ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-3-19
EXEMPTIONS - GENERALLY

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810-3-19-.01 Exempt Retirement Allowances.

(1) Income received from retirement systems that is totally exempt from Alabama income tax is as follows:

(a) Retirement allowances, pensions, annuities, or optional allowances paid by the Alabama Teachers' Retirement System, the Alabama Judicial Retirement System, and the Alabama Employees' Retirement System; and

(b) retirement annuities paid under the United States Retirement System to civil service employees from the United States government civil service retirement and disability fund including income received from the Tennessee Valley Authority's pension system, income received as annuities under the United States foreign service retirement and disability fund or income received from any other United States government retirement and disability fund.

(c) amounts received under the Federal Social Security Acts.

(d) retirement annuities paid under the provisions of the Federal Railroad Retirement Act of 1935, 1937, and 1974.

1. The exclusion for Railroad Retirement Act benefits includes both tier one and tier two benefits.

(e) military retirement (see §40-18-20).

(f) For tax years beginning after December 31, 1990, any retirement compensation, retirement allowances, pensions and annuities, or optional allowances received by any eligible peace officer, as defined in §36-21-60(10), or his/her designated beneficiary, from any police retirement system

established in the State of Alabama, but only if such retirement compensation, retirement allowances, pensions and annuities, or optional allowances are awarded as a result of police services rendered.

1. An eligible peace officer as defined in §36-21-60(10) is:

"A person duly sworn as a peace officer of the State of Alabama possessing powers of arrest and employed by the state, any political subdivision thereof or any municipal corporation therein who is required by the terms of his employment, whether such employment exists by virtue of election or appointment, to give his full time to the preservation of public order and the protection of life or property or the detection of crime in the state. Such terms shall include enforcement officers for conservation laws and full-time coroners, but shall not include any pardon, parole or probation officer, district attorney, assistant district attorney, assistant attorney general, commissioner, deputy commissioner or any municipal inspector, county inspector or state inspector."

(g) For tax years beginning after December 31, 1990, any retirement compensation, retirement allowances, pensions and annuities, or optional allowances received by any eligible firefighter (as defined in §§36-32-1 and 36-32-2), or his/her designated beneficiary, from any firefighting agency established in the State of Alabama, but only if such retirement compensation, retirement allowances, pensions and annuities, or optional allowances are awarded as a result of fire protection services rendered.

(2) Income from retirement systems that is partially exempt from Alabama income tax is as follows:

(a) For tax years beginning after December 31, 1983, and before January 1, 1991, the first $8,000.00 of retirement compensation, retirement allowances, pensions and annuities, or optional allowances received by any eligible peace officer, or his/her designated beneficiary, from any police retirement system established in the State of Alabama, but only if such retirement income was awarded as the result of police services as defined in §§36-21-60(10) and 40-18-19 and Regulation 810-3-19-.01(1)(f).

(b) For tax years beginning after December 31, 1986, and before January 1, 1991, the first $8,000.00 of retirementcompensation, allowances, pensions and annuities, or optional allowances received by an eligible firefighter (as defined in §§36-32-1 and 36-32-2), or his/her designated beneficiary, from any firefighting agency established in this

state, but only if such amounts are awarded as a result of fire protection services rendered.

(3) Retirement pay annuities received by a retired employee from any retirement system not listed in the preceding paragraphs are subject to tax after recovery of the taxpayer's investment in the system. The taxpayer's investment in the system is the taxpayer's contributions, excluding those allowed as a deduction in determination of Alabama taxable income. Computations, for Alabama purposes, of taxable amount and the recovery of the taxpayer's investments will be determined in the same manner as used for determining these amounts for federal purposes. Alabama totals will be substituted for federal totals.
Author: Mary L. Gifford, Ann F. Winborne, Roy Wiggins
Statutory Authority: Code of Ala. 1975, § 40-18-19.
History: Adopted September 30, 1982. **Amended:** June 17, 1988; Filed July 27, 1988; May 15, 1992.

810-3-19-.02 Personal Exemptions And Credit For Dependents.

(1)(a) General Rule - Resident or Part-year Resident Taxpayers. A single person, or a married person not filing a tax return with their spouse, is entitled to a personal exemption of fifteen hundred dollars ($1,500.00). A head of a family or a married couple filing a joint return is entitled to a personal exemption of three thousand dollars ($3,000.00). If a married couple file separate returns, each must claim a personal exemption of fifteen hundred dollars ($1,500.00).

