promulgated thereunder, inclusive. However, the following special rules are also applicable:

1. Gross receipts derived from the performance of a contract are attributable to Alabama if the construction project is located in Alabama. If the construction project is located partly within and partly without Alabama, the gross receipts attributable to Alabama are based upon the ratio which construction costs for the project in Alabama incurred during the income year bear to the total of construction costs for the entire project during the income year, or upon any other method, such as engineering cost estimates, which will provide a reasonable apportionment.

(i) Example: A construction project was undertaken in Alabama by a calendar year taxpayer which had elected one of the long-term contract methods of accounting. The following gross receipts (progress billings) were derived from the contract during the three income years that the contract was in progress.

	1st Year	2nd Year	3rd Year
Gross receipts	$1,000,000	$4,000,000	$3,000,000

The gross receipts to be reflected in both the numerator and denominator of the sales factor for each of the three years are the amounts shown.

(ii) Example: A taxpayer contracts to build a dam on a river at a point which lies half within Alabama and half within another state. During the taxpayer's first income year, construction costs in Alabama were $2,000,000. Total construction costs for the project during the income year were $3,000,000. Gross receipts (progress billings) for the year were $2,400,000. Accordingly, gross receipts of $1,600,000 ($2,000,000/$3,000,000 x $2,400,000) are included in the numerator of the Alabama sales factor.

2. If the percentage of completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year.

Example: A taxpayer which had elected the percentage of completion method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project), it estimated that the project was 30% completed. The bid price for the project was $9,000,000 and it had received $2,500,000 from progress billings as of the end of its current income year. The amount of gross receipts to be included in the sales factor for the current income year is $2,700,000 (30% of $9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

3. If the completed contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received or accrued, whichever is applicable, during the income year attributable to each contract.

(i) Example: A taxpayer which had elected the completed contract method of accounting entered into a long-term construction contract. By the end of its current income year (the second since starting the project), it had billed and had accrued on its books a total of $5,000,000 of which $2,000,000 had accrued in the first year in which the contract was undertaken and $3,000,000 had accrued in the current (second) year. The amount of gross receipts to be included in the

sales factor for the current income year is $3,000,000.

(ii) Example: Same facts as the example in subparagraph (i) above except that the taxpayer keeps its books on the cash basis and, as of the end of its current income year, had received only $2,500,000 of the $3,000,000 billed during the current year. The amount of gross receipts to be included in the sales factor for the current income year is $2,500,000.

4. The sales factor, except as noted above in subparagraphs 2. and 3., is computed in the same manner, regardless of which long-term method of accounting the taxpayer has elected, and is computed for each income year even though, under the completed contract method of accounting, business income is computed separately.

5. Completed Contract Method - Special Computation. The completed contract method of accounting requires that the reporting of income (or loss) be deferred until the year in which the construction project is completed or accepted. Accordingly, a separate computation is made for each such contract completed during the income year, regardless of whether the project is located within or without Alabama, in order to determine the amount of income which is attributable to sources within Alabama. The amount of income from each contract completed during the income year apportioned to Alabama, plus other business income apportioned to Alabama pursuant to Rule 810-27-1-.09, such as interest income, rents, royalties, income from short-term contracts, etc., plus all nonbusiness income allocated to Alabama is the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within Alabama using the completed contract method of accounting is computed as follows:

(a) In the income year in which the contract is completed, the income (or loss) therefrom is determined.

(b) The income (or loss) determined at subparagraph (a) above is apportioned to Alabama by the following method:

1. A fraction is determined for each year during which the contract was in progress. The numerator is the amount of construction costs paid or accrued in each year during which the contract was in progress and the denominator is the total of all such construction costs for the project.

2. Each percentage determined in subparagraph 1. is multiplied by the apportionment formula percentage for that particular year as determined in subparagraph (4)(g) of this rule above.

3. The percentages determined at subparagraph 2. for each year during which the contract was in progress are totaled. The amount of total income (or loss) from the contract determined at subparagraph (5)(a) of this rule is multiplied by the total percentage. The resulting income (or loss) is the amount of business income from such contract derived from sources within Alabama.

(i) Example: A taxpayer using the completed contract method of accounting for long-term contracts is engaged in three long-term contracts; Contract L in this state, Contract M in state X and Contract N in state Y. In addition, it has other business income (less expenses) during the income year 1972 from interest, rents and short-term contracts amounting to $500,000, and nonbusiness income allocable to this state of $8,000. During 1972, it completed Contract M in state X at a profit of $900,000. Contracts L and N in this state and state Y, respectively, were not completed during the income year. The apportionment percentages of the taxpayer as determined in subparagraph (4)(g) of this rule and the percentages of contract costs as determined in subparagraph (5)(b) above for each year during which Contract M in state X was in progress are as follows:

	1970	1971	1972
Apportionment %	30%	20%	40%
% of Construction Costs of Contract M each year to total construction	20%	50%	30%

The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business Income	$500,000
Apportion 40% to this state	$200,000
Add: Income from Contract M*	$252,000

Total business income derived from sources within this state	452,000
Add: Nonbusiness income allocated to this state	8,000
Net income subject to tax in this state	$460,000

*Income from Contract M apportioned to this state:

	1970	1971	1972	Total
Apportionment %	30%	20%	40%	
% of Construction Costs	30%	50%	30%	100%
Product	6%	10%	12%	28%

28% of $900,000 = $252,000

(ii) Example: Same facts as the example in subparagraph (i) above except that Contract L was started in 1972 in this state, the first year in which the taxpayer was subject to tax in this state. Contract L in this state and Contract N in state Y are incomplete in 1972.

