

1 SB20
2 170847-1
3 By Senator Melson
4 RFD: Finance and Taxation Education
5 First Read: 03-AUG-15

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8 SYNOPSIS: Under current law, an employer is not
9 required to withhold income taxes from an
10 employee's wages if the employee has furnished the
11 employer a withholding exemption certificate
12 certifying that the employee: (1) incurred no
13 income tax liability for the preceding tax year and
14 (2) anticipates that he or she will not incur a tax
15 liability for income tax imposed for the current
16 year.

17 This bill would amend current law to repeal
18 the total exemption from withholding.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 To amend Section 40-18-73, Code of Alabama 1975,
25 relating to individual income taxes; to repeal the total
26 withholding exemption; and to provide an effective date.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the Fraud Prevention Act.

3 Section 2. The Legislature finds and declares the
4 following:

5 (a) Current law provides individual taxpayers with
6 the option of having no income taxes withheld from their
7 paycheck if there is in effect with respect to the payment a
8 withholding exemption certificate furnished to the employer by
9 the employee certifying that the employee:

10 1. Incurred no income tax liability in the previous
11 tax year and

12 2. Anticipates that he or she will not incur a
13 liability for income taxes for the current year.

14 (b) According to the Department of Revenue, there
15 are many taxpayers that currently avoid income taxes by
16 completing a withholding exemption certificate claiming a
17 total exemption from withholding taxes and discontinue filing
18 an Alabama income tax return, even though they have tax
19 liability.

20 (c) Unless the abuse of withholding exemption
21 certificates is discovered by the Department of Revenue
22 through an audit or other compliance measures, the tax
23 avoidance reduces the amount of income taxes received by the
24 state which are used for educational purposes and increases
25 the costs of collections for the Department.

26 (d) In order to prevent tax avoidance, it is in the
27 best interest of the state to repeal the provisions of law

1 allowing withholding exemption certificates to be used by
2 taxpayers to claim a total exemption from withholding tax. An
3 individual employee should file an income tax return with the
4 Department of Revenue and claim a refund, if the taxpayer is
5 entitled to such refund.

6 Section 3. Section 40-18-73, Code of Alabama 1975,
7 is hereby amended to read as follows:

8 "§40-18-73.

9 (a) Every employee, on or before the date of
10 commencement of employment, shall furnish his or her employer
11 with a signed Alabama withholding exemption certificate
12 relating to the number of withholding exemptions which he or
13 she claims, which in no event shall exceed the number to which
14 the employee is entitled. In the event the employee inflates
15 the number of exemptions allowed by this Chapter on Form A-4,
16 the employee shall pay a penalty of five hundred dollars
17 (\$500) for such action pursuant to Section 40-29-75.

18 (b) Due to the fact that the federal exemptions
19 differ significantly from Alabama law, federal Form W-4 is not
20 an acceptable filing under this section; rather Alabama Form
21 A-4 must be utilized to comply with this section.

22 (c) In the event the employee fails to furnish the
23 employer a signed Alabama Form A-4, the employer must withhold
24 on such employee's wages using no exemptions.

25 (d) Withholding exemption certificates shall take
26 effect upon the beginning of the employee's first payroll
27 period, or the first payment of wages made without regard to a

1 payroll period, after the date on which the certificate is
2 completed and submitted.

3 (e) A withholding exemption certificate which takes
4 effect under this section shall continue in effect with
5 respect to the employer until another certificate takes effect
6 under this section. If a withholding exemption certificate is
7 submitted to take the place of an existing certificate, the
8 employer, at his or her option, may continue the old
9 certificate in force with respect to all wages paid on or
10 before the first status determination date and adjust the
11 withholding on January 1 or July 1, whichever occurs at least
12 30 days after the date on which the new certificate is
13 furnished, or may adjust the withholding immediately.

14 (f) If, on any day during the calendar year, the
15 number of withholding exemptions to which the employee may
16 reasonably be expected to be entitled at the beginning of his
17 or her next taxable year is different from the number to which
18 the employee is currently entitled, the employee shall,
19 according to rules established by the department, provide the
20 employer with a withholding exemption certificate relating to
21 the number of exemptions which he or she claims with respect
22 to the next taxable year, which shall not exceed the number to
23 which he or she may reasonably be expected to be so entitled.
24 Exemption certificates issued pursuant to this subsection
25 shall not take effect with respect to any payment of wages
26 made in the calendar year in which the certificate is
27 submitted.

1 (g) Whenever the number of exemptions of an employee
2 either increases or decreases, the employee shall submit to
3 the employer a new exemption certificate which accurately
4 states the true number of exemptions to which that employee is
5 entitled.

6 ~~(h) Effective for tax years beginning January 1,~~
7 ~~1998, and thereafter, an employer shall not be required to~~
8 ~~deduct and withhold any tax under this chapter upon a payment~~
9 ~~of wages to an employee if there is in effect with respect to~~
10 ~~the payment a withholding exemption certificate furnished to~~
11 ~~the employer by the employee certifying that the employee:~~

12 ~~(1) Incurred no liability for income tax imposed~~
13 ~~under this chapter for the preceding taxable year, and~~

14 ~~(2) Anticipates that he or she will not incur a~~
15 ~~liability for income tax imposed under this chapter for the~~
16 ~~current year.~~

17 ~~(i) Notwithstanding the provisions of subsection~~
18 ~~(h), an (h) An~~ employer must submit to the department a copy
19 of any withholding exemption certificates where the employee
20 claims eight or more exemptions. Employers failing to provide
21 such withholding exemption certificates within 60 days of the
22 date employment begins, shall be subject to the "failure to
23 timely file" penalty of fifty dollars (\$50) per certificate.

24 ~~(j) (i)~~ Withholding exemption certificates shall be
25 in the form and contain that information which the department
26 may require, and be submitted in accordance with regulations
27 which the department shall prescribe.

1 Section 4. The commissioner shall be authorized to
2 promulgate any rules and regulations necessary to implement
3 the provisions of this mandatory act.

4 Section 5. This act shall become effective
5 immediately following its passage and approval by the
6 Governor, or its otherwise becoming law, and shall apply to
7 exemption certificates received after September 30, 2015 and
8 all wages paid on or after January 1, 2016.