

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-3-73-.01

Rule Title: Withholding Exemption Certificates

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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

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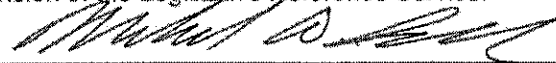
Does the proposed rule have any economic impact? No

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.

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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 1/21/16

APA-6  
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-3-73-.01

Rule Title: Withholding Exemption Certificates

New  Amend  Repeal  Adopt by Reference



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:**

APA-2  
11/96

**ALABAMA DEPARTMENT OF REVENUE  
Individual and Corporate Tax Division**

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE**

810-3-73-.01                      Withholding Exemption Certificates

**INTENDED ACTION:**              Repeal and New rule

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to repeal the above rule and replace it with a new rule to remove the exempt option and require withholding on all wages per Act 2015-504.

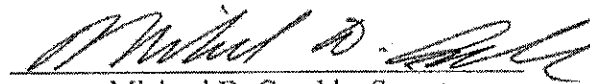
**TIME, PLACE, MANNER OF PRESENTING VIEWS:** A public hearing will be held at **1:30 p.m. on Thursday, March 10, 2016, Room 1203, First Floor**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://revenue.alabama.gov/analysis/upcoming-rule-hearings.cfm>

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:**  
Thursday, March 10, 2016

**CONTACT PERSON AT AGENCY:**

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



Michael D. Gamble, Secretary  
Alabama Department of Revenue

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810-3-73-.01 Withholding Exemption Certificates. (REPEALED)

(1) Every employee is required to furnish his or her employer an Alabama withholding exemption certificate at the time of employment showing the number of exemptions claimed. The number of exemptions claimed may not exceed the number of exemptions to which the employee is entitled to claim under Section 40-18-19, Code of Alabama 1975. An exemption certificate is considered a component of payroll records and should be maintained in accordance with Rule 810-3-70-.02 Retention of Payroll Records. Exemption certificates should be kept with the employees personnel file.

(a) Form A4 must be completed by an employee unless the employee qualifies for an exemption from the withholding requirements as instructed in paragraph (2) or (3) of this rule. In such case, an employee will file the qualifying Form A4E or Form A4MS.

(b) Federal Form W-4 will not be accepted as a substitute for Form A4 as the values of exemption differ greatly between the Alabama and federal allowances.

(c) Failure by the employee to provide to his or her employer a signed, Alabama withholding exemption certificate will result in the employer withholding using zero ("0") exemptions.

(2) An employer is not required to deduct and withhold tax on the wages of an employee if the employee has certified to the employer on the Form A4E withholding exemption certificate that the employee meets the conditions specified in subsections (a) and (b) of this paragraph and the employer has confirmed that Form A4E has been verified by the Department pursuant to (c) of this paragraph:

(a) Incurred no liability or income tax for the prior tax year (this requirement will not be met if the employee did not file a return for the prior year), and

(b) Does not expect to incur an income tax liability for the current year,

(c) Pursuant to 40-18-73(j), the aforementioned Form A4E must be submitted for verification as prescribed by the Department. Unless verified by the Department, the Form A4E will not take effect. In such case the employer is required to withhold without exemption until a corrected Form A4 is submitted by the employee. Form A4E must be signed and sworn to under penalties of perjury and any employee that files a fraudulent Form A4E may be subject to criminal prosecution.

(3) An employer is not required to deduct and withhold tax on the wages of an employee if the employee certifies on Form A4MS that the employee qualifies for an exemption under the Military Spouses Residency Relief Act. This exemption applies to the spouse of a service member who is present in Alabama in compliance with military orders and who maintains domicile in another state. Employees must provide their employer with a valid military identification. Employers will report the employee's wages on Form W2 reflecting the state of legal residency shown on the spouses Form DD-2058 or current leave and earnings statement. Employers must keep a copy of these forms on file.

(4) If an employee is no longer entitled to an exemption from withholding tax as described in paragraph (2) above, the employee should submit to his or her employer a new Form A4 exemption certificate reflecting the current number of exemptions to which they are entitled. If not received, the Department may issue a letter instructing an employer to withhold without exemption for this employee until a corrected Form A4 is submitted by the employee.

