

APA-1

### Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-3-39-.03

Rule Title: Consolidated Filing

New;  Amended;  Repealed;  Adopt by Reference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

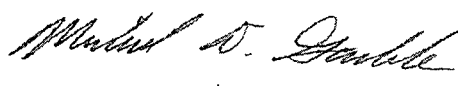
Are all the facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

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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

APA-6  
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-3-39-.03

Rule Title: Consolidated Filing

New  Amend  Repeal  Adopt by Reference

NO  
 YES

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

**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
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**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
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**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

**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  
Montgomery, Alabama 36132  
(334) 242-1380



Michael D. Gamble, Secretary  
Alabama Department of Revenue

810-3-39-.03 Consolidated Filing. **(REPEAL)**

(1) Making the Election. The election is made by the common parent of the Alabama affiliated group properly completing and filing Form 20C-CRE (Election to File Consolidated Corporate Income Tax Return), Form 20C-AS (Affiliations Schedule), and the Alabama consolidated return, Form 20C, with the annual fee by the due date (including extensions). If the election is not filed timely with payment of the annual fee, the election is invalid.

(2) Liability. Each corporation included in the Alabama consolidated return will be jointly and severally liable for the Alabama income tax liability of the Alabama affiliated group. If a corporation is a member of the Alabama affiliated group for only part of the tax year, then the corporation will be liable for only the portion of the Alabama consolidated tax liability attributed to that portion of the year that the corporation was a member of the Alabama affiliated group prorated on a daily basis. The tax liability of the Alabama affiliated group will be the Alabama tax rate specified in §40-18-31 applied to the taxable income of the Alabama affiliated group.

(a) Part-year members. If an eligible corporation becomes a member of an Alabama affiliated group after the beginning of the Alabama consolidated return year or ceases to be a member of the Alabama affiliated group during the consolidated return year, two tax returns will be due for that taxable year. The Alabama consolidated return shall include amounts attributable to such corporation for the part of the year in which it was a member of the Alabama affiliated group. A separate return shall be filed and include (or if a member of a different Alabama affiliated group, such group's Alabama consolidated return shall include) amounts attributable to such corporation for the remainder of the taxable year. The method used to determine the federal taxable income of that member will be used to attribute amounts of taxable income or loss, modifications, business income or loss, apportionment factors, nonbusiness or partnership income or loss, and credits to the different portions of the taxable year.

(b) Ineligible members. If a part-year member is a taxpayer that is ineligible to be a member of an Alabama affiliated group it shall file a separate tax return for the respective period(s) using the accounting method used in determining federal taxable income of such member.

(c) Liability of corporation after withdrawal. If a corporation has ceased to be a member of an Alabama affiliated group and if such cessation resulted from a bona fide sale or exchange of its stock for fair value and occurred prior to the date upon which any deficiency is assessed, the Commissioner may, if the Department determines that the assessment or collection of the balance of the deficiency will not be jeopardized, make assessment and collection of such deficiency from such former member in an amount not exceeding the portion of such deficiency which the Commissioner may determine to be allocable to it. If the Commissioner makes assessment and collection of any part of a deficiency from such former member, then for purposes of any credit or

refund of the amount collected from such former member, the agency of the common parent will not apply.

(d) Effect of intercompany agreements. No agreement entered into by one or more members of the Alabama affiliated group with any other member of the group or with any other person will in any case have the effect of reducing the liability prescribed pursuant to §40-18-39.

(3) Consolidated estimated tax.

(a) Generally. If an Alabama affiliated group files an Alabama consolidated return for two consecutive taxable years, it must make payments of estimated tax on a consolidated basis for each subsequent taxable year, until such time as separate returns are properly filed. Until such time, the Alabama affiliated group is treated as a single corporation for purposes of §40-18-82 (relating to payment of estimated tax by corporations). If separate returns are filed by the members of an Alabama affiliated group for a taxable year, the amount of any estimated tax payments made with respect to a consolidated payment of estimated tax for such year will be credited against the separate tax liabilities of the members in any manner designated by the common parent which is reasonably satisfactory to the Department. For example, the manner of allocation will be satisfactory to the Department if it does not jeopardize the collection of any income tax liability.

(b) First two consolidated return years. For the first two years for which an Alabama affiliated group files a federal and an Alabama consolidated return, it may make payments of estimated tax on either a consolidated or separate basis. If a consolidated return is filed for such year, the amount of any estimated tax payments made for such year by any member will be credited against the tax liability of the Alabama affiliated group. The amount of any separate estimated tax payments made for such year will be credited against the combined income tax liability for the Alabama affiliated group.