The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business Income	$500,000
Apportion 40% to this state	$200,000
Add: Income from Contract M*	108,000
Total business income derived from sources within this state	$308,000
Add: Nonbusiness income allocated to this state	8,000
Net income subject to tax	$316,000

*Income from Contract M apportioned to this state

	1970	1971	1972	Total
Apportionment %	0	0	40%	
% of Construction Costs	20%	50%	30%	100%
Product	0	0	12%	12%

12% of $900,000 = $108,000

Note: Only 12% is used to determine the income derived from sources within this state since the corporation was not subject to tax in this state prior to 1972.

(iii) Example 3: Same facts as in example 1 except that the figures relate to Contract L in this state and 1972 is the first year the corporation was taxable in another state (See §40-27-1, and .3, Code of Ala. 1975, and rules promulgated thereunder. Contracts M and N in states X and Y were started in 1972 and are incomplete).

The corporation's net income subject to tax in this state for 1972 is computed as follows:

Business Income	$500,000
Apportion 40% to this state	$200,000
Add: Income from Contract M*	738,000
Total business income derived from sources within this state	$938,000
Add: Nonbusiness income allocated to this state	8,000
Net income subject to tax	$946,000

*Income from Contract L apportioned to this state

	1970	1971	1972	Total
Apportionment %	100%	100%	40%	
% of Construction Costs	20%	50%	30%	100%
Product	20%	50%	12%	82%

82% of $900,000 = $738,000

(6) Computation for Year of Withdrawal, Dissolution or Cessation of Business - Completed Contract Method. Use of the completed contract method of accounting for long-term contracts requires that income derived from sources within Alabama from incomplete contracts in progress outside Alabama on the date of withdrawal, dissolution or cessation of business in Alabama be included in the measure of tax for the taxable year during which the corporation withdraws, dissolves or ceases doing business in Alabama. The amount of income (or

loss) from each such contract to be apportioned to Alabama by the apportionment method set forth in subparagraph (5)(b) of this rule shall be determined as if the percentage of completion method of accounting were used for all such contracts on the date of withdrawal, dissolution or cessation of business. The amount of business income (or loss) for each such contract shall be the amount by which the gross contract price from each such contract which corresponds to the percentage of the entire contract which has been completed from the commencement thereof to the date of withdrawal, dissolution or cessation of business exceeds all expenditures made during such period in connection with each such contract. In so doing, account must be taken of the material and supplies on hand at the beginning and end of the income year for use in each such contract.

Example: A construction contractor qualified to do business in this state had elected the completed contract method of accounting for long-term contracts. It was engaged in two long-term contracts. Contract L in this state was started in 1971 and completed at a profit of $900,000 on 12/16/73. The taxpayer withdrew on 12/31/73. Contract M in state X was started in 1972 and was incomplete on 12/31/73. The apportionment percentages of the taxpayer, as determined at Paragraph (4) of this rule, and percentages of construction costs, as determined in subparagraph (5)(b) of this rule, for each year during which Contract M in state X was in progress are as follows:

	1970	1971	1972	Total
Apportionment %	100%	100%	40%	
% of Construction Costs				
Contract L, this state	20%	50%	30%	100%
Contract M, state X	0	10%	25%	35%

The corporation had other business income (net of expenses) of $500,000 during 1972 and $300,000 during 1973. The gross contract price of Contract M (state X) was $1,000,000, and it was estimated to be 35% completed on 12/31/73. Total expenditures to date for Contract M (state X) were $300,000 for the period ended 12/31/73.

The measure of tax for the taxable year ended 12/31/73 is computed as follows:

	Taxable Year 1973	
	Income Year 1972	Income Year 1973
Business Income	$500,000	$300,000

	Taxable Year 1973	
	Income Year 1972	Income Year 1973
Apportionment % to this state	20%	40%
Add: Income from contracts:	$100,000	
L* (this state)		$252,000
M**(state X)	_____	6,000
Total business income derived from sources within this state	$100,000	$378,000

*Income from Contract L apportioned to this state:

	1971	1972	1973	Total
Apportionment %	30%	20%	40%	
% of Construction Costs	20%	50%	30%	100%
Product	6%	10%	12%	28%

**Income from Contract M apportioned to this state:

	1971	1972	1973	Total
Apportionment %	0	20%	40%	
% of Construction Costs	0	10%	25%	35%
Product	0	2%	10%	12%

*** Computation of apportionable income from Contract M based on
percentage of completion method:

Total Contract Price	$1,000,000
Estimated to be 35%	$350,000
Less: total expenditures to date	300,000
Apportionable income	$50,000

Author: Kathleen Abrams, Holly H. Coon, Christina Hall, CPA, Jennifer Reynolds
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-57; Rules 810-27-1-.09 through 810-27-1-.14.
History: **New Rule:** Filed October 6, 2016; effective November 20, 2016. **Amended:** Published March 31, 2022; effective May 15, 2022.

810-27-1-.18.03 Special Rules: Publishing.

The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material.

(1) In General. Except as specifically modified by this rule, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without Alabama, the amount of business income from sources within Alabama from such business activity shall be determined pursuant to §§40-27-1, and 40-27-1.1, Code of Ala. 1975, and the rules promulgated thereunder.

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

(a) "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 publishing, licensing, selling or otherwise distributing printed material, but which are not physically located in any particular state.

(b) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

(c) "Purchaser" and "Subscriber" mean the individual, residence, business or other outlet which is the ultimate or final recipient of the print or printed material. Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

(d) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae or other relay system or device

that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

(3) Apportionment of Business Income.

(a) All business income shall be apportioned to Alabama in accordance with the calculation provided in §40-27-1, Code of Ala. 1975, and Rule 810-27-1-.09.

1. For tax periods beginning on or after January 1, 2021, the property factor and the payroll factor are no longer considered in calculating a taxpayer's Alabama apportionment factor.

2. The industry specific definitions and guidance provided in this rule for property and payroll are applicable for tax periods on or after January 1, 2021, when:

(i) A taxpayer petitions and is granted approval from the department to employ an alternative apportionment method in accordance with §40-27-1, Code of Ala. 1975.

