

RULES OF THE
DEPARTMENT OF REVENUE

CHAPTER 810-3-27

Individual Taxpayers' Returns

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810-3-27-.01. When an Individual Return is Required.

(1) (a) Each resident shall file a return for each tax year if single or married but not living with husband or wife, and having for the year a net income (as defined in § 40-18-12) of \$1,500 or more; or if married and living with husband or wife and having a net income of \$3,000 or more for the tax year.

(b) 1. A husband and wife, each having income for the tax year, may file separate returns reporting the income and deductions of each, or they may elect to file a joint return reporting their combined income and deductions. A joint return may only be filed when -

(i) both spouses have the same tax year (except when one spouse dies during the tax year), and

(ii) both spouses were residents of Alabama for the tax year.

2. A joint return must be signed by both husband and wife.

3. The election to file a joint return is irrevocable after the due date of the return for any tax year.

4. (i) If a husband and wife file a joint return, they shall be jointly and severally liable for the tax shown by said return, or as may be determined by the Department to be due by them.

(ii) Innocent Spouse Rule.

(I) General Rule. For tax years beginning after August 10, 1987, if a joint return was made for such tax year and -

I. on such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse, and

II. the other spouse (innocent spouse) establishes that in signing the return such innocent spouse did not know, and had no reason to know, that there was a substantial understatement, and

III. taking into account all the facts and circumstances, it is inequitable to hold such innocent spouse liable for the deficiency in tax for such tax year attributable to such substantial understatement by the other spouse,

then the innocent spouse shall be relieved of liability for tax (including interest, penalties and other amounts) for such tax year to the extent such liability to attributable to such substantial understatement.

(II) Definitions. For purposes of this subsection (ii):

I. the term "grossly erroneous items" means, with respect to any spouse

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A. any item of gross income attributable to such spouse which is omitted from gross income, and

B. any claim of a deduction, credit, or basis by such spouse in an amount for which there is no basis in fact or law.

II. the term "substantial understatement" of tax means any understatement which exceeds \$500. (If the understatement of tax is not more than \$500, the innocent spouse is not relieved of joint liability.)

III. the term "understatement" means the excess of the amount of tax required to be shown on the return for the tax year (reduced by any credits allowed by § 40-18-21) over the amount shown on the return as filed by the taxpayer (reduced by any credits allowed by § 40-18-21).

IV. the term "preadjustment year" means the most recent tax year of the innocent spouse ending before the date an assessment is issued pursuant to § 40-18-40. (If the assessment is not issued in the first year following the year of the understatement, the "preadjustment year" will be a year which occurs after the year of the understatement.)

V. the term "inequitable" means the innocent spouse received no benefit, directly or indirectly, from the understatement by the other spouse.

(III) Limitations and Exceptions.

I. This subsection (ii) shall apply only (the innocent spouse will be relieved of joint liability for the understatement by the other spouse) if -

A. the adjusted gross income of the innocent spouse for the preadjustment year is more than \$5,000 but not more than \$20,000, and the understatement is greater than ten percent (10%) of such adjusted gross income, or

B. the adjusted gross income of the innocent spouse for the preadjustment year is greater than \$20,000 and the understatement is greater than twenty-five percent (25%) of such adjusted gross income.

(A) If the innocent spouse is married to another spouse at the close of the preadjustment year, the innocent spouse's adjusted gross income shall include the income of the new spouse, whether or not they file a joint return.

II. The limitation in subsentence I. above shall not apply to any liability attributable to the omission of an item from gross income. (The relief from joint liability for an innocent spouse may be available, regardless of the ratio of the understatement to the innocent spouse's adjusted gross income in the preadjustment year, if the understatement resulted from the omission of an item of gross income by the other spouse.)

(c) If the taxable period is for less than twelve months a return is required if the net income is more than the exemption computed for the fractional part of the year. See Reg. 810-3-19-.02(3) for proration of exemptions.

(d) If the taxpayer is unable to make a return, his duly authorized agent or guardian is required to file the return.

(2) (a) Every nonresident individual, receiving taxable income from property owned or business transacted within Alabama, which is more than his prorated Alabama personal exemption is required to file a return. For income from property owned or business transacted in the state, see Reg. 810-3-14-.05. For deductions allowable to nonresidents, see Reg. 810-3-15-.21. For proration of the exemptions of a nonresident, see Reg. 810-3-19-.02(4). In order to receive the deductions authorized by § 40-18-15, a nonresident shall make a complete return of his gross income both from within and from without Alabama.

