

810-12-1-.01 General Rule - 100% Penalty for Willful Failure to Collect and Pay Over Tax or Willful Attempt to Evade or Defeat Tax.

(1) Any person required to collect, truthfully account for, and/or pay over any tax imposed by §40-17-2 (Motor Fuels Excise Tax), §40-17-220 (Gasoline, Motor Fuels and Lubricating Oil Excise Tax), §40-18-71 (Income Tax Withholding), §40-21-82 (Utility Gross Receipts Tax), §40-23-2 (State Sales Tax), §40-23-61 (State Use Tax), §40-26-1 (State Lodgings Tax), Code of Alabama 1975, as amended, or any other local sales, use, or gross receipts taxes collected by the Alabama Department of Revenue who willfully fails to collect such tax, or truthfully account for, and/or pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall in addition to other penalties, be liable for a penalty in an amount not to exceed the total amount (100%) of the tax evaded, or not collected, or not accounted for and paid over. These designated taxes may be referred to as trust-fund taxes since they are collected in a fiduciary capacity on behalf of the Department of Revenue.

(2) The term "person" means an officer of a corporation or a member of a partnership who by virtue of such position held, is charged with a duty to perform the act of collecting, truthfully accounting for, and/or paying over any trust fund tax to which this penalty relates.

(3) The penalty imposed by this section is not assessed against the corporation or partnership which has the primary liability for the taxes required to be collected, accounted for, and/or paid over to the Department of Revenue. The 100% penalty is assessed against any corporate officer(s) or member(s) of a partnership who is under a duty on behalf of the corporation or partnership to collect, account for, and/or pay over the tax to the State of Alabama.

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Authority: Sections 40-29-72, 40-29-73, Code of Alabama 1975

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