

ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-3-71

Withholding Tax

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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. 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 Alabama 1975.

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

(6) 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) 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) 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.

(10) 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) 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) An employer and employee may agree to the withholding of Alabama income tax in addition to the amounts specified in this 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) 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.

Authors: Ewell Berry, Ann F. Winborne, CPA
and Neal Hearn, CPA

Authority: §§ 40-2A-7(a)(5), 40-18-70, 40-18-91, 41-10-44.8(a)(2), 41-10-44.8(b),
Code of Alabama 1975

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810-3-71-.02 Computing Tax Withheld.

(1) Employers may elect to compute the amount of Alabama income tax to be withheld from the wages of employees in one of two ways.

(a) The withholding amounts can be computed from withholding tax tables, which may be obtained from the Department. The tables show amounts to be withheld for weekly, biweekly, semimonthly, monthly, and quarterly payroll periods.

(b) Alabama withholding tax may also be computed using the following formula, based on information provided by the employee on the Alabama Form A-4, Employee's Withholding Exemption Certificate:

1. The employee will select a withholding exemption, and indicate the selected exemption on the Form A-4.

(i) A withholding exemption of "0" indicates that no personal exemption is selected.

(ii) A withholding exemption of "S" indicates that a full personal exemption is selected.

(iii) A withholding exemption of "M" indicates that personal exemptions for both spouses are being selected or that the employee is claiming head of family.

2. Compute the Employee's Gross Wages. Multiply the employee's gross wages for the current payroll period by the number of payroll periods in the year.

3. Compute the Standard Deduction. Multiply the amount computed in subparagraph 2, above, by 20% not to exceed \$2,000 if employee claims the "0", "S", or "Head of Family" withholding exemptions on the Alabama Form A-4, or; not more than \$4,000 if the employee claims the "M" withholding exemption.

4. Compute the Federal Withholding Tax. Multiply the employee's actual federal withholding tax for the payroll period by the number of payroll periods in the year.

5. Determine the Personal Exemption. If the employee claims the "O" withholding exemption, the personal exemption is zero. If the employee claims the "S" withholding exemption, the personal exemption is \$1,500. If the employee claims the "M" or the "Head of Family" withholding exemption, the personal exemption is \$3,000.

6. Compute the Dependency Exemption. Multiply the number of dependents the employee claims by \$300. Do not include the employee's spouse as a dependent.

7. Add the amounts determined in subparagraphs 3 through 6, above.

8. Compute the taxable amount by subtracting the amount determined in subparagraph 7 from the amount determined in subparagraph 2.

9. Compute the tax for the taxable amount computed in subparagraph 8, as follows:

(i) If the employee is claiming the "O", "S", or "Head of Family" withholding exemption, the tax will be equal to the sum of:

- (I) 2% of the first \$500,
- (II) 4% of the next \$2,500, and
- (III) 5% of the amount over \$3,000.

(ii) If the employee is claiming the "M" withholding exemption, the tax will be equal to the sum of:

- (I) 2% of the first \$1,000,
- (II) 4% of the next \$5,000, and
- (III) 5% of the amount over \$6,000.

10. Compute the Alabama withholding tax by dividing the amount determined in subparagraph 8, above, by the number of payroll periods in the year.

(c) The withholding tax to be remitted to the Department may be rounded to the nearest dollar.

(2) Tax to be withheld from supplemental wage payments such as bonuses, commissions and overtime pay shall be computed by one of the following methods:

(a) If paid at the same time as regular wages, the tax to be withheld shall be determined as if the aggregate of the supplemental and regular wages were a single wage payment for the regular payroll period.

(b) If paid at a time different from the regular payroll period, the tax to be withheld may be determined by aggregating the supplemental wage either with the regular wages for the current payroll period or with the regular wages for the last preceding payroll period within the same calendar year.

1. Example: An employee receives a regular paycheck of \$500 biweekly, and the next week receives a bonus of \$1,000. Withholding for the bonus payment is computed as follows:

Withholding on \$1,500 (bonus plus regular pay - exemption status - "S")	\$44.09
Amount withheld previously on	

biweekly salary of \$500	<u>14.28</u>
Amount to withhold from bonus	<u>\$29.81</u>

(c) Tax for supplemental wage payments may be withheld using a rate of 5% without allowance for exemptions or dependents.

(3) Withholding on vacation pay shall be computed as follows:

(a) If the employee receives vacation pay in lieu of regular wages, tax shall be withheld as though it were regular wage payments.

(b) If the employee receives vacation pay in addition to regular wages, such payments shall be treated as supplemental payments and the tax shall be withheld in accordance with paragraph (2).

(4) When wages are paid in a form other than cash (such as certain fringe benefits required to be treated as wages) tax shall be collected and paid to the Department in the same manner as tax withheld on other supplemental wages. See paragraph (2).

(a) The employer must make the necessary arrangements to insure that the amount of tax required to be collected is available for payment in cash.

(5) If a payment of wages is made to an employee by an employer through an agent, fiduciary or other person who also has the control, receipt, custody, or disposal of, or pays the wages payable by another employer, the amount of the tax required to be withheld shall, whether the wages are paid separately on behalf of each employer or paid in a lump sum on behalf of all such employers, be determined upon the aggregate amount of such wage payment or payments in the same manner as if such aggregate amount had been paid by one employer.

(a) In all such cases, each employer shall be liable for the return and payment of a pro rata portion of the tax so determined, such portion to be determined in the ratio which the amount contributed by the particular employer bears to the aggregate of such wages.

