

810-27-1-.18 Special Rules.

(1) Special Rules: In General. Section 40-27-1, Article IV.18, Code of Alabama 1975, provides that, if the allocation and apportionment provisions of Section 40-27-1, Article IV, Code of Alabama 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 pursuant to Section 40-27-1, Article IV.18, Code of Alabama 1975, 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 Section 40-2A-7, Code of Alabama 1975. A taxpayer

may file a 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 Section 40-2A-7, Code of Alabama 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 Section 40-2A-7(c)(5), Code of Alabama 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: Property Factor. 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 Alabama 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.

(4) 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 Section 40-27-1, Article IV.17-.18, Code of Alabama 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.

(5) Special Rules: Adoption of Multistate Tax Commission Special Industry

Rules. In the case of certain industries, the general provisions of Section 40-27-1, Article IV, Code of Alabama 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 special rules will provide the appropriate procedures to-determine the industries' property, payroll and sales attributable to Alabama:

1. Airlines- Alabama Rule 810.27-1-.18.01
2. Construction Contractors- Alabama Rule 810-27-1-.18.02
3. Publishing- Alabama Rule 810-27-1-.18.03
4. Railroads- Alabama Rule 810-27-1-.18.04
5. Television and Radio Broadcasting- Alabama Rule 810-27-1-.18.05
6. Trucking- Alabama Rule 810-27-1-.18.06
7. Telecommunications and Ancillary Service Providers- Alabama Rule 810-27-1-.18.07

(b) All business income shall be apportioned to Alabama in accordance with the calculation provided in Section 40-27-1, Article IV.9, Code of Alabama 1975, and Alabama Rule 810-27-1-.09, which requires that the sales factor be given double weight.

(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 Section 40-18-31.2, Code of Alabama 1975.

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

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