

Transmittal Sheet For Notice Of Intended Action

Control: 810
Rule Nos: 810-3-72-.01
Rule Title: Included and Excluded Wages

Department or Agency: Revenue

New; Amended; Repealed; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that result from the absence of the proposed rule? N/A

Are all the facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule relate to or effect any matter of litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have any economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency .

Signature of certifying officer
Date 08/21/2023



REC'D & FILED

AUG 21 2023

LEGISLATIVE SVC AGENCY

ALABAMA DEPARTMENT OF REVENUE
Income Tax Administration

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-3-72-.01

Included and Excluded Wages

INTENDED ACTION

Amended

**SUBSTANCE OF
PROPOSED ACTION:**

In accordance with Act 2023-421, this rule is being amended to add a reference concerning the qualifying overtime that will be exempt from taxation beginning January 1, 2024 through June 30, 2025.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be conducted at **1:30 P.M. on Tuesday, October 10, 2023** via web-conference. To participate in the upcoming web-conference public hearing please contact the Tax Policy and Governmental Affairs Division at Taxpolicy@revenue.alabama.gov or 334-242-1380 to obtain the appropriate sign-in information for a specific public hearing date. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/tax-policy/>.

All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also may present their views during the web-conference.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, October 10, 2023

CONTACT PERSON AT AGENCY:

Meagan Barrett

Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380



Cameran L. Clark, Secretary
Alabama Department of Revenue

810-3-72-.01 Included And Excluded Wages

(1) Class exemptions from Alabama withholding are the same as those under federal law. The chief classes of employees exempt from withholding are agricultural, domestic, and merchant seamen. Alabama will not follow the federal requirement to withhold income tax on cash payments made after 1989 to agricultural employees where the payments are considered wages for social security purposes and FICA withholding is required.

~~(2) If an employee's earnings are partly from exempt work and partly from work subject to withholding, tax should be withheld either from all or from none of his earnings. Tax should be withheld from all of his earnings if one-half or more of his time is spent in nonexempt work; there should be no withholding if over one-half of his time is spent in exempt work.~~

~~(3)(2)~~ Where an employer establishes a deferred compensation plan under I.R.C. Sections 401(k)(2) or 403(b), the amounts properly deferred are not wages for withholding tax purposes.

~~(4)(3)~~ Amounts paid to or on behalf of an employee as reimbursement for moving expenses incurred relative to a new job location in Alabama, or advance payments of such expenses, are not wages for withholding tax purposes to the extent that there is reason to believe that the employee will have a corresponding deduction under Section 40-18-15(a)(18).

~~(5)(4)~~ Amounts paid to or on behalf of an employee for traveling or other bona fide ordinary and necessary expenses incurred, or advance payments of such expenses, to the extent that there is reason to believe that the employee will have a corresponding deduction under Section 40-18-15(a)(1).

~~(6)(5)~~ For tax years or periods beginning after December 31, 1990 - Where an employer participates in a cafeteria plan as described in I.R.C. Section 125, contributions made by an employer on behalf of an employee are not included in the employee's gross income and therefore are not subject to Alabama withholding tax.

~~(7)(6)~~ For tax years or periods beginning after December 31, 1990 - Where an employer incurs dependent care expenses on behalf of an employee, such amount is excluded from wages as defined in I.R.C. Section 129.

(7) For tax years or periods beginning after December 31, 2023, and ending prior to June 30, 2025, wages paid to a full time hourly employee as compensation for work performed in excess of 40 hours in a workweek are not taxable wages subject to Alabama withholding tax. The exemption for wages in

excess of 40 hours in a workweek will not apply to salaried or other alternate payment methods made to employees. See Rule 810-3-72-.02.

Authors: Ewell Berry, Ann F. Winborne, Neal Hearn, **CPA**
Authority: §§40-2A-7(a)(5), **40-18-14, and** 40-18-72, Code of Ala. 1975.
History: Adopted: September 30, 1982.
Amended: June 17, 1988; effective filed July 27, 1988;
Amended: May 15, 1992.
Amended: Filed December 4, 2017; effective January 18, 2018.
Amended: Filed August 21, 2023; effective