1. A common law marriage is recognized in Alabama for income tax purposes.

2. Head of Family - years ending before January 1, 1990:

(i) An individual is a head of family within the meaning of §40-18-19 only if he actually supports or maintains in his household one or more dependents (as defined in subparagraph (b)1. below). All of the six factors described below are essential to qualify as head of family:

(I) Taxpayer must be unmarried, and

(II) Taxpayer must provide over fifty percent (50%) of the actual support of the dependent and be entitled to claim the exemption for such dependent on his income tax return, and

(III) The dependent(s) must reside in a household maintained by the taxpayer, and

(IV) The taxpayer must have the right to exercise family control over the dependent(s), and

(V) The taxpayer must be related to the dependent(s) as defined in subpart (b) below and must have a legal or moral obligation to support the dependent(s), and

(VI) The dependent must not have independent means and must be actually dependent upon the taxpayer for support.

(ii) Head of family - years beginning after December 31, 1989. The term "head of family" has the same meaning as "head of household" as described in 26 U.S.C. §2(b) for federal income tax purposes. The judicial and administrative decisions and interpretations of 26 U.S.C. §2(b) will be given due weight in interpreting § 40-18-19 as it relates to head of family status.

(I) To be head of family, the taxpayer must be unmarried, or considered unmarried, at the close of the taxable year and not be entitled to claim married filing joint return, as in the year of a spouse's death. The taxpayer is considered not married under 26 U.S.C. §2(b) if -

(A) the taxpayer has been legally separated from his spouse under a decree of divorce or of separate maintenance, or

(B) at any time during the taxable year the taxpayer's spouse was a nonresident alien as recognized for federal income tax purposes.

(II) The taxpayer must maintain as his home a household which also serves as the principal place of abode for any of the following persons -

(A) a son, stepson, daughter, or stepdaughter of the taxpayer, or a descendent of a son or daughter, but only if the son, daughter, stepson, stepdaughter, or descendent is unmarried at the end of the taxable year, except when the taxpayer is entitled to a deduction for the taxable year for the exemption of such son, daughter, stepson, stepdaughter, or descendent, or would be so entitled except that the right to claim such dependent exemption had been relinquished by reason of a signedagreement or court's declaration which provides that the

noncustodial parent may claim any deduction allowable for the dependent exemption; or

(B) any other person who is a dependent of the taxpayer, as described in subpart (b), below, if the taxpayer is entitled to a deduction for the taxable year for a dependent exemption for that person, but

(C) if the dependent described in the above provisions would not be a dependent but for -

I. The person has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, or

II. The person may be claimed as a dependent under a multiple support agreement as described in 26 U.S.C. § 152(c): then the taxpayer is not entitled to claim the status of head of family.

(III) The father or mother of the taxpayer may qualify the taxpayer as head of family, but only if the taxpayer is entitled to the dependent exemption for the father or mother. The taxpayer must maintain a household which constitutes the principal place of abode of the taxpayer's dependent father or mother, or both, and provide more than one-half of the support of the father or mother. It is not necessary for the taxpayer to reside in the same place of abode as the parent, as is required for other dependents, for the taxpayer to qualify as head of family.

(IV) Maintaining a household for another person is defined as providing more than one-half of the cost of maintaining the home for that person.

(V) Under no circumstances shall the same person be used to qualify more than one taxpayer as the head of family for the same taxable year.

(VI) If, at any time during the taxable year, the taxpayer is a nonresident alien as recognized for federal income tax purposes, the head of family status will not be allowed.

4. Unless otherwise provided (see subparagraph(a)(ii) above), the status of a taxpayer as single, married or head of family will be determined on the last day of the Alabama tax year.

(b) Every taxpayer is entitled to an exemption of three hundred dollars for each person, other than a spouse, who is a dependent of the taxpayer and who received over half of his support from the taxpayer during the calendar year during which the taxpayer's taxable year begins. There is no maximum age limit for a qualifying dependent.

1. A "dependent" as used in the preceding paragraph is limited to persons having the following relationship to the taxpayer:

(i) son or daughter, or descendant of a son or daughter; or

(ii) stepson or stepdaughter; or

(iii) brother, sister, stepbrother, or stepsister; or

(iv) father or mother or ancestor of either; or

(v) stepfather or stepmother; or

(vi) son or daughter of taxpayer's brother or sister (nephew or niece); or

(vii) a brother or sister of the taxpayer's father or mother (aunt or uncle); or

(viii) son-in-1aw, daughter-in-1aw, father-in-1aw, mother-in-1aw, brother-in-1aw, or sister-in-1aw.

