

RULES OF
DEPARTMENT OF REVENUE

CHAPTER 810-3-2

Persons and Subjects Generally Subject to Tax

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

(1) Individuals domiciled within Alabama (residents) are taxable on their 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 Reg. 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 40NR, each year. See Regs. 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 Reg. 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 Section 514 of Public Law 732.

2. Wives of military personnel who earn income in Alabama, 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:

<u>Income</u> <u>Resident</u> (or includable as Income from all sources if Nonresident)	<u>Taxable to</u> <u>Nonresident</u>	<u>Taxable to</u>
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Income During Taxable Year

Husband

Military

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-
Dislocation 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.	<u>300</u>	<u>300</u>	<u>300</u>
Total Income	<u>\$11,900</u>		
Taxable if Taxpayer is a resident	<u>\$ 8,400</u>		
Taxable if Taxpayer is not a resident			<u>\$ 1,000</u>

Wife

<u>Income from Other States</u>			
Compensation (Including Federal Civil Service)	\$ 500	\$ 500	\$ -0-
Business, Interest, Dividends, Rents, etc.	500	500	-0-
<u>Income from Alabama</u>			
Compensation (Including Federal Civil Service)	5,600	5,600	5,600
Business, Rental Income, etc.	<u>400</u>	<u>400</u>	<u>400</u>
Total Income	<u>\$ 7,000</u>		
Taxable if Taxpayer is a resident	<u>\$ 7,000</u>		
Taxable if Taxpayer is not a resident			<u>\$ 6,000</u>

(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 Reg. 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 resident's 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 40NR as a nonresident, covering income from sources in Alabama for the period of nonresidence.

(ii) 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 40NR) would report \$3,000. His personal exemptions and/or credit for dependents would be on the nonresident return as the full annual amount would have been allowed on the resident return.

(Adopted September 30, 1982; amended: effective April 24, 1989)

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Auth: § 40-18-2

810-3-2-.02. Corporations Subject to Alabama Income Tax.

(1) Corporations, associations or joint-stock companies subject to tax in this state only are taxable on income from all sources, both within the without Alabama. Corporations, associations or joint-stock companies subject to tax in this state and another state shall allocate and apportion their income as defined in the statute and regulations under Section 40-27-1, Code of Alabama 1975.

(2) For a corporation acting in a fiduciary capacity in Alabama, see Reg. 810-3-2-.03.

(3) For tax years beginning after December 31, 1984, and before January 1, 1990, a qualified corporation, either domestic or foreign, may elect to be an Alabama S corporation under the provisions of Sec. 40-18-160, et seq., Code of Alabama 1975. For tax years beginning after December 31, 1989, a corporation qualified to do business or doing business in this state and having a valid S election U.S.C. § 1362 shall be an Alabama S corporation under the provisions of Sec. 40-18-160, et seq. An S corporation will not pay income tax at the corporate level, but will act as a conduit to pass through income to its shareholders. See §40-18-160, Code of Alabama 1975, and related regulations.

(4) (a) For tax years beginning after December 31, 1984, every organization described in subdivisions (1), (2), (3), (4), (5), (6), (7), (11), and (12) of § 40-18-32(a), which receives "unrelated business taxable income" as defined in 26 U.S.C. § 512, shall file an income tax return reporting such "unrelated business taxable income" and pay any tax due thereon.

(b) Any organization, whether incorporated or not, which receives such "unrelated business taxable income" shall file Form 20C and report income and deductions in the same manner as a corporation. Any organization subject to income tax which receives such "unrelated business taxable income" shall file Form 20C and report the income and deductions attributable to Alabama. See the statute and regulations under Section 40-27-1 for rules on apportionment and allocation of income and deductions.

Author: Verlon R. Frost, Jeff Taylor
Authority: Section 40-18-2, Code of Alabama 1975
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810-3-2-.03. Estates, Trusts and Fiduciaries Subject to Alabama Income Tax.

(1) Every individual or corporation acting in a fiduciary capacity, receiving income from sources within the State of Alabama, is subject to the Alabama income tax with respect to such income. For definitions of resident individuals and resident corporations, see Regs. 810-3-2-.01 and 810-3-2-.02.

(2) An estate or trust resident in the State of Alabama, or having a resident fiduciary, is subject to the Alabama income tax. An estate or trust having income from sources within the State is subject to tax on such income. For a discussion of the situs of income, see Reg. 810-3-14-.05(2). For specific rules with respect to estates, trusts and fiduciaries, see §§40-18-25 and 40-18-29, Code of Alabama 1975.

Author: Roy Wiggins
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RULES OF
DEPARTMENT OF REVENUE

CHAPTER 810-3-2.1

EXEMPT INCOME FOR FOREIGN MISSIONARY SERVICE

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810-3-2.1-.01 Exempt Income for Foreign Missionary Service

810-3-2.1-.01. Exempt Income for Foreign Missionary Service.

(1) After December 31, 1983, all missionary service income earned by a person engaged in foreign missionary service is exempt (excluded from gross income) if -

(a) the person is physically present in a foreign country or countries for a minimum of twenty-four (24) months, and

(b) the person is appointed or employed by a church or other like religious organization.

(2)(a)1. Only service as a foreign missionary qualifies for the exclusion in paragraph (1) above. Other foreign service, such as governmental appointments, does not qualify for the exclusion.

2. Missionary service not performed in a foreign country or countries does not qualify for the exclusion or for the computation of the 24 month qualifying period.

3. Service as a missionary in a territory or possession of the United States or within the Commonwealth of Puerto Rico does not qualify as foreign service.

(b)1. The 24 months of qualifying service need not be performed consecutively nor must the 24 month period begin on or after January 1, 1984.

(i) EXAMPLE: The taxpayer has served 24 months (not necessarily consecutively) as a foreign missionary prior to January 1, 1984. The taxpayer returns to foreign missionary service during 1984. All income earned as a foreign missionary in 1984 may be excluded from the Alabama income tax return for that period.

2. If a taxpayer receives foreign missionary service income, but has not met the 24 month foreign service requirement on or before the date the return for such year is filed (including extensions of time to file), such foreign missionary service income shall be included in gross income for the year earned. However, if the 24 month foreign service requirement period is subsequently met before the expiration of the statute of limitations for claiming a refund for such year, an amended return may be filed to exclude such prior foreign missionary service income and a claim for refund filed. Generally, such a refund claim must be filed within three years of the date the tax for such year was paid (or deemed to be paid, if paid by withholding or estimated payments). See Reg. 810-14-1-.19 for limitations on refund claims.

(3) Income earned from foreign missionary service for periods prior to January 1, 1984, may not be excluded from gross income even though such service may qualify for the 24 month period of required foreign service.

Author: Income Tax Division

Authority: Section 40-18-2.1, Code of Alabama 1975

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