(ii) Measuring against nexus thresholds pursuant to §40-18-31.2, Code of Ala. 1975.

(b) The Property Factor. For tax years prior to January 1, 2021, or if the taxpayer is granted approval from the Commissioner to employ an alternative apportionment method that includes the use of the property factor, the property factor shall include:

1. Property Factor Denominator. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

2. Property Factor Numerator.

(i) 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.

(ii) Outer-jurisdictional 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 in the ratio which the value of such property that is attributable to

its use by the taxpayer in business activities in Alabama bears to the total value of such property that is attributable to its use in the taxpayer's business activities everywhere.

(I) The value of outer-jurisdictional property to be attributed to the numerator of the property factor of Alabama shall be determined by the ratio that the number of uplinks and downlinks (sometimes referred to as "half-circuits") that were used during the tax period to transmit from Alabama and to receive in Alabama any data, voice, image or other information bears to the total number of uplinks and downlinks or half-circuits that the taxpayer used for transmissions everywhere.

(II) Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outer jurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of Alabama shall be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outer- jurisdictional property that was used during the tax period to transmit from Alabama and to receive in Alabama any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

(III) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within Alabama when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material and any data, voice, image or other information is transmitted to or from Alabama either through an earth station or terrestrial facility located in Alabama.

Example: One example of the use of outer-jurisdictional property is where the taxpayer either owns its own communications satellite or leases the use of uplinks, downlinks or

circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees in a state. The state or states in which any printing facility that receives the satellite communications is located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of said satellite to its total usage everywhere.

Assume that ABC Newspaper Co. owns a total of $400,000,000 of property everywhere and that, in addition, it owns and operates a communication satellite for the purpose of sending news articles to its printing plant in Alabama, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in Alabama for the entire income year was valued at $3,000,000. Assume also that the total original cost of the satellite is $100,000,000 for the tax period and that of the 10,000 uplinks and downlinks of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from Alabama. Assume further that the company's mobile property that was used partially within Alabama, consisting of 40 delivery trucks, were determined to have an original cost of $4,000,000 and such mobile property was used in Alabama for 95 days. The total value of property to be attributed to Alabama would be determined as follows:

Value of property permanently in state:	$3,000,000
Value of mobile property:	
95/365 or (.260274) x $4,000,000:	$1,041,096
Value of leased satellite property used in-state:	
(.02) x 100,000,000:	$2,000,000
Total value of property attributable to state:	$6,041,096
Total property factor %: $6,041,096/($500,000,000):	1.2082%

(c) The Payroll Factor. For tax years prior to January 1, 2021, or if the taxpayer is granted approval from the Commissioner to employ an alternative apportionment

method that includes the use of the payroll factor. The payroll factor shall be determined in accordance with 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 that may be excluded under Rules 810-27-1-.15 through 810-27-1-.18.

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 derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in Alabama.

(ii) Except as provided in subparagraph (3)(d)2.(iii), gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to Alabama as determined by the taxpayer's "circulation factor" during the tax period. The circulation factor shall be determined for each individual publication by the taxpayer of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere. The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

(iii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which

Alabama is located, the taxpayer may petition, or the Commissioner may require, that a portion of such receipts be attributed to the sales factor numerator of Alabama on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by subparagraph (3)(d)2.(ii). Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in Alabama of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

(iv) In the event that the purchaser or subscriber is the United States Government or that the taxpayer is not taxable in a State, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such State, shall be included in the numerator of the sales factor of Alabama if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in Alabama.

Author: Kathleen Abrams, Holly H. Coon, Christina Hall, CPA, Jennifer Reynolds
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-31.2, 40-18-57; Rules 810-27-1-.13 through 810-27-1-.18.
History: **New Rule:** Filed October 6, 2016; effective November 20, 2016. **Amended:** Published March 31, 2022; effective May 15, 2022.

810-27-1-.18.04 Special Rules: Railroads.

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 must 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 §40-27-1, Code of Ala. 1975, inclusive. Business income is apportioned among the states in which the business is conducted. 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 Rule 810-27-1-.01. "Business income" must be determined in accordance with §40-27-1.1, Code of Ala. 1975. Nonbusiness income is defined in §40-27-1, Code of Ala. 1975.

(3) *Apportionment of Business Income.*

(a) In General. Business income is apportioned to Alabama in accordance with the calculation provided in §40-27-1, Code of Ala. 1975, and Rule 810-27-1-.09. The apportionment percentage is then applied to business income to determine the amount apportioned to Alabama.

1. For tax periods beginning on or after January 1, 2021, the property factor and the payroll factor are no longer considered in calculating a taxpayer’s Alabama apportionment factor.

2. The industry specific definitions and guidance provided in this rule for property and payroll are applicable for tax periods beginning on or after January 1, 2021, when:

(i) A taxpayer petitions and is granted approval from the department to employ an alternative apportionment method in accordance with §40-27-1, Code of Ala. 1975.

(ii) Measuring against nexus thresholds pursuant to §40-18-31.2, Code of Ala. 1975.

(b) The Property Factor. For tax years prior to January 1, 2021, or if the taxpayer is granted approval from the Commissioner to employ an alternative apportionment method that includes the use of the property factor. The property factor shall be determined in accordance with Rule 810-27-1-.10 through 810-27-1-.12, inclusive, except as modified in this rule.

1. Property Valuation. Owned property must be valued at its original cost and property rented from others must be valued at eight (8) times the net annual

rental rate in accordance with 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 (Rule 810- 27-1-.11).

(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 means its original cost. (See Rule 810-27-1-.11).

(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 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. (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 must 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 must 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 must be included in the numerator of the property factor in accordance with 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 must 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.

(a) The Payroll Factor. For tax years prior to January 1, 2021, or if the taxpayer is granted approval from the Commissioner to employ an alternative apportionment method that includes the use of 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 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 must be included in the numerator as provided in 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 must 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 §§40-27-1, and 40-27-1.1, Code of Ala. 1975, and 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, must be attributable to Alabama in accordance with §40-27-1, Code of Ala. 1975, and 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 must be attributable to Alabama as follows:

(i) All receipts from shipments which both originate and terminate within Alabama.

