

810-3-14-.05 Gross Income of Nonresidents.

(1) (a) The gross income of a nonresident includes compensation for personal services only to the extent that the services were rendered in this State.

(b) Compensation for personal services rendered by a nonresident outside this State and not connected with the management or conduct of a business in this State is excluded from gross income even if payment is made from a point within this State or the employer is a resident individual, partnership or corporation.

1. Compensation for personal services rendered by a nonresident within this State is to be included in gross income although payment is received at a point outside this State or from a nonresident individual, partnership or corporation.

2. Where compensation is received for personal services rendered partly within and partly without this State, that part of the income attributable to this State is included in gross income. In such cases the test of physical presence is used to determine the situs of the rendition of the services, except where the peculiar nature of such services causes the objective of the employment to be accomplished or to take effect within this State, as, for example, where a nonresident acts as a fiduciary of an Alabama estate or trust. The gross income from commissions earned by a nonresident traveling salesman, agent, or other employee for services performed or sales made, whose compensation is in the form of a specified commission on each sale made, or service rendered, includes the specific commissions earned on sales made, or services rendered, in this State; and allowable deductions must be computed on the same basis. The gross income of all other nonresident employees, including corporate officers, includes that portion of the total compensation for services which the total number of working days employed within this State bears to the total number of working days employed both within and without this State during the taxable period. In the case of corporate officers and executives who spend only a portion of their time within this State, but whose compensation paid by a corporation operating in Alabama is exclusively for managerial services rendered by such officers and executives while within this State, the entire amount of compensation so earned is taxable without apportionment.

(2) (a) Gross income of a nonresident includes income from real and/or tangible personal property located within Alabama, or intangible personal property with a business situs in Alabama.

(b) The income from property may be derived from the operation of the property, from rents or royalties for its use, or from the sale, exchange or other disposition of the property.

1. For real property located within Alabama, gross income includes gains or losses from the sale, exchange or disposition of such property. See Chapters 6 and 8 of these regulations for computation of gains and losses to be recognized.

2. For tangible personal property located within Alabama, gross income includes gains from the sale, exchange or disposition of such property. Losses are included in gross income

from the sale, exchange or disposition of such property only if such property was "business income" producing property (as defined in Reg. 810-3-31-.02).

3. For intangible personal property which has a business situs in Alabama, gross income includes gains from the sale, exchange or disposition of such property. Losses are included in gross income from the sale, exchange or disposition of such property only if such property was "business income" producing property (as defined in Reg. 810-3-31-.02).

4. As a general rule, for the purpose of determining the source of income attributable to the sale of personal property, a sale is consummated at the place where the seller surrenders all his right, title, and interest to the buyer. Where bare legal title is retained by the seller, the sale will be deemed to have occurred at the time and place of passage to the buyer of beneficial ownership and risk of loss.

(3) (a) Gross income includes the deemed distributive share of separately stated and nonseparately stated income (or loss not to exceed basis) for shareholders of an electing Alabama S corporation.

1. For electing Alabama S corporations with income from more than one state, gross income includes only the deemed distributive share attributable to Alabama.

(b) Gross income does not include actual distributions from electing Alabama S corporations which have been previously included in gross income under subparagraph (3)(a) above.

(c) Gross income of a nonresident does not include actual distributions from S corporations which have not elected to be Alabama S corporations, nor does it include deemed distributive shares of income (or losses) of such corporations.

(d) See §§40-18-160, et seq., Code of Alabama 1975, and regulations thereunder, relating to Alabama S corporations.

(4) Gross income of a nonresident partner of a partnership includes the distributive share of the partnership income (or loss not to exceed basis), plus any "Guaranteed Payments to Partner". See Regs. 810-3-24-.01(3) and 810-3-24-.03. If the partnership has income from Alabama and any other state, Alabama gross income includes only the amount attributed to Alabama as provided in Reg. 810-3-24-.02(2).

(5) Gross income of a nonresident beneficiary of an estate or trust includes income from such estate or trust attributable to Alabama. See Reg. 810-3-25-.05.

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