

810-27-1-.17 Sales Factor: Sourcing Sales Derived from Services Rendered to Individual and Unrelated Business Customers.

(1) Effective for tax years beginning after December 31, 2010, Code of Alabama 1975, §40-27-1, Article IV.17 has been amended to state that sales other than sales of tangible personal property pursuant to §40-27-1, Article IV.16, are to be sourced to this state if the taxpayer's market for the sale is in this state. For previous tax years, §40-27-1, Article IV.17 sourced these sales to this state if the "income producing activity" was performed in this state based on "cost of performance". This rule sets forth the Alabama Department of Revenue's policy regarding the sourcing of sales derived from services rendered to individual and unrelated business customers.

(2) The taxpayer's market for a sale is in this state if and to the extent the service is delivered to a location in this state. This rule interprets when and to what extent a service will be considered delivered to a location in this state under certain situations.

(a) In the case where the taxpayer's customer is an individual, the taxpayer shall source receipts from the sale of a service consistent with this subparagraph.

1. In the case where a taxpayer's customer is an individual and the service provided is a direct personal service, the sale shall be sourced to the state where the customer received the direct personal service. "Direct personal services" are services that are delivered or rendered in person by or on behalf of the service provider to the customer. This type of service requires the service provider and the customer be together at one location. Direct personal services include, but are not limited to, salon services, medical and dental services including examinations and surgeries, dance lessons and other similar services.

(i) Example: Hair Cutting Corp, located in Alabama and other states, provides hair grooming services for individuals. Receipts from hair grooming services performed at Hair Cutting Corp locations in Alabama shall be sourced to this state. Receipts from hair grooming services performed at Hair Cutting Corp locations outside of Alabama shall be sourced to the state in which the services were performed.

2. Services delivered to customers which are individuals with an Alabama billing address that are not direct personal services should be sourced to this state.

(i) Example: A brokerage firm provides brokerage services to individuals located both inside and outside of Alabama. The firm's brokerage service receipts are sourced to this state if the customer's billing address is in this state.

3. In the case where the sourcing methodology specified by subparagraphs 1. or 2. is: (1) difficult to administer or (2) fails to reasonably reflect the taxpayers market in this state, the taxpayer may utilize, or the Department may require, the use of other criteria and methodologies that will reasonably approximate the taxpayer's market in this state. If an alternate approach is utilized, the taxpayer must conspicuously note on the return that an alternate approach was utilized for sourcing its sales. If the taxpayer fails to make such a conspicuous disclosure on the return, it will be deemed the taxpayers consent to the sourcing as detailed in subparagraph 1. or 2. above as applicable. Although not required, it is highly recommended that in addition to the conspicuous notation required above, the taxpayer attach to each tax return a detailed explanation of why it was unreasonable to utilize the methodology specified by subparagraph 1. or 2. and an explanation of the methodology used.

(b) In the case where the taxpayer's customer is a business enterprise which is not affiliated with the taxpayer, the taxpayer shall source receipts from the sale of a service consistent with this subparagraph.

1. A business enterprise is affiliated with the taxpayer if it is a related member pursuant to Code of Alabama 1975, §40-18-1(29). "Business enterprise" includes any person other than an individual.

2. To the extent a service is provided to an unrelated business enterprise and the service being provided has a substantial connection to a specific geographic location, the income shall be sourced to Alabama if the geographic location is in this state. If the service receipts have a substantial connection to geographic locations in more than one state, the sales shall be reasonably sourced between those states.

(i) Example: Cleaning Company Inc. has a contract to provide cleaning services to Company B, an unrelated business enterprise. The contract specifies that cleaning services are to be provided to Company B's locations in Alabama and other states. Cleaning Company Inc. should source a portion of the total service receipts to Alabama based on the amount of services performed at Company B's locations in Alabama to the total amount of services performed at the other Company B locations.

(ii) Example: Hard Hat Inc. contracts with Company D, a multistate company commercially domiciled outside of Alabama, to design and build a building in Alabama. Hard Hat Inc. will source service receipts from this project to this state.

(iii) Example: Training Service Inc. contracts with Company A, an unrelated multistate business enterprise, to provide training services to Company A's employees located in Alabama and three other states. The training services are related to a specific geographic location, therefore they shall be sourced to the location where Company A's

employees received the training and not the location of Company A's commercial domicile. Training Service Inc. sources receipts from its contract with Company A by reasonably assigning those receipts between Alabama and other states using a formula based on the number of training hours provided to Company A locations in Alabama to the total number of training hours provided to all Company A locations.

3. To the extent a service is provided to an unrelated business enterprise and the service being provided does not have a substantial connection to a specific geographic location, sales from services delivered to unrelated business enterprises, commercially domiciled in Alabama, should be sourced to Alabama. A business enterprise is commercially domiciled in Alabama if its principal place of business is in Alabama. If the "Principal place of business" or the nerve center of the business is unknown or it is cost prohibitive to determine, the taxpayer should source the sale to the "Principal Address" of the entity as noted on the public records of the corporations section of the Alabama Secretary of State or the equivalent in the taxpayer's state of domicile.

(i) Example: CPA firm provides tax preparation services to Company A that is commercially domiciled in Alabama. Company A also operates business establishments in four other states. The CPA firm should source these sales solely to Alabama.

4. In the case where the sourcing methodology specified by subparagraphs 2. or 3. is: (1) difficult to administer or (2) fails to reasonably reflect the taxpayers market in this state, the taxpayer may utilize, or the Department may require, the use of other criteria and methodologies that will reasonably approximate the taxpayer's market in this state. If an alternate approach is utilized, the taxpayer must conspicuously note on the return that an alternate approach was utilized for sourcing its sales. If the taxpayer fails to make such a conspicuous disclosure on the return, it will be deemed the taxpayers consent to the sourcing as detailed in subparagraph 2. or 3. above as applicable. Although not required, it is highly recommended that in addition to the conspicuous notation required above, the taxpayer attach to each tax return a detailed explanation of why it was unreasonable to utilize the methodology specified by subparagraph 2. or 3. and an explanation of the methodology used.

(i) Example: Computer Fix It Company has a contract with Company C to provide on-site computer repair services to Company C's customers. Company C is an unrelated business enterprise which sells computers to customers in Alabama and many other states. Computer Fix It Company should assign a portion of the total service receipts to Alabama based on the portion of repair services performed for Company B's

customers in Alabama as compared to the total portion of repair services performed for all of Company B's customers.

(c) The delivery of a tangible medium representing the output of a service does not control the sourcing of receipts from the underlying service.

1. Example: Law Firm Inc. prepares a bond opinion for refinancing the corporate debts of Corporation A, a multi-state corporation commercially domiciled in Alabama. Law Firm Inc. mails the opinion to an office of Corporation A in Delaware. The receipts from this service will be assigned to Alabama despite the property deed having been mailed to a Delaware address unless the taxpayer shows that it is unreasonable to source the receipts to the commercial domicile of its customer pursuant to (b)4. above.

(d) Whenever a taxpayer is subjected to different sourcing methodologies regarding intangibles or services, by the Department of Revenue and one or more other state taxing authorities, the taxpayer may petition for, and the Department of Revenue shall participate in, and encourage the other state taxing authorities to participate in, non-binding mediation in accordance with the mediation rules promulgated by the Multistate Tax Commission from time to time, regardless of whether all the state taxing authorities are members of the Multistate Tax Compact.

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Authority: Sections 40-2A-7(a)(5) and 40-27-1, Article IV(17.), Code of Alabama 1975.

History: New rule: Filed May 11, 2016, effective June 25, 2016.