(ii) The 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 includes:

(i) All receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate within Alabama.

(ii) The 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.

Author: Kathleen Abrams, Holly H. Coon, Christina Hall. CPA, Jennifer Reynolds
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-57; Rules 810-27-1-.11 through 810-27-1-.17.
History: **New Rule:** Filed October 6, 2016; effective November 20, 2016. **Amended:** Published February 28, 2022, effective April 14, 2022.

810-27-1-.18.05 Special Rules: Television And Radio Broadcasting.

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 §§40-27-1, and 40-27-1.1, Code of Ala. 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 Rule 810-27-1-.01. Business income is determined in accordance with §40-27-1.1, Code of Ala. 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. Business income is apportioned to Alabama in accordance with the calculation provided in §40-27-1, Code of Ala. 1975, and Rule 810-27-1-.09. The apportionment percentage is then applied to business income to determine the amount apportioned to Alabama.

1. For tax periods beginning on or after January 1, 2021, the property factor and the payroll factor are no longer considered in calculating a taxpayer's Alabama apportionment factor.

2. The industry specific definitions and guidance provided in this rule for property and payroll are applicable for tax periods beginning on or after January 1, 2021, when:

(i) A taxpayer petitions and is granted approval from the department to employ an alternative apportionment method in accordance with 40-27-1, Code of Ala. 1975.

(ii) Measuring against nexus thresholds pursuant to §40-18-31.2, Code of Ala. 1975.

(b) The Property Factor. For tax years prior to January 1, 2021, or if the taxpayer is granted approval from the department to employ an alternative apportionment method that includes the use of the property factor. The property factor shall be determined in accordance with Rule 810-27-1-.10 through 810-27-1-.12, inclusive, except as modified in this rule.

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.

(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 property: 100/365 or (.2739) x $4,000,000:	$1,095,600
Total value of property to be included in the state's property factor numerator (outer-jurisdictional and film property excluded):	$3,095,000

(c) The Payroll Factor. For tax years prior to January 1, 2021, or if the taxpayer is granted approval from the department to employ an alternative apportionment method that includes the use of 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 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 Rule 810-27-1-.18.

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 Rule 810-27-1-.16.

Author: Kathleen Abrams, Holly H. Coon, Christina Hall, CPA, Jennifer Reynolds
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-5; Rules 810-27-1-.09 through 810-27-1-.16.
History: **New Rule:** Filed October 6, 2016; effective November 20, 2016. **Amended:** Published March 31, 2022; effective May 15, 2022.

810-27-1-.18.06 Special Rules: Trucking Companies.

The following special rules are established with respect to trucking companies.

(1) *In General*. As used in this rule, the term "trucking company" means a motor common carrier, a motor contract carrier, or an express carrier which primarily transports tangible personal property of others by motor vehicle for compensation. Where a trucking company 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 trucking company's income constitutes "business" income and what portion constitutes "nonbusiness" income under §40-27-1, and 40-27-1.1, Code of Ala. 1975, and Rule 810-27-1-.01. Nonbusiness income is directly allocable to specific states pursuant to the provisions of §40-27-1, Code of Ala. 1975, inclusive. Business income is apportioned among the states in which the business is conducted and pursuant to the sales apportionment factors set forth in this rule. The sum of (i) the items of nonbusiness income directly allocated to Alabama and (ii) the amount of business income attributable to Alabama constitutes the amount of the taxpayer's entire net income which is subject to tax in Alabama.

(2) *Business and Nonbusiness Income*. For definitions, rules, and examples for determining business and nonbusiness income, see Rule 810-27-1-.01. Business income is determined in accordance with §40-27-1.1, Code of Ala. 1975.

(3) *Apportionment of Business Income*.

(a) *In General*. Business income is apportioned to Alabama in accordance with the calculation provided in §40-27-1, Code of Ala. 1975, and Rule 810-27-1-.09. The apportionment percentage is then applied to business income to determine the amount apportioned to Alabama.

1. For tax periods beginning on or after January 1, 2021, the property factor and the payroll factor are no longer considered in calculating a taxpayer's Alabama apportionment factor.

2. The industry specific definitions and guidance provided in this rule for property and payroll are applicable for tax periods beginning on or after January 1, 2021, when:

(i) A taxpayer petitions and is granted approval from the department to employ an alternative apportionment method in accordance with 40-27-1, Code of Ala. 1975.

(ii) Measuring against nexus thresholds pursuant to §40-18-31.2, Code of Ala. 1975.

(b) *The Property Factor*. For tax years prior to January 1, 2021, or if the taxpayer is granted approval from the Commissioner to employ an alternative apportionment method that includes the use of the property factor. The property factor shall be determined in accordance with Rule 810-27-1-.10 through 810-27-1-.12, inclusive, except as modified in this rule.

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, Code of Ala. 1975, and Rule 810-27-1-.11.

2. *General Definitions*. The following definitions are applicable to the numerator and denominator of the property factor, as well as other apportionment factor descriptions:

(i) "Average value" of property means the amount determined by averaging the values at the beginning and end of the income tax year, but the Commissioner may require the averaging of monthly values during the income year or such averaging as is necessary to reflect properly the average value of the trucking company's property. (See Rule 810-27-1-.12.)

(ii) "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

(iii) A "mobile property mile" is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

(iv) "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)

(v) "Property used during the course of the income year" includes property which is available for use in the taxpayer's trade or business during the income year.

(vi) The "value" of owned real and tangible personal property means its original cost. (See Rule 810-27-1-.11)

(vii) The "value" of rented real and tangible personal property means the product of eight times the net annual rental rate. (See Alabama Rule 810-27-1-.11)

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. In the determination of the numerator of the property factor, all property, except mobile property as defined in this rule, shall be included in the numerator of the property factor in accordance with Rules 810-27-1-.10 through 810-27-1-.12, inclusive.

