

Transmittal Sheet For Notice Of Intended Action

Control: 810 Department or Agency: Revenue
Rule Nos: 810-27-1-.09
Rule Title: Apportionment Formula: Double Weighting the Sales Factor.

New; Amended; Repealed; Adopt by Reference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 relate to or effect any matter of litigation which the agency is a party to concerning the subject matter of the proposed rule? No

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 Services Agency.

Signature of certifying officer
Date 09/20/2021

LEGISLATIVE SVC AGENCY
SEP 20 2021
REC'D & FILED

**ALABAMA DEPARTMENT OF REVENUE
Income Tax Administration**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-27-1-.09

Apportionment Formula: Double Weighting the Sales Factor.

INTENDED ACTION

Amended

**SUBSTANCE OF
PROPOSED ACTION:**

Act 2021-1 amended Section 40-27-1 Article IV.9 to provide that a single sales factor be used to apportion a multistate taxpayer's income to Alabama effective for periods beginning on or after January 1, 2021. This rule is being amended to incorporate those changes.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be conducted at **01:30 PM on Tuesday, November 09, 2021** via web-conference. To participate in the upcoming web-conference public hearing please contact the Tax Policy and Governmental Affairs Division at Taxpolicy@revenue.alabama.gov or 334-242-1380 to obtain the appropriate sign-in information for a specific public hearing date. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/tax-policy/>.

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 may present their views during the web-conference.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, November 09, 2021

CONTACT PERSON AT AGENCY:

Meagan Barrett

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



Mary Martin Mitchell, Secretary
Alabama Department of Revenue

Apportionment Formula: Double Weighting the Sales Factor.

~~(1) The provisions of this rule are effective for taxable years beginning on or after December 31, 2010. For previous taxable years, the sales factor was evenly weighted with property factor and payroll factor in calculating a taxpayer's apportionment factor in Alabama.~~

(2) All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Code of Ala. 1975, 40-27-1, §40-27-1, Article IV.9, as amended.

(2) For taxpayers with a business interest in an unincorporated entity (e.g., partnership, unincorporated joint-venture, limited liability company taxed as a partnership, etc.), the apportionment formula shall include the pro rata share of the unincorporated entity's factor data.

(3) For taxable years beginning on or after January 1, 2020, all business income shall be apportioned to this state by multiplying the income by the sales factor.

(4) For taxable years beginning before January 1, 2020, the elements of the apportionment formula are include the property factor, the payroll factor and the sales factor. If any factor is not utilized in the production of business income, it shall be eliminated, and the denominator reduced accordingly. The taxpayer may request, or the Commissioner may require, the use of a replacement factor in lieu of the eliminated factor where appropriate as provided for in §40-27-1, Article IV.18 and any rules promulgated thereunder.

(a) For taxable years beginning on or after December 31, 2010 and taxable years beginning on or before January 1, 2020. The apportionment formula gives double-weight to the sales factor and equal weight to both the property and payroll factors. If any factor is not utilized in the production of business income, it shall be eliminated and the denominator reduced accordingly. The taxpayer may request, or the Commissioner may require, the use of a replacement factor in lieu of the eliminated factor where appropriate as provided for in §40-27-1, Article IV.18 and any rules promulgated thereunder.

(a)1. EXAMPLE: Company A is a multistate entity which does business both within and without of Alabama. Company A shall apportion its income using the apportionment formula as follows:

	Alabama	Everywhere
Property	500,000	600,000
Payroll	1,500,000	2,000,000
Sales	2,500,000	7,000,000

Company A must compute its apportionment formula as follows:

Property	(500,000/600,000)	83.3333%	
Payroll	(1,500,000/2,000,000)	75.0000%	
Sales	(2,500,000/7,000,000)	71.4286%	= (35.7143% X 2)
Sum of Factor Percentages		229.7619%	

Divide by Number of Factors Used	<u> </u>	÷ 4
Apportionment Factor Average Percentage:		<u>57.4405%</u>

(b)2. EXAMPLE: Company B is a multistate entity which does business both within and without of Alabama. Company B has property and sales within Alabama but does not have any payroll within Alabama. Therefore, Company B shall eliminate the payroll factor and reduce the denominator. Company B shall apportion its income by doing the following:

	Alabama	Everywhere
Property	500,000	600,000
Payroll	0	0
Sales	2,500,000	7,000,000

Company B must compute its apportionment formula as follows:

Property	(500,000/ 600,000)	83.3333%	
Payroll	(0/0)	00.0000%	
Sales	(2,500,000/ 7,000,000)	71.4286%	= (35.7143% X 2)
Sum of Factor Percentages		154.7619%	
Divide by Number of Factors Used		<u> </u>	÷3
Apportionment Factor Average Percentage			<u>51.5873%</u>

(b) For taxable years beginning prior to December 31, 2010, the sales factor was evenly weighted with property factor and payroll factor in calculating a taxpayer's apportionment factor in Alabama.

~~(3) For taxpayers with a business interest in an unincorporated entity (e.g., partnership, unincorporated joint venture, limited liability company taxed as~~

a partnership, etc.), the apportionment formula shall include the pro rate share of the unincorporated entity's factor data.

(a) ~~EXAMPLE: Corporation C has a 20 % distributive share of Partnership P's income which is included in Corporation C's apportionable business income. There are no transactions between Corporation C and Partnership P. Corporation C shall apportion his income as follows:~~

	Alabama	Everywhere
Property	550,000	600,000
Payroll	1,800,000	2,000,000
Sales	1,500,000	7,000,000

Using the rules for computing the elements of the apportionment formula at the partnership level, ~~Corporation C's 20% share of Partnership P's apportionment factor data is as follows:~~

	Alabama	Everywhere
Property	20,000	55,000
Payroll	10,000	25,000
Sales	15,000	70,000

Corporation C must compute its apportionment formula as follows:

	Alabama	Everywhere	
Property	(550,000 + 20,000) 570,000	(600,000 + 55,000)	655,000
Payroll	(1,800,000 + 10,000) 1,810,000	(2,000,000 + 25,000)	2,025,000
Sales	(1,500,000 + 15,000) 1,515,000	(7,000,000 + 70,000)	7,070,000

Property	(570,000 / 655,000)	87.0229%
Payroll	(1,810,000 / 2,025,000)	89.3827%
Sales	(1,515,000 / 7,070,000)	42.8572% = (21.4286% X 2)

Sum of Factor Percentages _____ 219.2628%
 Divide by Number of Factors Used _____ ÷ 4
 Apportionment Factor Average Percentage 54.8157%

Author: Kathleen F. Abrams, Holly H. Coon
 Authority: §§40-2A-7(a)(5), 40-18-57, 40-27-1, Code of Ala. 1975.
 History: New Rule: Filed May 11, 2016, effective June 25, 2016.
 Amended: September 20, 2021, effective