

**810-3-19.1-.01 Severance Pay Exemption.**

(1) DEFINITIONS. The following terms have these meanings for the purposes of this regulation:

(a) Administrative downsizing: A reduction in the employer's workforce or discontinuance or relocation of the operations of the employer in accordance with a business plan. Administrative downsizing does not include:

1. the transfer or exchange of employees between related taxpayers as described in 26 U.S.C. §267;

2. the transfer or exchange of employees to another legal entity with such employees continuing to perform essentially the same or related duties for the former employer;

(b) Displaced from employment: Termination of the employer/employee relationship due to an employee's job being abolished or relocated.

(c) Employee: A common law or statutory employee as defined by the Internal Revenue Code.

(2) To qualify for the exemption, the payment must be:

(a) received pursuant to a plan of administrative downsizing which has been submitted to and approved by the Department of Revenue, and

(b) received from the employer:

1. as severance pay, unemployment compensation, termination pay, or from a supplemental income plan;

2. by an employee who is terminated, laid off, fired, or displaced from employment;

3. as a result of administrative downsizing.

(3) This exemption is limited to the first twenty-five thousand dollars (\$25,000) received in any year for each displaced worker.

(4) The exemption is effective for payments made on or after January 1, 1997.

(5) Alabama income tax withholding requirements for the employer do not apply to payments exempted under this section if the employer has obtained exemption approval from the Department of Revenue.

(6) If all other requirements of this section are met, payments which qualify for this exclusion include but are not limited to the following:

- (a) certain union benefits,
- (b) certain payments received from voluntary employee's beneficiary associations,
- (c) certain payments to laid-off employees from company-financed, supplemental unemployment compensation benefit plans, also known as "guaranteed annual wage plans," and
- (d) incentives or inducements for early retirement.

(7) Payments made to employees which do not qualify for this exemption include but are not limited to the following:

(a) payments made for accumulated sick leave, annual leave, vacation time, or unused benefits unless only offered as an incentive or inducement for early retirement;

(b) cancellation of contract payments made to independent contractors or others not deemed to be employees of the payor;

(c) "parachute payments" or any other payments made due to termination of employment for any reason other than administrative downsizing;

(d) retirement benefits received as a result of a voluntary retirement due to administrative downsizing; or,

(e) payments made by the employer in compensation for services (previous or future), repurchase, redemption, or retirement of stock or similar equity interests, or any interest therein or option thereto, or in consideration of a non-compete agreement, contractual or legal claim.

(8) Exemption of a payment from income taxes is allowed only when the substance of the transaction fairly meets the requirements of this regulation and the statute. The form of the transaction is usually unimportant.

(9) Employers must apply for approval of the exemption by submitting a written request to the Department of Revenue. In the request, employers may submit a complete description of their plan for administrative downsizing including, but not limited to:

(a) a complete description of the benefits paid to the displaced employee(s),

(b) a complete description of the plan itself, including, but not limited to:

1. the number and description of employees affected,
2. the reasons for administrative downsizing,

(c) the aggregate amount of benefits to be paid to affected employees which will be exempt from Alabama individual income taxation.

(d) the request must be filed at least annually if the administrative downsizing plan continues into the next year.

(10) Notwithstanding anything to the contrary herein, neither the employer nor the employee is exempted from the income tax withholding requirements if the employee was terminated, fired, or constructively fired through voluntary resignation due to misconduct. Likewise, employees who were terminated, fired, or constructively fired through voluntary resignation due to misconduct shall not be allowed to take the tax exemption on their income tax return.

(11) Severance pay, whether paid as a lump sum or in installments, granted prior to January 1, 1997, is not exempt from Alabama individual income taxation.

**Author:** Ann F. Winborne, CPA

**Authority:** §§40-2A-7(a)(5) and 40-18-19.1, Code of Ala. 1975.

**History:** **New Rule:** Filed February 5, 2009; effective March 12, 2009.

**Amended:** Filed September 30, 2009; effective November 4, 2009.