(i) Mobile property, as defined in this rule, which is located solely within Alabama during the

income year shall be included in the numerator of the property factor.

(ii) Mobile property as defined in this rule, which is located within and without Alabama during the income year shall be included in the numerator of the property factor in the ratio which mobile property miles in the state bear to the total mobile property miles.

(c) *The Payroll Factor*. For tax years prior to January 1, 2021, or if the taxpayer is granted approval from the Commissioner to employ an alternative apportionment method that includes the use of the payroll factor. The denominator of the payroll factor is the compensation paid everywhere by the taxpayer during the income year for the production of business Rules 810-27-1-.13 and 810-27-1-.14.) The numerator of the payroll factor is the total compensation paid in Alabama during the income year by the taxpayer. With respect to all personnel, except those performing services within and without Alabama, compensation paid to such employees shall be included in the numerator as provided in Rules 810-27-1-.13 and 810-27-1-.14.

1. With respect to personnel performing services within and without Alabama, 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 based on mobile property miles.

(d) *The Sales (Revenue) Factor*.

1. In General. All revenue derived from transactions or activities in the regular course of the taxpayer's trade or business which produce business income shall be included in the denominator of the revenue factor. (See §§40-27-1, and 40-27-1.1, Code of Ala. 1975, and Alabama Rule 810-27-1-.01 through .17)

(i) The numerator of the revenue factor is the total revenue of the taxpayer in Alabama during the income year. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to Alabama in accordance with §40-27-1, Code of Ala. 1975, and Rule 810-27-1-.15 through 810-27-1-.17. Numerator of the Sales (Revenue) Factor from

2. Freight, Mail, and Express. The total revenue of the taxpayer attributable to Alabama during the

income year from hauling freight, mail, and express shall be:

(i) Intrastate: All receipts from any shipment which both originates and terminates within Alabama.

(ii) Interstate: That portion of the receipts from movements or shipments passing through, into, or out of Alabama as determined by the ratio which the mobile property miles traveled by such movements or shipments in Alabama bear to the total mobile property miles traveled by movements or shipments from points of origin to destination.

(4) *Records*. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by such mobile property as those terms are used in this rule. Such records are subject to review.

(5) *De Minimis Nexus Standard*. Notwithstanding any provision contained herein, this rule (Special Rules relating Trucking Companies) shall not apply to require the apportionment of income to Alabama if the trucking company during the course of the income tax year did not meet the "substantial nexus" thresholds as stipulated by §40-18.31.2, Code of Ala. 1975.

Author: Kathleen Abrams, Holly H. Coon, Christina Hall, CPA, Jennifer Reynolds
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-31.2, 40-18-57, 40-27-1, 40-27-1.1; Rules 810-27-1-.01 through 810-27-1-.17.
History: **New Rule:** Filed October 6, 2016; effective November 20, 2016. **Amended:** Published February 28, 2022, effective April 14, 2022.

810-27-1-.18.07 Special Rules: Telecommunications and Ancillary Service Providers.

The following special rules are established with respect to the apportionment of income from the sale of telecommunications and ancillary services by a person that is taxable both in Alabama and in one or more other states.

(1) In general, A person providing telecommunications or ancillary services whose business activity is taxable both within and without Alabama shall allocate and apportion its net income as provided in §40-27-1, Code of Ala. 1975, and rules issued thereunder, exclusive of §40-27-1, Code of Ala. 1975, except as modified by this special rule. However,

business income shall be determined in accordance with §40-27-1.1, Code of Ala. 1975.

(2) Definitions.

(a) "800 service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

(b) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

(c) "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(d) "Ancillary service" means services that are associated with or incidental to the provision of telecommunications services, including but not limited to the following subcategories: detailed telecommunications billing, directory assistance, vertical service, conference bridging service and voice mail services. The term "ancillary service" is defined as a broad range of services and is broader than the sum of the subcategories.

(e) "Bundled transaction" means the retail sale of two or more products where (1) the products are otherwise distinct and identifiable, and (2) the products are sold for one non-itemized price. For purposes of this special rule, a "bundled transaction" does not include the sale of any products in which the "sales price" varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. A transaction that otherwise meets the definition of a "bundled transaction" is not a "bundled transaction" if it is: (1) the "retail sale" of two products where the first product is essential to the use of the second product, and the first product is provided exclusively in connection with

the second, and the true object of the transaction is the second; (2) the "retail sale" of more than one product, but the products are sourced the same under this special rule; or (3) the "retail sale" of more than one product, but the sum of the "purchase price" or "sales price" of products which are sourced differently under this special rule is de minimis.

(f) "Call-by-call Basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(g) "Coin-operated telephone service" means a "telecommunications service" paid for by inserting money into a telephone accepting direct deposits of money to operate.

(h) "Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(i) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(j) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(k) "Customer Channel Termination Point" means the location where the customer either inputs or receives the communications.

(l) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(m) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.

(n) "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

(o) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(p) "Home service provider" means the same as that term is defined in §124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(q) "International" means a "telecommunications service" that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

(r) "Interstate" means a "telecommunications service" that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

(s) "Intrastate" means a "telecommunications service" that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

(t) "Mobile telecommunications service" means the same as that term is defined in §124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(u) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(v) "Network access service" means the provision by a local exchange telecommunication service provider of the use of its local exchange network by an inter-exchange telecommunication service provider to originate or terminate the inter-exchange telecommunication service provider's traffic carried to or from a distant exchange.

(w) "Outer-jurisdictional property" means tangible personal property, such as orbiting satellites, undersea

transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications or ancillary service business, but that are not physically located in any particular state.

(x) “Paging service” means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

(y) “Pay telephone service” means a telecommunications service provided through any pay telephone.