(c) Example. Corporations P and S-1 file a federal and an Alabama consolidated return for the first time for calendar year 1999. Corporations P and S-1 also file Alabama consolidated returns for calendar years 2000 and 2001. For calendar years 1999 and 2000, Corporations P and S-1 may make payments of estimated Alabama income tax on either a separate or consolidated basis. For calendar year 2001, however, the Alabama affiliated group must pay its estimated tax on a consolidated basis.

(4) Records. In accordance with §40-2A-7 taxpayers must maintain records to allow the Department to determine the correct amount of tax including support for deviations from federal to Alabama income, gain computations, elimination entries, etc.

(5) Federal statutes. For interpretation of federal statutes adopted by the Alabama Legislature, see Rule 810-3-1.1-.01, Operating Rules.

(6) Effective date. This rule is effective for tax periods beginning after December 31, 1998.

Authors: Joe Garrett, Cathy McCary, Melody Moncrief, Michael Mason, CPA  
Authority: Code of Ala. 1975, §§40-2A-7(a)(5),40-18-39.  
History: New Rule: Filed December 15, 1999; effective January 19, 2000.  
Amended: Filed October 15, 2010; effective November 19, 2010.

810-3-39-.03 Consolidated Filing. **(NEW RULE)**

(1) Election to file an Alabama consolidated return. In lieu of filing separate entity returns in Alabama, a group of related corporations may elect to be treated as an Alabama affiliated group filing a consolidated corporate income tax return. Such election may be made by submitting items (a) through (c) below to the Department by the due date or extended due date of the return:

(a) Submit a completed Form 20C-CRE (Election to File Consolidated Corporate Income Tax Return). This form must be filed by the common parent of the Alabama affiliated group. If the common parent is not a member of the Alabama affiliated group, the members of the Alabama affiliated group must designate the member that will serve in this role.

(b) Submit a Form 20C-C (Alabama Consolidated Return) for the Alabama affiliated group and include all pertinent schedules, including Schedule AS (Affiliation Schedule) and a proforma Form 20C for each member. The Alabama consolidated return must be signed by one of the officers of the common parent listed in Alabama Rule 810-3-.39-.01(1)(a) on behalf of the Alabama affiliated group.

(c) Pay the annual fee for the privilege of filing an Alabama consolidated return. The annual fee is a graduated fee based upon the aggregate amount of total assets and is determined by Section 40-18-39(b)(8), Code of Alabama 1975. "Aggregate amount of total assets" means, for purposes of this rule, the aggregate of all member's total assets as determined on a proforma separate entity basis.

(2) Nexus. Only corporations having substantial nexus with Alabama may be included as part of the Alabama affiliated group. A corporation has substantial nexus with Alabama if certain thresholds are exceeded pursuant to Section 40-18-31.2, Code of Alabama 1975.

(3) Liability. Each corporation included in the Alabama consolidated return will be jointly and severally liable for the Alabama income tax liability of the Alabama affiliated group. If a corporation is a member of the Alabama affiliated group for only part of the tax year, then the corporation will be liable for only the portion of the Alabama consolidated tax liability attributed to that portion of the year that the corporation was a member of the Alabama affiliated group prorated on a daily basis. The tax liability of the



Alabama affiliated group will be the Alabama tax rate specified in Section 40-18-31, Code of Alabama 1975 applied to the taxable income of the Alabama affiliated group.

(a) Part-year members. If an eligible corporation becomes a member of an Alabama affiliated group after the beginning of the Alabama consolidated return year or ceases to be a member of the Alabama affiliated group during the consolidated return year, two tax returns will be due for that taxable year. The Alabama consolidated return shall include amounts attributable to such corporation for the part of the year in which it was a member of the Alabama affiliated group. A separate return shall be filed and include (or if a member of a different Alabama affiliated group, such group's Alabama consolidated return shall include) amounts attributable to such corporation for the remainder of the taxable year. The method used to determine the federal taxable income of that member will be used to attribute amounts of taxable income or loss, modifications, business income or loss, apportionment factors, nonbusiness or partnership income or loss, and credits to the different portions of the taxable year.

