APA-1

Transmittal Sheet For
Notice Of Intended Action

Control: 810
Department or Agency: Revenue
Rule Nos: 810-3-72-.02
Rule Title: Overtime Pay Exemption

_X_ New; ___ Amended; ___ Repealed; ___ Adopt by Reference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 purposed rule?	No

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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.

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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

APA-2

ALABAMA DEPARTMENT OF REVENUE
Income Tax Administration

NOTICE OF INTENDED ACTION

RULE NO. & TITLE
810-3-72-.02 Overtime Pay Exemption

INTENDED ACTION New

SUBSTANCE OF PROPOSED ACTION: Act 2023-421 exempts qualifying overtime wages from taxation begining after December 31, 2023, through June 30, 2025, unless extended by the legislature. The proposed rule adds definitions and other qualifying information for employers.

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-.02 Overtime Pay Exemption (New Rule)

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

(a) Hourly wage paid employee - An hourly employee that is paid a wage for each hour of work they complete.

(b) Week – A workweek as defined by U.S. Fair Labor Standards Act (FLSA). An employee's work week is a fixed and regularly recurring period of 168 hours - seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day.

(c) Hours Worked - In general, hours worked include all the time during which an employee is required to be on the employer's premises, on duty, or at a prescribed workplace.

(d) Overtime - Hours worked in excess of 40 hours in a work week.

(e) Paid Time off (PTO) - A benefit program offered by employers which allows an employee to take off for a specific number of days and still receive compensation. This generally includes absences related to vacation, illness, or personal circumstances.

(2) For periods beginning January 1, 2024, and ending before June 30, 2025, gross income does not include the amounts received by an hourly wage paid employee for hours worked in excess of 40 hours in a week. This includes amounts received for hours worked in excess of 40 hours that are paid at the regular rate of pay.

(a) PTO and holiday pay are not hours worked and are not included in determining the hours worked in excess of 40 hours during a week. If an hourly wage paid employee has PTO during a week which, when combined with actual hours worked in a week exceed 40 hours, only the hours worked contribute to the calculation of "overtime".

> Example 1: Employee A is paid for 48 hours in a week, 32 hours of paid time off plus 16 hours worked. Only the 16 hours count toward the 40 hours worked, the 8 hours the employee is paid over 40 hours is not exempt.
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> Example 2: Employee B is paid for 52 hours in a week, 8 hours of holiday pay plus 44 hours worked. Only the 44 hours worked count toward the 40 hours worked, only 4 of the 12 hours the employee is paid over 40 hours is exempt.

(3) The exemption does not apply to the following:

(a) Salaried employees.

(b) Compensation not based on an hourly wage, such as mileage, comp time, or other alternative methods of payment.

(c) Commissions and bonuses paid in addition to an hourly wage.

(4) Exempt overtime reporting requirements:

(a) Beginning with the January 2024 filing of withholding tax, the following must be reported with the employer's monthly (Form A-6) or quarterly (Form A-1) withholding tax return:

1. Total amount of exempt overtime wages for the period.

2. Total number of employees to which it was paid during that period.

(b) The total amount of exempt overtime wages to report is the actual overtime wages exempt from Alabama taxable income whether paid at the regular, time and a half, or other hourly wage.

(c) The exempt overtime wages included in Box 14 of the employee's annual Form W-2 should correspond to the total reported with the monthly/quarterly filings throughout the year.

Author: Kathleen Abrams, Neal Hearn
Authority: §§40-2A-7(a)(5) and 40-18-14, Code of Ala. 1975.
History: **New Filed** August 21, 2023; effective