

810-3-73-.01 Withholding Exemption Certificates.

(1) Every employee is required to furnish his or her employer an Alabama withholding exemption certificate (~~Form A-4~~) at the time of employment showing the number of exemptions claimed. The number of exemptions claimed may not exceed the number of exemptions to which the employee is entitled to claim under Section 40-18-19, Code of Alabama 1975.

(a) ~~There are no exceptions to the above rule. Form A4 must be completed by an employee unless the employee qualifies for an exemption from the withholding requirements as instructed in paragraph (2) or (3) of this rule. In such case, an employee will file the qualifying Form A4E or Form A4MS.~~

(b) Federal Form W-4 will not be accepted as a substitute for Form A4 as the values of exemption differ greatly between the Alabama and federal allowances.

(c) Failure by the employee to provide to his or her employer a signed, Alabama withholding exemption certificate will result in the employer withholding using zero ("0") exemptions.

(2) An employer is not required to deduct and withhold tax on the wages of an employee if the employee has certified to the employer on the Form A4E withholding exemption certificate that the employee meets the conditions specified in subsections (a) and (b) of this paragraph and the employer has confirmed that Form A4E has been verified by the Department pursuant to (c) of this paragraph:

(a) Incurred no liability or income tax for the prior tax year (this requirement will not be met if the employee did not file a return for the prior year), and

(b) Does not expect to incur an income tax liability for the current year, or

(c) Pursuant to 40-18-73(j), the aforementioned Form A4E must be submitted for verification as prescribed by the Department. Unless verified by the Department, the Form A4E will not take effect. In such case the employer is required to withhold without exemption until a corrected Form A4 is submitted by the employee. Form A4E must be signed and sworn to under penalties of perjury and any employee that files a fraudulent Form A4E may be subject to criminal prosecution.

~~(c)~~(3) Qualifies An employer is not required to deduct and withhold tax on the wages of an employee if the employee certifies on Form A4MS that the employee qualifies for an exemption under the Military Spouses Residency Relief Act. This exemption applies to the spouse of a service member who is present in Alabama in compliance with military orders and who maintains domicile in

another state. Employees **should must** provide their employer with a valid military identification. Employers will report the employee's wages on Form W2 reflecting the state of legal residency shown on the spouses Form DD-2058 or current leave and earnings statement. Employers must keep a copy of these forms on file.

~~(3)~~**(4)** If an employee is no longer entitled to an exemption from withholding tax as described in paragraph (2) above, the employee should submit to his or her employer a new Form A4 exemption certificate reflecting the current number of exemptions to which they are entitled. **If not received, the Department may issue a letter instructing an employer to withhold without exemption for this employee until a corrected Form A4 is submitted by the employee.**

~~(4)~~**(5)** Pursuant to the requirements of Section 40-18-73, Code of Alabama 1975, employers must provide to the Alabama Department of Revenue, no later than 60 days from the date the employee begins employment, a copy of any withholding exemption certificates where **the an** employee claims eight (8) or more exemptions. Failure to provide this information within the above stated time period shall subject the employer to the "failure to timely file" penalty of \$50 per certificate.

~~(5)~~**(6)** Penalties.

(a) In the event the employee inflates the number of exemptions allowed **by this Chapter under Section 40-18-73, Code of Alabama 1975** on Form A-4 or falsely claims an exemption from withholding **tax on Form A4E or Form A4MS**, the employee shall be subject to a penalty of \$500 for such action pursuant to the provisions of Section 40-29-75, Code of Alabama 1975.

(b) Any person who fails to comply with the requirements of this section also shall be subject to the penalties provided in Section 40-2A-11, Code of Alabama 1975, **and/or may be subject to criminal prosecution.**

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Authority: Sections 40-2A-7(a)(5) and 40-18-73, Code of Alabama 1975
History: Adopted September 30, 1982; amended June 17, 1988.
Amended: Filed March 20, 1989, effective April 24, 1989.
Amended: Filed May 3, 2000, effective June 7, 2000.
Amended: Filed March 13, 2007, effective April 18, 2007.
Amended: Filed June 6, 2008, effective July 11, 2008.
Amended: Filed August 9, 2012, effective September 13, 2012.