(z) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" shall be within the licensed service area of the home service provider.

(aa) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunication service.

(bb) “Prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(cc) “Prepaid wireless calling service” means the sale of a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.

(dd) “Private communications service” means a telecommunications service that entitles the customer to

exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(ee) "Product" means tangible personal property, digital good or service.

(ff) "Service address" means:

1. The location of the customer's telecommunications equipment, to which the customer's call is charged, and from which the call originates or terminates, regardless of where the call is billed or paid.

2. If the location in subparagraph 1. above is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. If the location in subparagraph 1. and subparagraph 2. above are not known, the service address means the location of the customer's place of primary use.

(gg) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.

1. The term "telecommunication service" is defined as a broad range of services. The term includes, but is broader than the sum of, the following subcategories: 800 service, 900 service, fixed wireless service, mobile wireless service, paging service, prepaid calling service, prepaid wireless calling service, private communication service, value-added non-voice data service, coin-operated telephone service, international telecommunications service, interstate

telecommunications service, intrastate telecommunications service, network access service and pay telephone service.

2. The term "telecommunications service" does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising, including but not limited to directory advertising.

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

(viii) "Ancillary services"; or

(ix) Digital products "delivered electronically", including but not limited to software, music, video, reading materials or ring tones.

3. Examples of Included and Excluded Services.

(i) Example: An entity provides dedicated network service to an entity which will resell that service as intrastate telecommunications service. Both entities are providing a telecommunications service.

(ii) Example: An entity provides an interstate telecommunications service to an internet service provider which will use that service in the provision of internet access service. The entity providing interstate telecommunications service is providing a telecommunications service. The entity providing internet access service is not providing a telecommunications service.

(iii) Example: An entity primarily engaged in the provision of cable television provides an interstate telecommunications service. The entity is engaged in the provision of telecommunications service.

(hh) "Value-added non-voice data service" means a service that otherwise meets the definition of "telecommunications services" in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

(ii) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(jj) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(3) Apportionment and Allocation

(a) All business income shall be apportioned to Alabama in accordance with the calculation provided in §40-27-1, Code of Ala. 1975, and Rule 810-27-1-.09.

1. For tax periods beginning on or after January 1, 2021, the property factor and the payroll factor are no longer considered in calculating a taxpayer's Alabama apportionment factor.

2. The industry specific definitions and guidance provided in this rule are applicable for tax periods beginning on or after January 1, 2021, when:

(i) A taxpayer petitions and is granted approval from the department to employ an alternative

apportionment method in accordance with 40-27-1, Code of Ala. 1975.

(ii) Measuring against nexus thresholds pursuant to §40-18-31.2, Code of Ala. 1975.

(b) Property Factor: Outer-jurisdictional property that is used by a taxpayer in providing a telecommunications or ancillary service shall be excluded from the numerator and from the denominator of the property factor.

(c) Sales Factor: Sales of telecommunications and ancillary services in Alabama.

1. Gross receipts from the sale of telecommunications services, other than those defined in subparagraphs 3. through 7. below, which are sold on a call-by-call basis are in Alabama when (a) the call originates and terminates in Alabama or (b) the call either originates or terminates and the service address is also located in Alabama.

2. Gross receipts from the sale of telecommunications services, other than those defined in subparagraphs 3. through 7. below, which are sold on other than a call- by-call basis, are in Alabama when the customer's place of primary use is in Alabama.

3. Gross receipts from the sale of mobile telecommunications services, other than air-to-ground radiotelephone service and prepaid calling service, are in Alabama when the customer's place of primary use is in Alabama pursuant to the Mobile Telecommunications Sourcing Act.

4. Gross receipts from the sale of pre-paid calling service, prepaid wireless calling service and post-paid calling service are in Alabama when the origination point of the telecommunications signal is first identified in Alabama by either (1) the seller's telecommunications system, or (2) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

5. Gross receipts from the sale of a private communication service are in Alabama:

(i) if such service is for a separate charge related to a customer channel termination point, when the customer channel termination point is located in Alabama;

(ii) if under such service all customer termination points are located entirely within one state, when the customer channel termination points are located in Alabama;

(iii) if such service is for segments of a channel between two customer channel termination points located in different states and such segments of channel are separately charged, when one of the customer channel termination points is in Alabama, provided however that only fifty percent of such gross receipts shall be sourced to Alabama; and

(iv) if such service is for segments of a channel located in more than one state and such segments are not separately billed, when the customer channel termination points are in Alabama, provided however that only a percentage of such gross receipts, determined by dividing the number of customer channel termination points in the state by the total number of customer channel termination points, are in Alabama.

6. A portion of the total gross receipts from sales of telecommunication services to other telecommunication service providers for resale is in Alabama in an amount determined by multiplying such total gross receipts by a fraction, the numerator of which is "total carrier's carrier service revenues" for Alabama and the denominator of which is the sum of "total carrier's carrier service revenues" for all states in which the taxpayer is doing business, as reported by the Federal Communications Commission [in its report titled Telecommunications Revenues by State, Table 15.6, or successor reports which include such information,] for the most recent year available as of the due date of the return, determined without regard to extensions.

7. Gross receipts attributable to the sale of an ancillary service are in Alabama when the customer's place of primary use is in Alabama.

8. Gross receipts attributable to the sale of a telecommunication or ancillary service sold as part of a bundled transaction are in Alabama when such gross receipts would be Alabama in accordance with the provisions of subparagraphs (c)1. through 7.

(i) The amount of gross receipts attributable to the sale of a telecommunication or ancillary service which is sold as part of a bundled

transaction shall be equal to the price charged by the taxpayer for such service when sold separately, adjusted by an amount equal to the quotient of a) the difference between 1) the price charged by the taxpayer for the bundled transaction, and 2) the sum of the prices charged by the taxpayer for each of the included products when sold separately, and b) the number of products included in the bundled transaction;

(ii) If the amount of such gross receipts is not determinable under subparagraph 8.(i) above, then it may be determined by reasonable and verifiable standards from taxpayer's books and records that are kept in the regular course of business for purposes including, but not limited to, non-tax purposes.

