

810-3-15-.21 Deductions for Nonresidents

(1) A nonresident is an individual who is a legal resident of another state.

(2) The phrase "adjusted gross income from all sources" is comprised of income which would be included in gross income if received by a resident of the State of Alabama in accordance with § 40-18-14, Code of Alabama 1975, less the deductions described in § 40-18-14.2.

(3) Effective for all taxable years beginning after December 31, 1997:

(a) Business-related Expenses. The following business-related expenses are deductible in computing Alabama adjusted gross income for a nonresident only to the extent that they are paid or incurred in a trade or business within the State of Alabama:

1. Ordinary and necessary business expenses in accordance with § 40-18-15(a)(1),
2. Interest expense in accordance with § 40-18-15(a)(2),
3. Taxes in accordance with § 40-18-15(a)(3),
4. Losses in accordance with §§ 40-18-15(a)(4) and (5),
5. Losses from debts ascertained to be worthless in accordance with § 40-18-15(a)(7),
6. Depreciation and amortization in accordance with § 40-18-15(a)(8),
7. Depletion in accordance with § 40-18-15(a)(9),
8. Retirement savings contributions and expenses for qualified pension plans, profit sharing plans, stock bonus plans, and annuity plans in accordance with §§ 40-18-15(a)(11) and (12),
9. Expenses incurred in removing barriers to handicapped persons in accordance with § 40-18-15(a)(19),
10. Section 179 expenses in accordance with § 40-18-15(a)(21),
11. Unreimbursed employee business expenses and expenses described at 26 U.S.C. § 212 in accordance with § 40-18-15(a)(23), and
12. Assistance provided to the State Industrial Development Authority in accordance with § 40-18-15(a)(25).

(b) Net Operating Losses. The deduction allowed by § 40-18-15.2 for net operating losses shall be deductible only to the extent that a loss arose from a trade or business carried on in Alabama. See § 40-18-15.2.

(c) Property Located in Alabama - Income Subject to Alabama Tax. The following expenses are deductible in computing Alabama adjusted gross income for a nonresident only to the extent arising from property located in Alabama or transactions producing income that is subject to tax in the State of Alabama:

1. Interest expense in accordance with § 40-18-15(a)(2),
2. Taxes in accordance with § 40-18-15(a)(3),
3. Losses in accordance with § 40-18-15(a)(5),
4. Depreciation and amortization in accordance with § 40-18-15(a)(8),
5. Depletion in accordance with § 40-18-15(a)(9),
6. Ordinary and necessary business expenses in accordance with § 40-18-15(a)(14) and 26 U.S.C § 212, and
7. Expenses incurred in removing barriers to handicapped persons in accordance with § 40-18-15(a)(19).

(d) Casualty and Theft Losses. The deductible amount of casualty and theft losses allowed by § 40-18-15(a)(6), which references 26 U.S.C. § 165, shall be allowed only for losses arising from property located within the State of Alabama. The limitations in 26 U.S.C. § 165 shall be applied only with regard to the taxpayer's Alabama adjusted gross income.

(e) Alabama Percentage of Adjusted Total Income. Nonresidents must divide the amount of their Alabama adjusted total income by the amount of their adjusted total income from all sources in order to determine the ratio of Alabama income to income from all sources. This percentage, the Alabama percentage of adjusted total income, is used to determine the deductible amount of certain expenses taken below the adjusted total income line. Alimony paid and adoption expenses are not considered in the computation of the Alabama percentage of adjusted total income - the amounts are not subtracted from either the numerator or the denominator of the fraction. See § 40-18-14.2.

1. Personal Exemption and Dependent Exemption. A nonresident must prorate the personal exemption by multiplying the amount of the personal exemption by the Alabama percentage of adjusted total income. If Alabama total income exceeds the prorated amount, a Form 40NR must be filed. Dependent exemptions must be prorated

in the same manner using the Alabama percentage of adjusted total income. See § 40-18-19.

2. Federal Income Tax Deduction. The federal income tax deduction must also be prorated using the Alabama percentage of adjusted total income. See Rule 810-3-15-.20.

(i) If the taxpayer is filing separately on the Alabama return, but jointly on the federal return, an intermediate computation is performed before the federal income tax deduction is prorated, and the Alabama percentage of adjusted total income is not used to prorate the federal income tax deduction.

(I) The taxpayer's Alabama adjusted total income is divided by the sum of the spouse's federal adjusted gross income and the taxpayer's adjusted total income from all sources.

(II) The percentage computed in subparagraph (I) is then applied to the amount of the federal income tax liability as shown on the current federal income tax return. The result of the computation is the allowable federal income tax deduction.

3. Optional Standard Deduction. If a nonresident taxpayer elects to claim the optional standard deduction in lieu of claiming itemized deductions, the optional standard deduction must be prorated by multiplying the amount of the optional standard deduction by the Alabama percentage of adjusted total income. See Rule 810-3-15-.19.

4. Other Adjustments and Itemized Deductions. The amount allowed for the following deductions shall be limited to the amount determined by multiplying the total amount of the deduction by the Alabama percentage of adjusted total income.

(i) Interest expense in accordance with § 40-18-15(a)(2),

(ii) Taxes (other than federal income tax) in accordance with § 40-18-15(a)(3),

(iii) Casualty and theft losses in accordance with § 40-18-15(a)(6),

(iv) Charitable contributions in accordance with § 40-18-15(a)(10),

(v) Medical and dental expenses in accordance with § 40-18-15(a)(13),

(vi) Expenses relating to the construction of a radioactive fallout shelter in accordance with § 40-18-15(a)(15),

(vii) The cost of conversion to wood as the primary energy source in accordance with § 40-18-15(a)(16),

(viii) Alimony in accordance with § 40-18-15(a)(17),

(ix) Expenses relating to the removal of barriers to handicapped persons in accordance with § 40-18-15(a)(19),

(x) Adoption expenses in accordance with § 40-18-15(a)(24), and

(xi) Qualified long-term care coverage in accordance with § 40-18-15(a)(26).

(4) Prior to January 1, 1998. Effective for taxable years beginning before January 1, 1998, the provisions of subparagraphs (3)(a) through (3)(e) of this rule were the same except:

(a) The deductions for alimony, retirement contributions, and early withdrawal of savings penalties were not deductible from Alabama income;

(b) Qualified long-term care coverage was deducted as an adjustment to income - after January 1, 1998, only the percentage applicable to Alabama income is deductible from Alabama income; and

(c) Adoption expenses were not allowable as a deduction for a nonresident - after January 1, 1998, adoption expenses are deductible according to the Alabama percentage of adjusted total income.

Author: Roger Frost, Sharon Norman, Hugh Kirkland, James Lucy, Lee Johnson, and Betty Knowles

Authority: §§40-2A-7(a)(5) and 40-18-15, Code of Alabama 1975

History: Effective September 30, 1982.

Amended June 17, 1988.

Amended September 18, 1996, effective October 23, 1996.

Repealed and New Rule: Filed July 26, 1999, effective August 30, 1999.