ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-3-2
PERSONS AND SUBJECTS GENERALLY SUBJECT TO TAX

810-3-2-.01 Individuals Subject To Alabama Income Tax.

(1) Individuals domiciled within Alabama (residents) are taxable on their entire income, whether earned within or without Alabama, subject to certain exclusions and exemptions as provided under Alabama income tax law, regardless of their physical presence within Alabama at any time during the taxable year. Individuals domiciled within Alabama should file a Resident Individual Income Tax Return, Form 40 or 40A each year.

(a) Domicile is the home, the fixed place of habitation; while residence is a transient place of dwelling. Domicile is the place where one lives and has his permanent home and principal establishment, and to which he has the intention of returning when he is absent. Domicile may be established by birth, by choice, or by operation of law.

(b) Each person has one and only one domicile. Once established, a domicile continues until a new one is established coupled with the abandonment of the old.

1. Domicile is established by physical presence in a jurisdiction, coupled with the present intent to establish domicile in the subject jurisdiction.

(i) A person's intent will be ascertained by examining his actions.

2. A taxpayer has the burden of proof in establishing a change in domicile.

(c) Federal employees, including military personnel, domiciled in Alabama continue to be so domiciled, irrespective of their period of absence or actual place of residence, and are subject to the Income Tax Law of Alabama until proof of change of domicile has been made.

(d) A husband and wife will be presumed to have the same domicile, unless clearly established otherwise.

1. An Alabama resident who marries a nonresident will continue to be an Alabama resident until and unless a new domicile is established as provided in subparagraph (b) above.

2. A nonresident who marries an Alabama resident will continue to be a nonresident until and unless a new domicile is established in Alabama as provided in subparagraph (b) above.

(e) A minor child will be presumed to have the same domicile as the custodial parent or guardian.

(2) Individuals not domiciled within Alabama who maintain a permanent place of abode within Alabama, or who spend more than a total of seven months (whether or not consecutive) of the taxable year within Alabama shall be presumed to be residents, and taxable on their net income from within and without Alabama during the taxable year. They should file Resident Individual Income Tax Return, Form 40 or Form 40A each year. For instructions for individuals who are residents for less than one year (part-year residents), see Rule 810-3-2-.01(4).

(a) A permanent place of abode is interpreted to mean a dwelling place permanently maintained by the taxpayer; it is not necessary that he be the owner, or that he occupy it himself.

(b) The Department may require individuals claiming domicile outside the State of Alabama to furnish a statement of information with details to support their claim.

(3) Nonresident individuals receiving taxable income from property owned or business transacted (including wages for personal services) within Alabama are taxable on such income from within Alabama. They should file Nonresident Individual Income Tax Returns, Form 4ONR, each year. See Rules 810-3-14-.05 (relating to taxable income of nonresidents) and 810-3-15-.21 (relating to allowable deductions of nonresidents).

(a) Resident individuals living in federal areas located within Alabama or any other state over which the United States exercises exclusive or concurrent jurisdiction, such as the Muscle Shoals reservation and military areas such as Maxwell Air Force Base and Redstone Arsenal, are taxable on their entire net income. See Rule 810-3-2-.01(2).

(b) Nonresident individuals (other than military personnel) living in federal areas located within Alabama over which the United States exercises exclusive or concurrent jurisdiction are taxable on income earned in such areas; including income from business transacted in these areas.

(c) This paragraph (3) applies only to income or receipts received after December 31, 1940, the effective date of Public Law No. 819, known as the Buck Act. Under this act the United States has ceded to the States the jurisdiction to tax persons residing within or receiving income from transactions occurring or services performed, in all federal areas heretofore or hereafter acquired by the United States. The term "Federal Area" means any land or premises held or acquired by or for the use of the United States, or any Department, Establishment, or Agency thereof, and over which the United States exercises exclusive or concurrent jurisdiction.

(d)1. Military personnel who are not residents of Alabama and who receive military pay while stationed in Alabama, shall be deemed not to have received such income for services performed within, or from sources within Alabama. This subparagraph (d) applies to all military compensation received after September 8, 1939, in accordance with §514 of Public Law 732.