(b) 1. A nonresident individual may file a joint return with his spouse as provided in subparagraph (1)(b) above, even if only one spouse has income from sources within Alabama.

2. If both spouses have income from sources within Alabama, each may file a separate return reporting their separate income and deductions, or they may file a joint return if (i) both spouses have the same tax year and (ii) both were nonresidents of Alabama for the entire tax year.

3. The provisions of section (1)(b)4. above (innocent spouse rule) are applicable to joint returns filed by nonresidents.

(Adopted September 30, 1982; Amended: June 17, 1988; Filed with LRS: July 27, 1988)

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Auth: § 40-18-27

810-3-27-.02 Preparation and Filing of Individual Taxpayer's Return.

(1) Every resident individual taxpayer required to file a return should do so using Form 40 or Form 40A, copies of which may be obtained from the Department. Nonresidents should file using Form 40NR. For use of Form 40A, see Rule 810-3-81-.01.

(a) Alabama individual income tax returns can also be filed electronically. See the Electronic Tax Return Filing Act, §§ 40-30-1 through 40-30-6, Code of Alabama 1975. See also Rules 810-3-27-.04 through 810-3-27-.08.

(2) Every person who prepares a tax return for another shall show his name, address, and social security number. However, this information may be provided pursuant to the provisions of IRS Notice 2004-54.

(3) The return must be signed or otherwise validated under penalty of perjury by the taxpayer and the person who prepares the return. A joint return must be signed or otherwise validated by both spouses. Each spouse included in a joint return will be jointly and severally liable for any tax due on such return, or as may be determined to be due by the Department.

(4) (a) Returns of income must be filed on or before the fifteenth day of the fourth month following the close of the taxable year. In the case of a final return of a decedent for a fractional part of a year, the return must be filed on or before the fifteenth day of the fourth month following the close of the twelve month period which began with the first day of such fractional part of the year.

(b) Any return which is postmarked on or before the due date will be deemed timely filed. See Rule 810-1-5-.01.

Author: Richard Henninger, Patricia L. Wilborn, CPA, Ann F. Winborne, CPA, and Ed Cutter, CPA

Authority: §§ 40-2A-7(a)(5) and 40-18-27, Code of Alabama 1975

History: Adopted September 30, 1982.

Amended: June 17, 1988. Filed with LRS: July 27, 1988.

Amended: Filed July 26, 1999, effective August 30, 1999.

Amended: Filed January 19, 2006, effective February 23, 2006.

810-3-27-.03 Extension of Time for Filing of Individual Taxpayer's Return.

(1) An individual will be granted an automatic six month extension of time for filing an individual income tax return.

(2) Except in the case of taxpayers who are outside the United States, extensions will not be granted for more than six months.

(3) An individual who fails to file the required return by the extended due date may not be granted an automatic extension the following (ensuing) year, but may be required to request the extension in writing. If a written request is required, the request must be made to the Commissioner of Revenue or to his designee, and must explain the reason for the request and the reason for failing to timely file the return in the previous year. The request also must state that the individual has no outstanding debts owed to the Department.

(4) An extension of time granted pursuant to this section is not an extension of time for payment of tax. The amount of tax due must be paid on or before the due date of the return without regard to the extension to file the return.

(a) Payment of the tax shall be made via the paper Payment Voucher or by Electronic Funds Transfer (EFT).

(b) However, payment must be made via EFT if the payment exceeds \$25,000. Please refer to Regulations 810-13-1-.01 and 810-13-1-.02.

(c) Underpayment of tax penalties plus any applicable interest will be imposed as provided by law without regard to any extension granted under this section.

Authors: Richard H. Henninger and Ann F. Winborne, CPA
Authority: § 40-2A-7(a)(5) and 40-18-27, Code of Alabama 1975
History: Adopted September 30, 1982.
Amended: June 17, 1988; Filed with LRS: July 27, 1988.
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Amended: Filed October 12, 2001, effective November 16, 2001.
Amended: Filed November 7, 2005, effective December 12, 2005.
Amended: Filed November 26, 2008, effective December 31, 2008.