9. Gross receipts from the sale of telecommunication services which are not taxable in the State to which they would be apportioned pursuant to subparagraphs (b)1. through 7., shall be excluded from the denominator of the sales factor.

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Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-31.2, 40-18-57, 40-27-1; 47cCFR 20.3, 47 CFR 22.99, Public Law 106-252.
History: New Rule: Filed October 6, 2016; effective November 20, 2016. **Amended:** Published March 31, 2022; effective May 15, 2022.

810-27-1-.19 Public Law 86-272 Exemption From Income Tax.

(1) **Scope**

(a) Public Law 86-272, 15 U.S.C. 381-384, (hereafter "P.L. 86-272") restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are to be sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales are made into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to the appropriate state which does have jurisdiction to impose its net income tax upon the income derived from those sales.

(b) Signatory State is a state which has signed the Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States under Public Law 86-272, as amended, from time to time.

(c) It is the policy of Alabama hereto to impose its net income tax, subject to Alabama and Federal legislative limitations, to the fullest extent constitutionally permissible. Interpretation of the solicitation of orders standard in P.L. 86-272 requires a determination of the fair meaning of that term in the first instance. The United States Supreme Court has recently established a standard for interpreting the term "solicitation" and this rule has been revised to conform to such standard. Wisconsin Department of Revenue v. William Wrigley, Jr., Co., 505 U.S., 112 S.Ct. 2447, 120 L.Ed.2d 174 (1992). In those cases where there may be reasonable differences of opinion between Alabama and a Signatory State as to whether the disputed activity exceeds what is protected by P.L. 86-272, Alabama will apply the principle that the preemption of state taxation that is required by P.L. 86-272 will be limited to those activities that fall within the "clear and manifest purpose of Congress." See Department of Revenue of Oregon v. ACF Industries, Inc., et al., U.S., 114 S.Ct. 843, 127 L. Ed.2d 165 (1994), Cipollone v. Liggett Group, Inc., 505 U.S., 112 S.Ct. 2608, 120 L. Ed.2d 407, 422 (1992); Heublein, Inc. v. South Carolina Tax Com., 409 U.S. 275, 281-282 (1972).

(d) The following rule reflects Alabama’s practice with regard to:

1. Whether a particular factual circumstance is considered under P.L. 86-272 or permitted under this rule as either protected or not protected from taxation by reason of P.L. 86-272 under Secs. 40-18-31 or 40-27-1, Article IV.2; and

2. The jurisdictional standards which will apply to sales made in another state for purposes of applying a throwback rule with respect to such sales under Sec. 40-27-1, Article IV.16 (b).

(2) **Nature of Property Being Sold**

(a) Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting, licensing or other disposition of tangible personal property, or transactions involving intangibles, such as franchises, patents, copyrights, trademark, service marks and the like, or any other type of property are not protected activities under P.L. 86-272.

(b) The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either

(i) ancillary to solicitation or

(ii) otherwise set forth as a protected activity under the subsection (5)(b) below is also not protected under Public Law 86-272 or this rule.

(3) **Solicitation of Orders and Activities Ancillary to Solicitation.**

(a) For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to de minimis solicitation (except for activities described in paragraph (4) and those activities conducted by independent contractors described in paragraph (6) below).

(b) Solicitation means:

1. Speech or conduct that explicitly or implicitly invites an order; and

2. Activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

(c) Ancillary activities are those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders. Activities that a seller would engage in apart from soliciting orders shall not be considered as ancillary to the solicitation of orders. The mere assignment of activities to sales personnel does not, merely by such assignment, make such activities ancillary to solicitation of orders. Additionally, activities that seek to promote sales are not ancillary, because P.L. 86-272 does not protect activity that facilitates sales; it only protects ancillary activities that facilitate the request for an order. The conducting of activities not falling within the foregoing definition of solicitation will cause the company to lose its protection from a net income tax afforded by P.L. 86-272, unless de the disqualifying activities, taken together, are either minimis or are otherwise permitted under this rule.

(4) ***De Minimis* Activities**

(a) *De minimis* activities are those that, when taken together, establish only a trivial connection with the taxing State. An activity conducted within a taxing State on a regular or systematic basis or pursuant to a company policy (whether such policy is in writing or not) shall normally not be considered trivial. Whether or not an activity consists of a trivial or non-trivial connection with the State is to be measured on

both a qualitative and quantitative basis. If such activity either qualitatively or quantitatively creates a non-trivial connection with the taxing State, then such activity exceeds the protection of P.L. 86-272. Establishing that the disqualifying activities only account for a relatively small part of the business conducted within the taxing State is de minimis not determinative of whether a level of activity exits. The relative economic importance of the disqualifying in-state activities, as compared to the protected activities, does not determine whether the conduct of the disqualifying activities within the taxing State is inconsistent with the limited protection afforded by P.L. 86-272.

(5) **Specific Listing of Unprotected and Protected Activities**

(a) Unprotected Activities. The following in-state de minimis activities (assuming they are not of a level) are not considered as either solicitation of orders or ancillary thereto or otherwise protected under P.L. 86-272 and will cause otherwise protected sales to lose their protection under P.L. 86-272:

1. Making repairs or providing maintenance or service to the property sold or to be sold.

2. Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise.

3. Investigating credit worthiness.

4. Installation or supervision of installation at or after shipment or delivery.

5. Conducting training courses, seminars or lectures for personnel other than personnel involved only in solicitation.

6. Providing any kind of technical assistance or service including, but not limited to, engineering assistance or design service, when one if the purposes thereof is other than the facilitation of solicitation of orders.

7. Investigating, handling, or otherwise assisting in revolving customer complaints, other than the mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer.