(6) For payments of all winnings subject to withholding, income tax shall be withheld at the rate of five percent (5%) of the amount of proceeds from a wager.

Author: Ewell Berry

Authority: §§ 40-2A-7(a)(5), 40-18-71, 40-18-91, Code of Alabama 1975

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810-3-71-.03 Job Development Fee. Upon the issuance by the Authority of its Project Obligations for the purpose of financing a Project for an Approved Company:

(1) The Approved Company may impose a Job Development Fee only on the new employees hired by the Approved Company for a Project. The term "new employees" includes only those individuals who (i) have not previously been employed by the Approved Company in Alabama; (ii) will be employed at the project site; and (iii) will be subject to the personal income tax imposed by Section 40-18-2 of the Code upon commencement of employment at the site. An Approved Company may assess and withhold a Job Development Fee from a new employee only during the time such employee is employed at the project site. Accordingly, an Approved Company may not continue to assess and withhold a Job Development Fee from an employee who is no longer employed at the project site.

(2) The Job Development Fee assessed by an Approved Company and withheld from the gross wages of new employees shall be based solely on the wages paid to such employees by the Approved Company. The Job Development Fee withheld from a new employee's wages shall be limited to an amount no greater than the tax that would otherwise be withheld from such employee's wages pursuant to the provisions of subsections (a) through (d) of Section 40-18-71 of the Code but for the imposition of the Job Development Fee. Any tax withheld pursuant to subsection (e) of Section 40-18-71 of the Code is not a Job Development Fee within the meaning of Section 41-10-44.8(b) of the Code and must be remitted by the Approved Company in accordance with the provisions of Section 40-18-74 of the Code.

(3) Pursuant to Section 41-10-44.8(a), the aggregate Job Development Fee withheld in a given year by an Approved Company from the wages paid to employees at a Project shall not exceed the difference between (1) the sum of the debt service payments made during such year by the Approved Company pursuant to the terms of a Financing Agreement (as that item is defined in Section 41-10-44.2); and (2) the sum of the corporate income tax credits claimed by the Approved Company on its state corporate income tax return for such year pursuant to Section 41-10-44.8(a)(1) and 41-10-44.9.

(4) In determining the aggregate Job Development Fee which may be withheld from an employee's wages in a given year, an Approved Company:

(a) shall apply the limitation in section (3) above on a calendar year basis. Accordingly, if an Approved Company's tax year does not correspond to the calendar year, both the corporate income tax credit and the debt service payments will be prorated to the calendar year;

(b) shall base its computation of the aggregate Job Development Fee which it may withhold from employees wages on an estimate of its state corporate income tax liability for such year;

(c) shall determine the actual amount of the aggregate Job Development Fee which it was entitled to withhold within 90 days of the close of the most recent tax year in which a corporate income tax credit was claimed pursuant to Section 41-10-44.8 or 41-10-44.9.

(d) shall, if the aggregate Job Development Fee withheld exceeds the maximum allowable pursuant to the limitation of section (3) above, remit the excess Job Development Fee, plus appropriate interest in accordance with Section 40-1-44, to the Department by the due date of the company's next corporate income tax return (without regard to extensions).

(e) shall not be entitled to any adjustment of its aggregate Job Development Fee if the amount of such fee is less than the maximum allowable pursuant to the limitation of section (3) above. Taxes withheld and remitted to the Department by an Approved Company pursuant to Section 40-18-74 may not be later claimed as Job Development Fees.

(5) Upon notification by the State Industrial Development Authority that an employer has been authorized to withhold a Job Development Fee, the Department shall issue such employer a withholding tax coupon booklet containing forms and instructions for reporting the Job Development Fee and Alabama income tax withheld. This booklet shall also contain instructions for reconciling an employer's yearly withholding amount when a Job Development Fee and/or Alabama income tax has been withheld.

(6) Employers who are authorized to withhold a Job Development Fee are subject to the same filing requirements as employers described in Section 40-18-74. All monthly, quarterly and annual returns must be filed by appropriate due dates. In addition to the requirements described in Section 40-18-74, employers who withhold a Job Development Fee will submit with each monthly, quarterly and annual return a listing of employees from whose wages a Job Development Fee was withheld. This listing shall include the following information:

- (a) Employer's name;
- (b) Employer's Alabama withholding tax account number;
- (c) Employee's name;
- (d) Employee's Social Security number; and
- (e) Amount withheld from employee's wages as a Job Development Fee.

(7) Pursuant to Section 41-10-44.8(c), if an Approved Company fails to achieve the level of capital investment or employment anticipated at the time the State Industrial Development Authority agreed to finance the Project, the Department may, after notice and hearing, prospectively reduce or suspend all or part of the Job

Development Fee inducement allowed in (1) above until such time as the anticipated capital investment and employment levels are met.

Authors: Ewell Berry, Ann F. Winborne and Neal Hearn

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810-3-71-.04 Information Submitted to the Department by the State Industrial Development Authority.

(1) The State Industrial Development Authority or its appointed delegate shall provide the Department with the following information:

(a) The names of employers who are authorized to withhold job development fees from their employees;

(b) Sufficient information for the Department to determine the time frame in which an employer may withhold a job development fee; and

(c) The amount of debt service payments paid each year under the financing agreement.

Authors: Ewell Berry, Ann F. Winborne, CPA and Neal Hearn, CPA

Authority: §§40-18-71, 41-10-44.8(a)(2), 41-10-44.8(b), Code of Alabama 1975

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