

APA-1

## Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-3-32-.03

Rule Title: Unrelated Business Taxable Income

New;  Amended;  Repealed;  Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that result from the absence of the proposed rule? N/A

Are all the facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

\*\*\*\*\*

Does the proposed rule have any economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

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### Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer  
Date 08/21/2017

*Michael D. Gaudin*

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APA-6  
10/96

**ECONOMIC IMPACT STATEMENT  
FOR APA RULE  
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-3-32-.03

Rule Title: Unrelated Business Taxable Income

           New            Amend   X   Repeal            Adopt by Reference



This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
3. EFFECT OF THIS RULE ON COMPETITION:
4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:
7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND

**BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE  
BENEFITS AND BURDEN COMPARISON:**

9. **THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC  
HEALTH:**

10. **DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH  
IF THE RULE IS NOT IMPLEMENTED:**

11. **OTHER COMMENTS:**

**ALABAMA DEPARTMENT OF REVENUE**  
**Individual and Corporate Tax**

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE**

|                 |  |
|-----------------|--|
| 810-3-32-.01.01 | Political Organizations                              |
| 810-3-32-.03    | Unrelated Business Taxable Income                    |
| 810-3-38-.01    | Additional Deductions Allowed for Corporations       |
| 810-3-39-.04    | Incentive Rules for Alabama Affiliated Groups Filing |
| 810-3-39-.06    | Mechanics of Consolidated Filing                     |

**INTENDED ACTION**

Repealed; Repealed; Repealed; Repealed; Repealed

**SUBSTANCE OF PROPOSED ACTION:**

The department proposes to repeal the above mentioned rules because during reviewal of the rule required by the Red Tape Reduction Act they were determined to be superfluous to the Alabama statute.

**RULE NO. & TITLE**

|              |                      |
|--------------|----------------------|
| 810-3-17-.01 | Items Not Deductible |
|--------------|----------------------|

**INTENDED ACTION**

Amended

**SUBSTANCE OF PROPOSED ACTION:**

The department proposes to amend the above mentioned rule to include items that are now deductible and to add clarification on others that are not deductible.

**RULE NO. & TITLE**

|              |                    |
|--------------|--------------------|
| 810-3-32-.02 | Proof of Exemption |
|--------------|--------------------|

**INTENDED ACTION**

Amended

**SUBSTANCE OF PROPOSED ACTION:**

The department proposes to amend the above mentioned rule, because during the reviewal required by the Red Tape Reduction Act, it was determined that within the rule there is a reference to 810-3-32-.03 which is being recommended for repeal.

**RULE NO. & TITLE**

|              |   |
|--------------|---|
| 810-3-39-.02 | Extension of Time for Filing a Corporation Return                           |
| 810-3-39-.05 | Taxable Years Following an Election Period for an Alabama Affiliated Group. |
| 810-3-71-.01 | Employers Required to Withhold Tax from Wages                               |
| 810-3-71-.02 | Computing Tax Withheld  |
| 810-3-72-.01 | Included and Excluded Wages   |
| 810-3-75-.01 | Withholding Statement Furnished Employees                                   |
| 810-3-75-.02 | Extensions Of Time for Filing Reports Under Withholding Tax Laws            |

**INTENDED ACTION** Amended; Amended; Amended; Amended; Amended; Amended; Amended

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to amend the above mentioned rule to comply with the Red Tape Reduction Act 2013-88 consisting of non technical clarifications.

**RULE NO. & TITLE**  
810-9-1-.05 Apportionment and Allocation of Net Income of Financial Institutions

**INTENDED ACTION** Amended

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to amend the above mentioned rule pursuant to Alabama Act 2017-165 that requires multi-state financial institutions to include loans and credit card receivables in the calculation of their Alabama property factor, which will be sourced consistent with the interest receipts associated with such loans.

**RULE NO. & TITLE**  
810-3-39-.03 Consolidated Filing

**INTENDED ACTION** New, Repealed

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to repeal and create a new rule as required by the Red Tape Reduction Act. Proposed repealed rule has been deemed outdated due to changes to Alabama statute. Therefore, a new updated rule is also proposed.


**TIME, PLACE, MANNER OF PRESENTING VIEWS:** A public hearing will be held at **02:30 PM on Tuesday, October 10, 2017, Room 1203, First Floor**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/analysis/rules.cfm>.

All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also appear at the hearing to present their views.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**  
Tuesday, October 10, 2017

**CONTACT PERSON AT AGENCY:**  
Meagan Barrett

Alabama Department of Revenue  
4131 Gordon Persons Building

  
Michael D. Gamble, Secretary  
Alabama Department of Revenue

810-3-32-.03.