Amended: Filed November 7, 2005, effective December 12, 2005.

810-3-27-.04 Participation in the Federal/State Electronic Filing Program.

(1) The Department will participate with the Internal Revenue Service in the Federal/State Electronic Filing Program for the joint electronic filing of individual income tax returns, effective for tax year 1997.

(2) The requirements of the Alabama Electronic Filing Program for electronic return originators and transmitters are stated in the Alabama Handbook for Electronic Filers of Individual Income Tax Returns, which is issued on an annual basis by the Department.

Author: Ed Cutter

Authority: Sections 40-2A-7(a)(5) and 40-30-4, Code of Alabama 1975

History: New rule: Filed April 23, 1998, effective May 28, 1998.

810-3-27-.05 Requirements for the Alabama Electronic Individual Income Tax Return.

(1) A complete Alabama electronic individual income tax return will consist of data transmitted electronically and supporting paper documents. A complete Alabama electronic return must contain the same information as a comparable Alabama return as if filed entirely on paper.

(2) The transmission date of an Alabama electronic individual income tax return will be used to determine timely filing of an electronic return in the same manner that the postmarked date is used to determine timely filing of a paper Alabama individual income tax return.

Author: Ed Cutter

Authority: Sections 40-2A-7(a)(5) and 40-30-5, Code of Alabama 1975

History: New rule filed April 23, 1998, effective date May 28, 1998.

810-3-27-.06 Requirements for the Individual Income Tax Declaration for Electronic Filing.

(1) The Individual Income Tax Declaration for Electronic Filing requires the following information:

- (a) The Declaration Control Number of the electronic return.
- (b) The taxpayer's first name, middle initial and last name.
- (c) The taxpayer's social security number.
- (d) If a joint return, the spouse's first name, middle initial, last name and social security number.
- (e) The taxpayer's address.
- (f) The Alabama taxable income reported by the electronic return.
- (g) The net tax liability reported by the electronic return, which is computed by adding the net tax due Alabama to the voluntary contributions to the Alabama Election Campaign Fund and the Neighbors Helping Neighbors Fund.
- (h) The total tax payments reported by the electronic return.
- (i) The amount of the refund reported by the electronic return.
- (j) The signature of the taxpayer and date of the signature.
- (k) If a joint return, the signature of the spouse and date of the signature.
- (l) The signature of the electronic return originator and date of the signature.
- (m) An indication whether the electronic return originator is self-employed.
- (n) The firm name of the electronic return originator.
- (o) The address, including the zip code, of the electronic return originator.
- (p) The federal employer identification number of the electronic return originator.

(q) If the paid preparer is different from the electronic return originator, the following information is required:

1. The signature of the paid preparer and date of the signature.
2. An indication whether the paid preparer is self-employed.
3. The firm name of the paid preparer.
4. The address, including the zip code, of the paid preparer.

(2) The signatures of the taxpayer(s), the electronic return originator, and the paid preparer (if the paid preparer is different from the electronic return originator) must be affixed to the Alabama Form AL8453 - Individual Income Tax Declaration for Electronic Filing before the return is electronically transmitted.

(a) Members of the firm or designated employees may sign for the electronic return originator.

(b) If the taxpayer is unable to obtain the paid preparer's signature on the Alabama Form AL8453, in lieu of the paid preparer's signature the electronic return originator may attach to the Alabama Form AL8453 a copy of the appropriate pages of the paper return with the paid preparer's signature.

(c) Electronic return originators and electronic return preparers are prohibited from allowing taxpayers to sign blank Alabama Forms AL8453.

(3) The completed and signed Alabama Form AL8453 will serve as the filing declaration for the electronic Alabama individual income tax return.

(4) The completed and signed Alabama Form AL8453, and the state copies of wage and tax statements (Forms W-2, W-2G, and 1099R), must be retained by the electronic return originator for a period of three years from the due date of the return or three years from the date the return was filed, whichever is later.

(5) Electronic transmission of the Alabama individual income tax return by the electronic return originator is an attestation by the electronic return originator that a properly completed and properly signed Alabama Form AL8453 is being retained on file by the electronic return originator.