2. Wives of military personnel who earn income in Alabama, unless specially exempt under Public Law 111-97 referred to as the Military Spouses Residency Relief Act, and military personnel who earn nonmilitary income in Alabama, are taxed on such income.

(e) Spouses will be presumed to have the same domicile, unless proven otherwise.

1. EXAMPLE	**Income Resident Ior includable as Income from all sources if Nonresident)**	**Taxable to Nonresident**	**Taxable to**
Income During Taxable Year			
Military Member			
Not in combat zone	$ 6,000	$6,000	$-0-
In combat zone	1,000	-0-	-0-
Quarters allowance	1,500	-0-	-0-
Subsistence allowance	600	-0-	-0-
Uniform allowance	100	-0-	-0-
Travel allowance	100	-0-	-0-
Flight pay	200	200	-0-
Sea duty	200	200	-0-

Trailer allowance	100	-0-	-0-
Income from Other States			
Compensation	200	200	-0-
Business, Interest, Dividends, Rents, etc.	800	800	-0-
Income from Alabama			
Compensation	700	700	700
Business, Rental Income, etc.	300	300	300
Total Income	$11,900		
Taxable if Taxpayer is a resident	$ 8,400		
Taxable if Taxpayer is not a resident			$1,000
Spouse Income from Other States			
Compensation (Including Federal Civil Service)	$ 500	$ 500	$-0-
Business, Interest, Dividends, Rents, etc.	500	500	-0-
Income from Alabama			
Compensation (Including Federal Civil Service)	5,600	5,600	5,600
Business, Rental Income, etc.	400	400	400
Total Income	$7,000		
Taxable if Taxpayer is a resident	$7,000		
			$6,000

Taxable if Taxpayer is not a resident			

(4) An individual who becomes a resident of Alabama must include in gross income all income from sources both within and without Alabama for the period of residence. A resident moving away from Alabama during the year includes in gross income only income from sources both within and without Alabama until date of termination of his residence in this state. The Department should be notified of the termination of taxpayer's residence, including all pertinent facts relating to the termination.

(a) EXAMPLE: Taxpayer moved from New York to Alabama on September 1. Prior to that date he had no Alabama income. After moving to Alabama, he had an income of $5,000. He must file a return on Form 40, (Resident Individual Income Tax Return) reporting the $5,000, but need not report any income earned before September 1. He is entitled to the same annual exemptions as a resident for a full year. See Rule 810-3-19-.02(3).

(b) EXAMPLE: Taxpayer moved from Alabama to Mississippi on November 1. Prior to that time he earned $8,000 taxable income in Alabama, and had no Alabama income during November and December. He should notify the Department of the termination of his residence in Alabama, and file a return on Form 40 (Resident Individual Income Tax Return) reporting the $8,000 income. He may claim the annual exemptions to which he would be entitled were he a resident for the entire year.

(c) An individual, a resident for part of the taxable year and a nonresident for the other part of the taxable year, having taxable income in both periods, should file two returns:

1. One return should be filed on Form 40 as a resident, covering the period of residence. All income, from whatever source within or without the state, earned during such period of residence should be included in this return, and exemptions should be claimed for the total annual exemptions to which the taxpayer is entitled.

2. A second return should be filed on Form 4ONR as a nonresident, covering income from sources in Alabama for the period of nonresidence. No personal exemptions and/or credit for dependents would be allowable on the nonresident return as the full annual amount would have been allowed on the resident return.

(i) EXAMPLE: Taxpayer, married and having two dependents, moved from Alabama to Tennessee on April

1. Prior to April 1, his income from Alabama sources amounted to $2,000. After April 1, his Alabama income was $3,000 and his income from other sources was $6,000, or a total income from all sources of $9,000 after April 1. Taxpayer must file two returns:

(I) His return as a resident (Form 40) should report income of $2,000, and the annual exemption he could claim were he a resident for the entire year.

(II) His return as a nonresident (Form 4ONR) would report $3,000. No personal exemptions and/or credit for dependents would be allowable on the nonresident return as the full annual amount would have been allowed on the resident return.

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