Unrelated Business Taxable Income. (REPEAL)

(1) Any organization specified in subdivisions (1), (2), (3), (4), (5), (6), (7), (11), and (12) of subparagraph (a) of § 40-18-32 which receives "unrelated business taxable income" (as defined in 26 U.S.C. § 512) is not exempt from taxation on such income. Any organization which receives unrelated business taxable income must comply with the provisions of §§ 40-18-2, and -31, and file the appropriate income tax returns and pay any tax due.

(2) Except for organizations described in § 40-18-32(a)(5), the term "unrelated business taxable income" is defined as follows:

(a) The gross receipts from any "unrelated trade or business" regularly carried on by the organization, reduced by the expenses and deductions directly connected with the unrelated trade or business.

(b) The following amounts are excluded from unrelated business taxable income:

1. All dividends, interest, payments with respect to securities loans (as defined in 26 U.S.C. § 512(a)(5)), and annuities; together with all expenses and deductions directly connected with such income.

2. All royalties (including overriding royalties) whether measured by production or by gross or taxable income from the property; together with all expenses and deductions directly connected with such income.

3. All rents from real property, together with rents from personal property if the rents from such personal property are incidental to the rental of the real property. If more than 50% of the total rents received are attributable to the rental of the personal property or if the amount of rents to be received is dependent in whole or in part upon the income or profits derived by any person from such property (other than a fixed percentage or percentages of sales or receipts); then such rents shall not be excluded from unrelated business taxable income. If any rents are excluded from unrelated business taxable income, then any expenses or deductions directly connected with such income shall also be excluded.

4. In the case of debt-financed property (as defined in 26 U.S.C. § 514), unrelated business taxable income will include the amount ascertained under 26 U.S.C. § 514(a)(1) less the deductions allowed by 26 U.S.C. § 514(a)(2).

5. All gains or losses from the sale, exchange or other disposition of property, other than stock in trade or property held primarily for sale to customers in the ordinary course of the trade or business, together with all expenses and deductions directly connected with such income.

6. The net operating loss deduction allowed by § 40-18-35.1.

7. Income derived from research performed for the United States government, or any of its agencies or instrumentalities, and any state or political subdivision thereof; together with all expenses and deductions directly connected with such income.

8. In the case of a college, university or hospital, all income from research performed for any person, together with all expenses and deductions directly connected with such income.

9. In the case of organizations operated primarily for the purpose of carrying on research, the results of which are freely available to the general public, all income derived from research performed for any person, together with all expenses and deductions directly connected with such income.

10. In the case of any organization subject to tax on its unrelated business taxable income under § 40-18-32, there will be allowed a deduction for charitable contributions as provided in § 40-18-35, but not in excess of 10% of the unrelated business taxable income computed without regard to this subdivision.

11. In the case of a trust described in 26 U.S.C. § 511(b), the deduction allowed for contributions (whether or not directly connected with the carrying on of a trade or business) shall be allowed, and any distribution made to a beneficiary described in 26 U.S.C. § 170 shall be considered to be a contribution. The deduction shall not exceed 10% of the unrelated business taxable income computed without regard to the deduction allowed by this subdivision.

12. Except from the purposes of computing the net operating loss deduction for section 6. above, there shall be allowed a specific deduction of \$1,000,00. In the case of a diocese, province of a religious order, or a convention or association of churches, there shall also be allowed with respect to each parish, individual church, district or other local unit, a specific deduction of \$1,000.00 or the gross income derived from any unrelated trade or business regularly carried on by such local unit, whichever is the lesser.

13. [RESERVED].

14. [RESERVED].

(c) 1. In the case of an organization described in § 40-18-32(a)(5), the term "unrelated business taxable income" means the gross income (excluding any exempt function income) less the deductions and expenses directly connected with such income and with the deductions specified in sections 6., 10., 11. and 12. of subparagraph (b) above.



2. The term "exempt function income" means the gross income from dues, fees, charges, or similar amounts paid by members of the organization as consideration for providing such members or their dependents or guests goods, facilities, or services in furtherance of the purposes constituting the basis of the exemption of the organization to which such income is paid. Exempt function income also includes all income set aside by the organization for the benefit of an organization described in § 40-18-32(a)(2), if such contribution is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(d) An organization which receives "unrelated business taxable income" from sources within and without Alabama shall determine the amount of such income attributable to Alabama by using the apportionment and allocation rules of Reg. 810-3-31-.02.

Authors: Fred H. Pritchard, John H. Burgess  
Authority: Code of Ala. 1975, § 40-18-32, 40-18-57.  
History: Adopted: June 17, 1988; Filed with LRS: July 27, 1988.