2. The terms "brother" and "sister" include a brother or sister by the half blood. A legally adopted child of a person shall be considered a child of such person by blood.

3. In the case of the birth or death of a dependent, a full dependency exemption is allowed for the year.

(2) Nonresident Taxpayers,

(a) A nonresident must prorate the personal exemption for dependents listed in paragraph (1) above by the ratio of adjusted gross income from sources within this state to total adjusted gross income from all sources. In such cases, a schedule must be submitted with the return explaining the computation of the personal exemption and the exemption for dependents. See Reg. 810-3-14-.05 for the computation of "total adjusted gross income from all sources."

(b) Married nonresident taxpayers may file a joint return, even if only one had income from Alabama sources. The election to file joint or separate returns is irrevocable after the due

date for filing the return. If separate returns are filed each taxpayer must claim his or her own personal exemption.

1. EXAMPLE: Taxpayer is a nonresident having adjusted gross income from sources within the State of Alabama of $5,000.00, and total adjusted gross income (including that from within Alabama) of $30,000.00. He is single and has no dependents. He is entitled to deduct as a personal exemption $250.00 ($1,500.00 x $5,000.00/$30,000.00 = $250.00).

2. EXAMPLE: Taxpayer and spouse are nonresidents. Taxpayer has income from sources within Alabama of $5,000.00 and total adjusted gross income (including that from within Alabama) of $30,000.00. His spouse has no income. He has two dependents (note that a spouse may not be a dependent).

(i) If a joint return is filed, taxpayer is entitled to a personal exemption of $500.00 ($3,000.00 x $5,000.00/ $30,000.00 = $500.00) and exemption for dependents of $100.00 ($600.00 x $5,000.00/$30,000.00 = $100.00).

(ii) If a separate return is filed, taxpayer is entitled to a personal exemption of $250.00 ($1,500.00 x $5,000.00/$30,000 = $250.00) and exemption for dependents of $100.00 ($600.00 x $5,000.00/$30,000.00 = $100.00).

3. EXAMPLE: Taxpayer and spouse are nonresidents. Taxpayer has $5,000.00 adjusted gross income within Alabama and total adjusted gross income of $30,000.00. Spouse has adjusted gross income within Alabama of $10,000.00 and total adjusted gross income of $20,000.00. They have two dependents who must be claimed by the taxpayer if the separate returns are filed, since he had the greater income.

(i) If a joint return is filed, the personal exemption will be $900.00 ($3,000.00 x $15,000.00/$50,000.00 = $900.00). The exemption for dependents will be $180.00 ($600.00 x $15,000.00/$50,000.00 = $180.00).

(ii) If a separate return is filed,

(I) The taxpayer's personal exemption will be $250.00 ($1,500.00 x $5,000.00/$30,000.00 = $250.00). Exemption for dependents will be $100.00 ($600.00 x $5,000.00/$30,000.00 = $100.00).

(II) Spouse's personal exemption will be $750.00 ($1,500.00 x $10,000.00/$20,000.00 = $750.00).

4. EXAMPLE: Taxpayer and spouse are nonresidents. Taxpayer has $5,000.00 adjusted gross income within Alabama, and total adjusted gross income of $30,000.00. Spouse has no adjusted gross income in Alabama and total adjusted gross income of $10,000.00. They have one dependent who is claimed by the taxpayer if he files a separate return.

(i) If a joint return is filed the personal exemption will be $375.00 ($3,000.00 x $5,000.00/$40,000.00 = $375.00). Exemption for dependents will be $37.50 ($300.00 x $5,000.00/$40,000.00 = $37.50).

(ii) If a separate return is filed the personal exemption will be $250.00 ($1,500.00 x $5,000.00/$30,000.00). Exemption for dependents will be $50.00 ($300.00 x $5,000.00/$30,000.00 = $50.00).

(3) Special Rules.

(a) If a taxpayer is a resident for part of the tax year, and also a nonresident for part of the tax year, the personal exemption and/or exemption for dependents will be allowed in full on the return as a part-year resident. In such cases, no deduction will be allowed for the personal exemption and/or exemption for dependents on the nonresident return.

(b)1. In the event a taxpayer makes a change in the tax year (from calendar year to fiscal year, from fiscal year to calendar year, or from one fiscal year to another fiscal year) as provided in §40-18-30, the deduction for the personal exemption and/or for dependents must be prorated for each year that is less than twelve months by the ratio of the number of months in the tax year divided by twelve. No proration is required if the change in the tax year is caused by the death of the taxpayer.