(b) Ineligible members. If a part-year member is a taxpayer that is ineligible to be a member of an Alabama affiliated group, it shall file a separate tax return for the respective period(s) using the accounting method used in determining federal taxable income of such member.

(c) Liability of corporation after withdrawal. If a corporation has ceased to be a member of an Alabama affiliated group and if such cessation resulted from a bona fide sale or exchange of its stock for fair value and occurred prior to the date upon which any deficiency is assessed, the Commissioner may, if the Department determines that the assessment or collection of the balance of the deficiency will not be jeopardized, make assessment and collection of such deficiency from such former member in an amount not exceeding the portion of such deficiency which the Commissioner may determine to be allocable to it. If the Commissioner makes assessment and collection of any part of a deficiency from such former member, then for purposes of any credit or refund of the amount collected from such former member, the agency of the common parent will not apply.

(4) Computation of consolidated income. Each member of an Alabama affiliated group must separately calculate its Alabama taxable income or loss (Form 20C) in accordance with Title 40, Code of Alabama 1975. The members will then combine such incomes and losses on a single return (Form 20C-C). Transactions between members of an Alabama affiliated group are not eliminated in determining the member's Alabama taxable income.

(5) Net Operating Losses. A net operating loss ("NOL") earned by one member of an Alabama affiliated group may offset income earned by another member in the year in which it was earned. To the extent the Alabama affiliated group, as a whole, earns a NOL for a tax year, such loss may be carried forward to offset taxable income earned by the Alabama affiliated group in subsequent tax years pursuant to Section 40-18-35.1, Code of Alabama 1975.

(a) Addition of a new member to the Alabama affiliated group. Pursuant to Section 40-18-39(h), Code of Alabama 1975, NOLs earned by a corporation before it was part of the Alabama affiliated group are deductible only to the extent the corporation reports separate company income and such deduction should be shown on the member's proforma Form 20C in the tax year in which the NOL was utilized.

(b) Assigment of NOL to a departing member. When a member departs an Alabama affiliated group, any unutilized NOL earned in a previous tax year must be evaluated to determine if any portion of such loss should be assigned to the departing member. Such NOLs are assigned to the members of the Alabama affiliated group based on the percentage in which the members contributed to the loss in the tax year in which the net operating loss was earned.

Example: Company A, Company B, and Company C elected to file an Alabama Consolidated return in 2013. The Alabama affiliated group earned a (\$40,000,000) NOL in tax year 2015. The members separate Alabama taxable income for tax year 2015 were as follows: Company A: (\$20,000,000), Company B: \$10,000,000, Company C: (\$30,000,000). The Alabama affiliated group utilized \$20,000,000 of the 2015 NOL in tax year 2016. On the last day of the 2016 tax year, Company C left the Alabama affiliated group. The unutilized 2015 tax year NOL of (\$20,000,000) (\$40,000,000 - \$20,000,000) must be analyzed to determine if a portion should be assigned to Company C. Only Company A and Company C contributed to the 2015 NOL earning a total negative taxable income of (\$50,000,000) (20,000,000 + 30,000,000). Company A is assigned 40% (20,000,000/50,000,000) of the NOL generated in tax year 2015 while Company C is assigned 60% (30,000,000/50,000,000). The Alabama affiliated group may carryforward \$8,000,000 of the remaining 2015 NOL while Company C may carryforward \$12,000,000.

(6) Income Tax Credits. Members of an affiliated group that have been approved for various income tax credits allowed by Alabama law must calculate those credits on a separate entity basis. Such credits may offset only the income tax liability of the specific member authorized to use the credit. Income tax credits earned by one member may not offset the income tax liability of another member. Credits may not be used to reduce the Alabama affiliated group's consolidated filing fee.

(7) Consolidated Estimated Tax. If an election has been made to file an Alabama consolidated return, estimated tax payments must be submitted for the Alabama affiliated group in the name of the common parent or its designee.

(8) Records. In accordance with Section 40-2A-7 Code of Alabama 1975, taxpayers must maintain records to allow the Department to determine the correct amount of tax including support for deviations from federal to Alabama income, gain computations, elimination entries, etc.

(9) Federal statutes. For interpretation of federal statutes adopted by the Alabama Legislature, see Alabama Rule 810-3-1.1-.01, Operating Rules.

Author: Holly H. Coon

Authority: Section 40-2A-7(a)(5), 40-18-31.2, 40-18-35.1, and 40-18-39, Code of Alabama 1975.

History: .