(6) The electronic return originator will provide the Department with the original Alabama Form AL8453 and the related wage and tax statements within five business days of receiving a written request for the documents from the Department.

(7) In the event that the electronic return originator ceases operations, the electronic return originator is responsible for contacting the Department and transferring to the Department all of the original Alabama Forms AL8453 along with the related wage and tax statements. Responsibility for the Alabama Forms AL8453 can be transferred to another electronic return originator upon receiving written approval from the Department.

(8) Nonprofit, volunteer tax preparation organizations such as Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) can elect, upon receiving written approval from the Department, to transfer all of the organization's original Alabama Forms AL8453 to the Department. The documents must be submitted to the Department in Declaration Control Number order.

Author: Ed Cutter

Authority: Sections 40-2A-7(a)(5) and 40-30-5, Code of Alabama 1975

History: New rule filed April 23, 1998, effective date May 28, 1998.

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Attachment 810-3-27-.06

Authority: Sections 40-2A-7(a)(5) and 40-30-5, Code of Alabama 1975
History: Form AL8453 Individual Income Tax Declaration for Electronic
Filing
Filed April 23, 1998, effective date May 28, 1998.

810-3-27-.07 Requirements for Electronic Filing Software.

(1) Record layouts and specifications for a complete Alabama electronic individual income tax return are issued annually by the Department in Electronic Return Record Layouts - Alabama Individual Income Tax Returns.

(2) Software developers are required to obtain prior approval from the Department by submitting for testing sample Alabama electronic individual income tax returns prepared by and transmitted by their software products.

(3) Software developer testing will occur in conjunction with IRS testing in accordance with IRS Publication 1436, Test Package for Electronic Filing of Individual Income Tax Returns.

(4) Alabama electronic individual income tax returns received by the Department which are prepared by software which has not completed the Department's software developer testing and which has not been approved by the Department will be rejected by the Department. Paper Alabama individual income tax returns must then be submitted by the taxpayers.

Author: Ed Cutter

Authority: Sections 40-2A-7(a)(5) and 40-30-5, Code of Alabama 1975

History: New rule filed April 23, 1998, effective date May 28, 1998.

810-3-27-.08 Acceptance into the Alabama Electronic Filing Program, Monitoring, and Revocation of Acceptance into the Program.

(1) Electronic return originators and transmitters accepted by and in good standing with the Federal Electronic Filing Program are automatically accepted into the Alabama Electronic Filing Program.

(2) Electronic return originators and transmitters accepted into the Alabama Electronic Filing Program serve as agents of the Alabama Department of Revenue, and must comply with the requirements of the program as stated in the Alabama Handbook for Electronic Filers of Individual Income Tax Returns.

(3) The Alabama Department of Revenue will conduct random monitoring visits with Electronic Return Originators and Transmitters to verify that the requirements of the Alabama Electronic Filing Program are being met.

(4) The Alabama Department of Revenue reserves the right to revoke the acceptance of an electronic return originator or transmitter for cause. Failure to comply with the guidelines set forth in the Alabama Handbook for Electronic Filers of Individual Income Tax Returns is considered just cause.

(5) Any of the following can result in the revocation of an electronic return originator's or transmitter's acceptance into the program:

(a) Conviction of a criminal offense under the revenue laws of any state or of any offense involving dishonesty, or breach of trust.

(b) Failure to file timely and accurate tax returns, both personal and business.

(c) Failure to pay personal tax liabilities or business tax liabilities.

(d) Failure or refusal to effect corrective action as required by the Alabama Department of Revenue.

(e) Other facts or conduct of a disreputable nature that would reflect adversely on the Alabama Electronic Filing Program.

(f) Unethical practices in return preparation.

(g) Suspension by IRS.

Author: Ed Cutter

Authority: Sections 40-2A-7(a)(5) and 40-30-6, Code of Alabama 1975

History: New rule filed April 23, 1998, effective date May 28, 1998.

810-3-27-.09 Alabama Requirements for **Mandatory** E-File and Application of Two-Dimensional (2-D) Barcode on Original Individual Income Tax Returns.

(1) (a) If an income tax return preparer prepares 50 or more acceptable, original individual income tax returns using tax preparation software in a calendar year, then for that calendar year and for each subsequent calendar year thereafter, all acceptable individual income tax returns prepared by that income tax preparer *must* be filed using electronic technology, as defined in the “Electronic Tax Return Filing Act,” as codified in Chapter 30 of Title 40, Code of Alabama 1975.

