

ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODECHAPTER 810-3-70
DEFINITIONS

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810-3-70-.01 Definitions.

(1)(a) The terms "employer," "employee," and, generally, "wages" have the same meaning as defined in the Internal Revenue Code, as amended from time to time.

(b) Section 40-18-90, Code of Ala. 1975, provides additional definitions in connection with the requirement for withholding of income tax on certain winnings from wagering transactions.

(c) Section 40-18-70 and Rule 810-3-70-.03 define and provide withholding requirements for a "Provisional Construction Employer" (PCE).

(2)(a) Employer -

1. For the purpose of administering the withholding of income tax on gambling winnings as provided in Section 40-18-90, Code of Ala. 1975, the term "employer" includes any person (as defined in Section 40-18-90) who pays winnings subject to withholding.

2. An employer as defined by Section 40-18-70 is required to withhold tax from wages earned in Alabama by an employee, whether the employee is a resident or a nonresident of Alabama.

(b) Employee - For the purpose of administering the withholding of income tax on gambling winnings as provided in Section 40-18-90, Code of Ala. 1975, the term "employee" includes any person (as defined in Section 40-18-90) who receives winnings subject to withholding.

(c) Wages for Withholding Tax Purposes - Generally wages for withholding tax purposes are the same as defined in I.R.C. §3401, except when the Alabama law is in conflict with the Federal law. "Wages" for Alabama withholding tax purposes,

shall include those wages exempt from Federal withholding if the wages represent taxable income under Alabama income tax law, or if there is no provision under the Alabama law for a deduction corresponding to the allowable Federal deduction.

(d) Person - For the purpose of withholding income tax on proceeds from a wagering transaction, the term "person" means all individuals, firms, partnerships, companies, corporations, associations, trustees, receivers, the State of Alabama and any of its agencies, authorities, boards, bureaus, commissions, departments and instrumentalities, each incorporated municipality and any agencies, authorities, boards, bureaus, commissions, and departments of such municipalities, and the several counties of the State of Alabama and any agencies, authorities, boards, bureaus, commissions, and departments of such counties, and any other political subdivisions of the State of Alabama by whatever name or description.

(e) The terms "Winnings Subject to Withholding," "Proceeds from a Wager," and "Wagering Transaction" have the same meaning as that defined in 26 U.S.C. §3402, as amended from time to time.

Author: Ewell Berry, Ann F. Winborne

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-70 and Act 2007-199.

History: Adopted June 17, 1988. **Amended:** February 8, 1989, filed March 20, 1989. **Amended:** Filed November 3, 2008; effective December 8, 2008.

810-3-70-.02 Retention Of Payroll Records.

(1) Every employer or withholding tax agent required to withhold income tax or who voluntarily withholds income tax is required to maintain withholding tax records for a period of three years from the due date of the return or three years from the date the return is filed with the Department, whichever is later. See also §40-2A-7, Code of Ala. 1975, and Rule 810-14-1-.07, Maintenance of Records.

(2) Withholding tax records maintained in an electronic format shall be maintained in accordance with Rule 810-14-1-.07.01, Model Recordkeeping and Retention Regulation in an Electronic Environment.

Author: Ewell Berry, Ann F. Winborne, CPA

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-18-70.

History: New Rule: Filed July 26, 1999; effective August 30, 1999.

810-3-70-.03 Provisional Construction Employers.

(1) Subsequent to August 1, 2007, and pursuant to Act 2007-199, there is created a provisional construction employer, as defined in Section 40-18-70, Code of Ala. 1975, and the below regulations. A provisional construction employer is any employer (including members of its affiliated group as that term is defined in the Internal Revenue Code), that:

(a) Employs fifty (50) or more employees in Alabama within the first twelve months of a contract in a construction project, the cost of which is part of the capital cost of a qualifying entity defined in Section 40-9D-3, Code of Ala. 1975, and

(b) Has not registered in the tax year preceding the current tax year with the Alabama Department of Revenue for withholding tax purposes. If the provisional construction employer reports and pays all past withholding taxes due the State and continues to report and pay for a one-year period all withholding taxes due to Alabama, the employer will no longer be deemed a provisional construction employer.

(2) In addition to all other requirements contained in Title 40 relating to employers, provisional construction employers must provide the Withholding Section of the Department with a bond that is acceptable by the Commissioner of Revenue. Such bonds may include a surety bond, cash bond, or other acceptable bonding or credit instrument.

(3) The required bond may be filed on forms provided by or approved by the department. Please refer to Rules 810-3-73.1-.01 and 810-3-73.1-.02 for compliance requirements for provisional construction employers.

Author: Michael Mason

Statutory Authority: Code of Ala. 1975, §§40-18-73.1, (Act 2007-199), 40-2A-7(a) (5).

History: New Rule: Filed June 6, 2008; effective July 11, 2008.