(5) Pursuant to the requirements of Section 40-18-73, Code of Alabama 1975, employers must provide to the Alabama Department of Revenue, no later than 60 days from the date the employee begins employment, a copy of any withholding exemption certificates where a n employee claims eight (8) or more exemptions. Failure to provide this information within the above stated time period shall subject the employer to the "failure to timely file" penalty of \$50 per certificate.

(6) Penalties.

(a) In the event the employee inflates the number of exemptions allowed under Section 40-18-73, Code of Alabama 1975 on Form A-4 or falsely claims an exemption from withholding tax on Form A4E or Form A4MS, the employee shall be subject to a penalty of \$500 for such action pursuant to the provisions of Section 40-29-75, Code of Alabama 1975.

(b) Any person who fails to comply with the requirements of this section also shall be subject to the penalties provided in Section 40-2A-11, Code of Alabama 1975, and/or may be subject to criminal prosecution.

Author: Neal Hearn, Michael Mason  
Authority: Sections 40-2A-7(a)(5) and 40-18-73, Code of Alabama 1975  
History: Adopted September 30, 1982; amended June 17, 1988.  
Amended: Filed March 20, 1989, effective April 24, 1989.  
Amended: Filed May 3, 2000, effective June 7, 2000.  
Amended: Filed March 13, 2007, effective April 18, 2007.  
Amended: Filed June 6, 2008, effective July 11, 2008.  
Amended: Filed August 9, 2012, effective September 13, 2012.

Amended: Filed August 27, 2014, effective October 1, 2014.

810-3-73-.01 Withholding Exemption Certificates. (NEW RULE)

(1) Every employee is required to furnish his or her employer an Alabama withholding tax exemption certificate Form A4 at the time of employment showing the number of exemptions claimed. The number of exemptions claimed may not exceed the number of exemptions to which the employee is entitled to claim under Section 40-18-19, Code of Alabama 1975. A Form A4 exemption certificate is considered a component of payroll records and should be maintained in accordance with Rule 810-3-70-.02 Retention of Payroll Records. Exemption certificates should be kept with the employees personnel file.

(2) Federal Form W-4 will not be accepted as a substitute for Form A4 as the values of exemptions differ greatly between the Alabama and federal allowances.

(3) Failure by the employee to provide to his or her employer a signed, Alabama withholding exemption certificate will result in the employer withholding using zero ("0") exemptions.

(4) An employer is not required to deduct and withhold tax on the wages of an employee if the employee certifies on Form A4-MS that the employee qualifies for an exemption under the Military Spouses Residency Relief Act. This exemption applies to the spouse of a service member who is present in Alabama in compliance with military orders and who maintains domicile in another state. Employees must provide their employer with a valid military identification. Employers will report the employee's wages on Form W2 reflecting the state of legal residency shown on the spouses Form DD-2058 or current leave and earnings statement. Employers must keep a copy of these forms on file.

(5) Pursuant to the requirements of Section 40-18-73, Code of Alabama 1975, employers must provide to the Alabama Department of Revenue, no later than 60 days from the date the employee begins employment, a copy of any withholding exemption certificates where an employee claims eight (8) or more exemptions. Failure to provide this information within the above stated time period shall subject the employer to the "failure to timely file" penalty of \$50 per certificate.

(6) Penalties.

(a) In the event an employee inflates the number of exemptions allowed under Section 40-18-73, Code of Alabama 1975 on Form A4 in order to reduce their withholding or falsely claims an exemption from withholding tax on Form A4-MS, the employee shall be subject to a penalty of \$500 for such action pursuant to the provisions of Section 40-29-75, Code of Alabama 1975.



(b) Any person who fails to comply with the requirements of this section also shall be subject to the penalties provided in Section 40-2A-11, Code of Alabama 1975, and/or may be subject to criminal prosecution.

Author: Neal Hearn  
Authority: Sections 40-2A-7(a)(5) and 40-18-73, Code of Alabama 1975  
History: New Rule