(b) 1. If a paid, income tax return preparer prepares individual income tax returns using tax preparation software and is not required under subparagraph (a) to electronically file the returns, then the paper returns must include the technology commonly referred to as two-dimensional (2-D) barcode technology if such returns using this technology conform to the format prescribed by the Department.

2. If a paid, income tax return preparer prepares individual income tax returns using tax preparation software and is required under subparagraph (a) to electronically file the returns, but does not submit the returns electronically, then the paper returns must include a signed, election form to “opt out” of electronic filing in addition to including the 2-D barcode technology.

(2) For purposes of this rule, the following definitions apply:

(a) “Income tax preparer” means a person that meets both the following:

1. Any person that prepares an Alabama individual income tax return in exchange for compensation.

2. Or any person who employs another person to prepare, in exchange for compensation, any current year Alabama individual income tax return.

(b) “Original individual income tax return” means any return that is required, to be filed with respect to the tax imposed as defined by Section 40-18-2, Code of Alabama 1975. For purposes of paragraph (1)(a) and (1)(b) above, a “timely” original individual tax return means any original individual tax return that is filed, without regard to extensions, during the calendar year for which that tax return is required to be filed.

(c) “Acceptable individual income tax return” means, for the purposes of the mandatory individual income tax filing program, any original individual tax return that is authorized by the Department to be filed solely using electronic technology as defined in Section 40-30-3(2), Code of Alabama 1975.

(d) “Tax preparation software” means any computer software program intended for accounting, tax return preparation, or tax compliance.

(3)(a) Paragraph (1)(a) of this rule, applies to acceptable individual income tax returns required to be filed for taxable years beginning on and after January 1, 2004 and may not be interpreted to require electronic filing of acceptable individual income tax returns that are required to be filed on or before January 1, 2004.

(b) Paragraph (1)(b) of this rule, applies to acceptable individual income tax returns required to be filed for taxable years beginning on and after January 1, 2009.

Author: Richard Henninger, Kathleen Campbell, Ann F. Winborne,
CPA, and Michael E. Mason, CPA

Authority: Sections 40-2A-7(a)(5), 40-18-40, and 40-30-1 through 6, Code of Alabama 1975

History: New rule: Filed June 4, 2004, effective July 9, 2004.

Amended: Filed November 7, 2005, effective December 12, 2005.

Amended: Filed November 26, 2008, effective December 31, 2008.

810-3-27-.10 Alabama Requirements for Compliance with Administrative Rule 810-3-27-.09.

(1) An income tax preparer may be subject to a random monitoring visit for not electronically filing returns or for submitting returns without a two dimensional (2-D) barcode containing the tax return information in a standard format as prescribed by the Department.

(2) If it is shown that failure to electronically file or print a 2-D barcode on an acceptable original individual income tax return is due to willful neglect and not due to reasonable cause, then that tax preparer's acceptance in the Alabama e-file program shall be revoked, and that tax preparer shall be unable to electronically transmit individual income tax returns to the Department.

(3) For purposes of this rule, reasonable cause includes, but is not limited to:

(a) A taxpayer may elect not to electronically file an acceptable original individual income tax return by filing a election form to "opt out" of electronic filing. This form must be prescribed by the Department, and must be signed by the taxpayer, or taxpayers in the case of a joint return, and by the preparer. The form must be attached and filed with the paper, original individual income tax return.

(b) Any electronically prepared original individual income tax return that cannot be filed or transmitted electronically by the tax preparer, or any original individual income tax return that cannot be accepted by the Department.

(3) Any original individual income tax return prepared, including those not electronically filed due to "reasonable cause," as indicated in subparagraphs (a) and (b) of this rule, will be included in the total mandate return count as defined in 810-3-27-.09.

Author: Richard Henninger, Kathleen Campbell, Tavares Mathews, and Ann F. Winborne, CPA

Authority: Sections 40-2A-7(a)(5), 40-18-40, and 40-30-1 through 6, Code of Alabama 1975

History: New rule: Filed June 4, 2004, effective July 9, 2004.
Amended: Filed March 13, 2007, effective April 18, 2007.