8. Approving or accepting orders.

9. Repossessing property.

10. Securing deposits on sales.

11. Picking up or replacing damaged or returned property.

12. Hiring, training, or supervising personnel, other than personnel involved only in solicitation.

13. Using agency stock checks or any other instrument or process by which sales are made within the state during the tax year.

14. Maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year.

15. Carrying samples for sale, exchange or distribution in any manner for consideration or other value.

16. Owning, leasing, using or maintaining any of the following facilities or property in-state:

(i) Repair shop.

(ii) Parts department.

(iii) Any kind of office other than an in-home office as described as permitted under subparagraph (5)(a)18 and (5)(b)2.

(iv) Warehouse.

(v) Meeting place for directors, officers, or employees when done on a regular or systematic basis during the tax year.

(vi) Stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation.

(vii) Telephone answering service that is publicly attributed to the company or to employees or agent(s) of the company in their representative status. i.e.

(viii) Mobile stores, , vehicles with drivers who are sales personnel making sales from the vehicles.

(ix) Real property or fixtures to real property of any kind.

17. Consigning stock of goods or other tangible personal property to any person, including an independent contractor, for sale.

18. Maintaining, by any employee or other representative, an office or place of business of any kind.

(i) Other than an in-home office located within the residence of the employee or representative that (1) is not publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity, and (2) so long as the use of such office is limited to soliciting and receiving orders outside the state for acceptance or rejection by the company ; or for such other activities that are protected under Public Law 86-272 or under subsection (6)(b) of this rule.

(ii) A telephone listing or other public listing within the state for the company or for an employee or representative of the company in such capacity or other indications through advertising or business literature that the company or its employee or representative can be contacted at a specific address within the state shall normally be determined as the company maintaining within Alabama an office or place of business attributable to the company to its employee or representative in a representative capacity . However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone and fax numbers and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative.

(iii) The maintenance of any office or other place of business in Alabama that does not strictly qualify as an "in-home" office as described above shall, by itself, cause the loss of protection under this rule.

(iv) For the purpose of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining such in-home office.

19. Selling or otherwise transferring intangible personal property which is neither an isolated or transient event nor intrinsic in the related tangible personal property sold or transferred within the state.

20. Conducting any activity not listed in subparagraph (5)(b) below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

(b) Protected Activities. The following in-state activities will not cause the loss of protection for otherwise protected sales:

1. Soliciting orders for sales by any type of advertising.

2. Soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an "in-home" office as described in subsection (5)(a)18 above.

3. Carrying samples and promotional materials only for display or distribution without charge or other consideration.

4. Furnishing and setting up display racks and advising customers on the display of the company’s products without charge or other consideration.

5. Providing automobiles to sales personnel for their use in conducting protected activities.

6. Passing orders, inquiries and complaints on to the home office.

7. Missionary sales activities; i.e., the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune.

8. Coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order.

9. Checking of customers’ inventories without a charge therefor (for reorder, but not for other purposes such as quality control.)

10. Maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year.

11. Recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel.

12. Mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders.

13. Owning, leasing, using or maintaining personal property for use in the employee or representative's "in-home" office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by this rule under subparagraph (5)(b) shall not, by itself, remove the protection under this rule.

(6) **Independent Contractors**

(a) P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives. Independent contractors may engage in the following limited activities in the state without the company's loss of immunity:

1. Soliciting sales.

2. Making sales.

3. Maintaining an office.

(b) Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-2722 and this rule.

(c) Maintenance of a stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

(7) **Application of Destination State Law In Case of Conflict**

(a) When it appears that Alabama and another Signatory State, due to the use of a throwback rule, have included or will include the same receipts from a sale in their respective sales factor numerators, at the written request of the company mailed to both states, Alabama may confer in good faith with the other state to determine which state should be assigned said receipts. Such conference may identify what law, rule or written guideline, if any, has been adopted in the state of destination with respect to the issue. The state of destination shall be that location at which the purchaser or

its designee actually receives the property, regardless of f.o.b. point or other conditions of sale.

(b) In determining which state is to receive the assignment of the receipts at issue, preference may be given to any clearly applicable law, rule or written guideline that has been adopted in state of destination. However, except in the case of the definition of what constitutes "tangible personal property", Alabama is not required by this rule to follow any other state's law, rule or written guideline should Alabama determine that to do so

(i) would conflict with its own laws, rules, or written guidelines and

(ii) would not clearly reflect the income-producing activity of the company within Alabama.

(c) Notwithstanding any provision set forth in this rule to the contrary, as between Alabama and any other Signatory State, Alabama will apply the definition of "tangible personal property" that exists in the state of destination to determine the application of P.L. 86-272 and issues of throwback, if any. Should the state of destination not have any applicable definition of such term so that it could be reasonably determined whether the property at issue constitutes "tangible personal property", then Alabama will treat such property in any manner that would clearly reflect the income- producing activity of the company within Alabama.

(8) **Miscellaneous Practices**

(a) Application of Rule to Foreign Commerce. Alabama will apply the provisions of Public Law 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a country outside of the United States from a point within Alabama or by (ii) either company selling such property into Alabama from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either Alabama or in the foreign country, as the case might be, and whether, if applicable, Alabama will apply its throwback provisions.

(b) Application to Corporation Incorporated in Alabama or to person resident or domiciled in Alabama. The protection afforded by P.L. 86-272 and the provisions of this rule, except for purposes of applying a throwback rule, do not apply to any corporation incorporated within Alabama or to any person who is a resident of or domiciled in Alabama

(c) Registration or Qualification to Do Business. A company that registers or otherwise formally qualifies to do business within Alabama does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from Alabama through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

(d) Loss of Protection for conducting unprotected activity during part of tax year. The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a tax year by tax year basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in Alabama or income earned by the company attributed to Alabama during any part of said tax year shall be protected from taxation under said Public Law or this rule.

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