

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-3-24.2-.04

Rule Title: Composite Payment Relief

XX New; ___ Amend; ___ Repeal; ___ 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 might result from the absence of the proposed rule? N/A


Are all 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.

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 5/13/15

APA-6
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-3-24.2-04

Rule Title: Composite Payment Relief

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 & Corporate Tax Division**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-3-24.2-.04 Composite Payment Relief

INTENDED ACTION: Adopt new rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to adopt the above rule to outline the criteria that must be met in order for a partnership to be exempt from the composite return payment.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **1:30 p.m. on Wednesday, July 15, 2015, 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://revenue.alabama.gov/analysis/upcoming-rule-hearings.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 during the thirty-five (35) day period following publication of the notice or by appearing at the hearing.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Wednesday, July 15, 2015

CONTACT PERSON AT AGENCY:

Patricia Toles
Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380



Michael D. Gamble, Secretary
Alabama Department of Revenue

810-3-24.2-04 Composite Payment Relief. (NEW RULE)

(1) Notwithstanding the provisions of Ala. Admin. Code § 810-3-24.2-.01, a pass-through entity shall not be required to remit a composite payment on behalf of a nonresident member if any of the following applies:

(a) The nonresident member is a partner of a pass-through entity that: (1) qualifies for the capital credit, (2) has income that is solely derived from the capital credit project, and (3) has an allowable capital credit that is expected to completely offset any potential liability. **See Ala. Admin. Code § 810-2-7;**

(b) The nonresident member is a tax-exempt entity that does not have any unrelated business taxable income (“UBTI”) attributable to the pass-through entity. **See Ala. Admin. Code §§ 810-3-32-.03 & 810-3-24.2-.01; or**

(c) The nonresident member: (1) is a corporate taxpayer that has been in a loss position for the three most recent tax periods, (2) expects to be a loss position for the current tax period, and (3) does not have any separately stated income items that pass through to its nonresident members.

(2) A pass-through entity that operates at a loss for the tax year shall remit an Alabama composite payment on behalf of a nonresident member, if the nonresident partner is allocated any separately stated income items, as evidenced on the Alabama Schedule K-1. **See Ala. Admin. Code § 810-3-24.2-.01.**

Example: Partner A is a partner in XYZ partnership (a 100% Alabama partnership). XYZ incurred an operating loss for the tax period and issued K-1’s to each of the partner’s in XYZ partnership. Partner A’s K-1 reports the following:

Ordinary business income (loss)	(\$10,000)
Portfolio Income	\$1,500
Guaranteed Payments	\$8,000

XYZ must file a composite return on behalf of Partner A and pay tax on the \$9,500 (\$8,000 guaranteed payments + \$1,500 portfolio income).

(3) A pass-through entity that qualifies for relief from the composite payment requirement for one or more nonresident partners shall complete form PTE-R indicating which exemption the pass-through entity qualifies for. The original form PTE-R must be submitted separately for approval before the due date of the income tax return to the address listed on the form.

(4) Each non-resident member that is included in the request for exemption from the composite payment shall complete a non-resident agreement (“NRA”) which must be filed with the PTE-R requesting relief. The non-resident will be required to make estimated tax payments timely, and file any necessary returns by the appropriate due dates. If the exempt non-resident

member does not abide by the criteria outlined in this paragraph, then the Department shall void the exemption and seek payment from the pass-through entity as outlined in 40-18-24.2.

(5) If a pass-through entity has a unique or unusual situation that does not qualify for one of the exemptions mentioned above, it may complete form PTE-R requesting relief from the composite payment. The form should be submitted with a detailed explanation of the situation and any substantiating information before the due date of the income tax return to the address listed on the form PTE-R. The Department will review the taxpayer's facts and circumstances on a case-by-case basis.

Author: Dennice Hillard
Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-24.2(c)(3)
History: