

APA-1

Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-3-71-.01

Rule Title: Employers Required to Withhold Tax from Wages

New; Amended; Repealed; Adopt by Reference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 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 Reference Service.

Signature of certifying officer
Date 08/21/2017



APA-6
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-3-71-.01

Rule Title: Employers Required to Withhold Tax from Wages

 New X Amend Repeal Adopt by Reference

- NO
 YES

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:

ALABAMA DEPARTMENT OF REVENUE
Individual and Corporate Tax

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-3-32-.01.01 Political Organizations
810-3-32-.03 Unrelated Business Taxable Income
810-3-38-.01 Additional Deductions Allowed for Corporations
810-3-39-.04 Incentive Rules for Alabama Affiliated Groups Filing
810-3-39-.06 Mechanics of Consolidated Filing

INTENDED ACTION

Repealed

SUBSTANCE OF
PROPOSED ACTION:

The department proposes to repeal the above mentioned rules because during reviewal of the rule required by the Red Tape Reduction Act they were determined to be superfluous to the Alabama statute.

RULE NO. & TITLE

810-3-17-.01 Items Not Deductible

INTENDED ACTION

Amended

SUBSTANCE OF
PROPOSED ACTION:

The department proposes to amend the above mentioned rule to include items that are now deductible and to add clarification on others that are not deductible.

RULE NO. & TITLE

810-3-32-.02 Proof of Exemption

INTENDED ACTION

Amended

SUBSTANCE OF
PROPOSED ACTION:

The department proposes to amend the above mentioned rule, because during the reviewal required by the Red Tape Reduction Act, it was determined that within the rule there is a reference to 810-3-32-.03 which is being recommended for repeal.

RULE NO. & TITLE

810-3-39-.02 Extension of Time for Filing a Corporation Return
810-3-39-.05 Taxable Years Following an Election Period for an Alabama Affiliated Group.
810-3-71-.01 Employers Required to Withhold Tax from Wages
810-3-71-.02 Computing Tax Withheld
810-3-72-.01 Included and Excluded Wages
810-3-75-.01 Withholding Statement Furnished Employees
810-3-75-.02 Extensions Of Time for Filing Reports Under Withholding Tax Laws

INTENDED ACTION

Amended

SUBSTANCE OF
PROPOSED ACTION:

The department proposes to amend the above mentioned rule to comply with the Red Tape Reduction Act 2013-88 consisting of non technical

clarifications.

RULE NO. & TITLE

810-9-1-.05

Apportionment and Allocation of Net Income of Financial Institutions

INTENDED ACTION

Amended

**SUBSTANCE OF
PROPOSED ACTION:**

The department proposes to amend the above mentioned rule pursuant to Alabama Act 2017-165 that requires multi-state financial institutions to include loans and credit card receivables in the calculation of their Alabama property factor, which will be sourced consistent with the interest receipts associated with such loans.

RULE NO. & TITLE

810-3-39-.03

Consolidated Filing

INTENDED ACTION

New, Repealed

**SUBSTANCE OF
PROPOSED ACTION:**

The department proposes to repeal and create a new rule as required by the Red Tape Reduction Act. Proposed repealed rule has been deemed outdated due to changes to Alabama statute. Therefore, a new updated rule is also proposed.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **02:30 PM on Tuesday, October 10, 2017, 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://www.revenue.alabama.gov/analysis/rules.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 following publication of the notice up until the conclusion of the hearing. Interested parties may also appear at the hearing to present their views.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
Tuesday, October 10, 2017

CONTACT PERSON AT AGENCY:

Meagan Barrett

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



Michael D. Gamble, Secretary
Alabama Department of Revenue

810-3-71-.01 Employers Required to Withhold Tax from Wages.

(1) Each calendar quarter every withholding agent shall deduct, withhold, and pay over to the Department of Revenue on or before the last day of the month following the close of each quarterly period a tax, computed as indicated in Rule 810-3-71-.02 on the compensation paid within each quarter for personal services of covered employees. For employers required to submit payment monthly see Rule 810-3-74-.01.

(2) All employers or withholding tax agents are required to register with the Alabama Department of Revenue prior to withholding Alabama income tax. Employers must register online for an Alabama withholding tax account number via the Department's website. ~~Forms for registering with the Department as a withholding tax agent may be obtained from the Department.~~

(3) Similar to the provisions of 26 U.S.C § 3504, the Alabama Department of Revenue also allows common-pay agents to register with the Department and withhold Alabama income tax on behalf of employers or other withholding tax agents. Common-pay agents are required by 26 U.S.C § 3504 to make written request to the Internal Revenue Service for permission to act as a common-pay agent. ~~A copy of the forms filed with the Internal Revenue Service must be submitted with the agent's withholding tax application when applying for an Alabama withholding tax account.~~

~~(4) Beginning August 25, 1993, employers approved by the State Industrial Development Authority (SIDA) to collect a job development fee will be allowed a credit for such job development fee against the amount deducted and withheld under Paragraph (1) above. The credit shall be allowed in an amount equal to the aggregate job development fees withheld from employees wages during each calendar quarter pursuant to §§ 41-10-44.8(a)(2) and 41-10-44.8(b), Code of Ala. 1975.~~

(5) (4) Alabama income tax must be withheld on the total wages subject to Alabama income tax.

(6) (5) An employer who is a resident of Alabama is required to withhold tax from the wages of his or her employees who are residents of Alabama, regardless of whether the wages are earned in Alabama or outside the State; except that if the employer is withholding tax for the state in which the employee is working, the employer is not required to withhold tax for Alabama.

(7) (6) An employer who is a resident of Alabama is required to withhold tax from the wages of employees who are not residents of Alabama only to the extent that the wages are earned in Alabama. In other words, a nonresident employee of an Alabama employer should have Alabama income tax withheld only on wages earned in Alabama.

~~(8) (7) An employer who is not a resident of Alabama is required to withhold tax from the wages of employees to the extent that such wages are earned in Alabama, whether the employee is a resident or a nonresident of the State. A nonresident employer is not required to withhold Alabama income tax on wages paid for services performed outside of Alabama, whether such wages are paid to a resident or to a nonresident of Alabama.~~

~~(9) Public Law 91-569 provides an exemption from Alabama withholding tax for employees of water and air carriers if either of the following conditions are met:~~

~~(a) The employee is not a resident of Alabama, or~~

~~(b) The employee did not earn over 50% of his or her income in Alabama the previous year.~~

~~(c) This public law does not affect the taxability of the income.~~

(8) Public Law 91-569 provides that the withholding tax of an employee of a water or air carrier that does not earn more than 50% of their compensation from said carrier in any one state shall be required only for the State of the employee's residence.

~~(10) (9) Beginning July 6, 1990, the Amtrack Reauthorization and Improvement Act (P.L. 101-322) provides that no part of the compensation paid to an employee of an interstate railroad subject to the jurisdiction of the Interstate Commerce Commission (ICC) may be subject to the income tax laws of any state except the state of the employee's residence when such employee performs regularly assigned duties in more than one state. The bill also precludes the taxation of compensation paid by an interstate motor carrier subject to the jurisdiction of the ICC or to an employee of a motor private carrier performing services in two or more states except by the state of the employee's residence. For purposes of the motor carrier, "employee" is as defined in §204 of the Motor Carrier Act of 1984 (40 U.S.C. 2503).~~

~~(11) (10) The burden and duty is placed upon the employer to determine the place of residence of each employee, and to determine the exact part of each employee's earnings which is attributable to the services performed within Alabama and to apportion such earnings accordingly for the purpose of withholding the tax.~~

~~(12) (11) An employer and employee may agree to the withholding of Alabama income tax in addition to the amounts specified in this **rule regulation**. The employee may request such withholding by proper indication on Form A-4, or any other means acceptable to the employer. If the employer withholds such additional amounts from the employee's wages, such action constitutes agreement to withhold the additional amounts, and to submit such additional amounts at the same time and in the same manner that other withholding is submitted. An agreement for additional withholding continues in effect until canceled or modified by the employer and/or employee.~~

~~(13) (12) Any person paying winnings subject to withholding is required to withhold income tax from such winnings in the same manner as if the person~~

receiving such winnings was an employee and the payer was an employer.

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Authority: **§§ Sections** 40-2A-7(a)(5), 40-18-70, 40-18-91, 41-10-44.8(a)(2),
41-10-44.8(b), **Code of Ala.bama 1975**

History: Adopted September 30, 1982.
Amended September 7, 1988; amended February 8, 1989, filed with
LRS March 20, 1989, effective April 24, 1989.
Amended: Filed August 26, 1994, effective September 30, 1994.
Amended: Filed May 3, 2000, effective June 7, 2000.