

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.

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