2. For example, if a taxpayer changes from a calendar year to a fiscal year ending June 30th, the maximum allowable deduction for the personal exemption would be $750.00 for a single person (6/12 x $1,500.00 = $750.00) or $1,500.00 for a married couple or head of family (6/12 x $3,000.00 = $1,500.00), for the 6-month short-period following the change.

(c) In no event may any combination of status as a resident or nonresident, or as single, married, or head of family, result in a deduction for personal exemption of more than $1,500.00 for one individual, $3,000.00 for a married couple, or$3,000.00 for a head of family in any one tax year; nor more

than $300.00 for each individual dependent for any one tax year.

(d) The terms "dependent exemption" and "exemption for dependent" as used in this and other regulations, as well as the forms used for filing Alabama income tax returns, shall mean that deduction referred to as "credit for dependents" in §40-18-19(b), Code of Ala. 1975.

Author: Anne Simms, Ann F. Winborne
Statutory Authority: Code of Ala. 1975, §40-18-19.
History: Adopted September 30, 1982. **Amended:** filed May 15, 1992.

810-3-19-.03 Income Realized From A Financial Business.

(1) Income realized in conducting a business subject to the excise tax on financial institutions imposed by §40-16-1, et seq., and where such excise tax is paid, is excluded from gross income under the provisions of Chapter 18 of Title 40.

(2) Salaries paid by businesses subject to the financial institution excise tax, allowed as deductions to such businesses under §40-16-1(2)(a) are included in gross income of the recipient for income tax purposes under Chapter 18.
Author: Rebecca S. Whisenant, John H. Burgess
Statutory Authority: Code of Ala. 1975, §40-18-19.
History: Adopted September 30, 1982. **Amended:** June 17, 1988; Filed July 27, 1988; May 15, 1992.

810-3-19-.04 Defined Benefit Plans.

(1) Payments made to a retiree or his designated beneficiary under a "defined benefit plan," as defined by IRC §414(j), as amended from time to time, are exempt from Alabama income tax for an individual resident taxpayer, to the extent such payment would be taxable for federal income tax purposes.

(2) A "defined benefit plan" is any plan that is not a "defined contribution plan." A "defined contribution plan" is a plan that provides an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and for income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participants' accounts. This includes plans such as profit sharing, stock bonus, and money purchase pension plans. These plans "could" be Keogh, SEP, orIRA plans. In a "defined contribution plan" such as a money purchase plan, contributions will be specified (not based on profits) and the benefits are whatever these contributions will provide. "Defined benefit plans"

may include pension and annuity plans, but all such plans are not necessarily "defined benefit plans." A "defined benefit plan" is one in which the contributions are based on a computation of what contributions are needed to provide definitely determinable benefits to plan participants. That is, contributions are dependent on promised benefits. Contributions to the plan are actuarially calculated to provide the promised benefits.

(3)(a) A lump-sum distribution from a defined benefit plan, which is rolled over into another type of retirement plan or account is not taxable and is considered as basis in the new account.

(b) Distributions rolled into an individual retirement account (IRA) are not deductible as an adjustment to income.

(c) Any earnings or income produced by the amount invested in another plan or account represents taxable income. The taxable portion of distributions from the account is computed pro rata, similar to nontaxable IRA distributions.

(4) Benefits received from defined benefit plans including benefits received from nonqualified defined benefit plans such as excess benefit plans or supplemental executive retirement income plans (SERP's) are exempt from Alabama income tax to the extent that the benefits are taxable for federal income tax purposes. Payments under excess benefit plans which provide benefits which exceed the limits set by the Internal Revenue Code and payments under SERP’s where such plans are defined benefit plans are tax exempt benefits for Alabama income tax purposes if the benefits are taxable on the federal income tax return.

(5) Where a combination of plans exists requiring the benefits from a defined benefit plan to be reduced, distributions in excess of the amount distributed from the defined benefit plan are taxable. Even though the recipient could have received more from the plan had a combination of plans not existed, only the amount actually distributed from the defined benefit plan is exempt from tax.

Author: Ann Simms, Ann F. Winborne, CPA
Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-19.
History: Adopted September 30, 1982. **Amended:** Filed July 27, 1988; May 15, 1992. **Amended:** November 3, 2008; effective December 8, 2008.