

1 HB42  
2 171104-1  
3 By Representatives Johnson (K) and Mooney  
4 RFD: Ways and Means 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. The bill  
19 would allow the department to provide downloadable  
20 withholding forms in English and different  
21 languages.

22  
23 A BILL  
24 TO BE ENTITLED  
25 AN ACT  
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1           To amend Section 40-18-73, Code of Alabama 1975,  
2 relating to individual income taxes; to repeal the total  
3 withholding exemption; to provide for downloadable withholding  
4 forms on the Department of Revenue website; and to provide an  
5 effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7           Section 1. This act shall known and shall be cited  
8 as the Alabama Taxpayer Fraud Prevention Act.

9           Section 2. The Legislature finds and declares the  
10 following:

11           (1) Current law provides individual taxpayers with  
12 the option of having no income taxes withheld from their  
13 paycheck if there is in effect with respect to the payment a  
14 withholding exemption certificate furnished to the employer by  
15 the employee certifying that the employee:

16           a. Incurred no income tax liability in the previous  
17 tax year; and

18           b. Anticipates that he or she will not incur a  
19 liability for income taxes for the current year.

20           (2) According to the Department of Revenue, there  
21 are many taxpayers that currently avoid income taxes by  
22 completing a withholding exemption certificate claiming a  
23 total exemption from withholding taxes and discontinue filing  
24 an Alabama income tax return, even though they have tax  
25 liability.

26           (3) Unless the abuse of withholding exemption  
27 certificates is discovered by the Department of Revenue

1 through an audit or other compliance measures, the tax  
2 avoidance reduces the amount of income taxes received by the  
3 state which are used for educational purposes and increases  
4 the costs of collections for the department.

5 (4) In order to prevent tax avoidance, it is in the  
6 best interest of the state to repeal the provisions of law  
7 allowing withholding exemption certificates to be used by  
8 taxpayers to claim a total exemption from withholding tax. An  
9 individual employee should file an income tax return with the  
10 Department of Revenue and claim a refund, if the taxpayer is  
11 entitled to such refund.

12 Section 3. Section 40-18-73, Code of Alabama 1975,  
13 is amended to read as follows:

14 "§40-18-73.

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

24 "(b) Due to the fact that the federal exemptions  
25 differ significantly from Alabama law, federal Form W-4 is not  
26 an acceptable filing under this section; rather Alabama Form  
27 A-4 must be utilized to comply with this section. The

1 Department of Revenue shall provide downloadable withholding  
2 forms in English and other languages on the department  
3 website.

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

7 "(d) Withholding exemption certificates shall take  
8 effect upon the beginning of the employee's first payroll  
9 period, or the first payment of wages made without regard to a  
10 payroll period, after the date on which the certificate is  
11 completed and submitted.

12 "(e) A withholding exemption certificate which takes  
13 effect under this section shall continue in effect with  
14 respect to the employer until another certificate takes effect  
15 under this section. If a withholding exemption certificate is  
16 submitted to take the place of an existing certificate, the  
17 employer, at his or her option, may continue the old  
18 certificate in force with respect to all wages paid on or  
19 before the first status determination date and adjust the  
20 withholding on January 1 or July 1, whichever occurs at least  
21 30 days after the date on which the new certificate is  
22 furnished, or may adjust the withholding immediately.

23 "(f) If, on any day during the calendar year, the  
24 number of withholding exemptions to which the employee may  
25 reasonably be expected to be entitled at the beginning of his  
26 or her next taxable year is different from the number to which  
27 the employee is currently entitled, the employee shall,

1 according to rules established by the department, provide the  
2 employer with a withholding exemption certificate relating to  
3 the number of exemptions which he or she claims with respect  
4 to the next taxable year, which shall not exceed the number to  
5 which he or she may reasonably be expected to be so entitled.  
6 Exemption certificates issued pursuant to this subsection  
7 shall not take effect with respect to any payment of wages  
8 made in the calendar year in which the certificate is  
9 submitted.

10 "(g) Whenever the number of exemptions of an  
11 employee either increases or decreases, the employee shall  
12 submit to the employer a new exemption certificate which  
13 accurately states the true number of exemptions to which that  
14 employee is entitled.

15 ~~"(h) Effective for tax years beginning January 1,  
16 1998, and thereafter, an employer shall not be required to  
17 deduct and withhold any tax under this chapter upon a payment  
18 of wages to an employee if there is in effect with respect to  
19 the payment a withholding exemption certificate furnished to  
20 the employer by the employee certifying that the employee:~~

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

23 ~~"(2) Anticipates that he or she will not incur a  
24 liability for income tax imposed under this chapter for the  
25 current year.~~

26 ~~"(h) (i) Notwithstanding the provisions of~~  
27 ~~subsection (h), an An employer must submit to the department a~~

1 copy of any withholding exemption certificates where the  
2 employee claims eight or more exemptions. Employers failing to  
3 provide such withholding exemption certificates within 60 days  
4 of the date employment begins, shall be subject to the  
5 "failure to timely file" penalty of fifty dollars (\$50) per  
6 certificate.

7 "~~(j)~~(i) Withholding exemption certificates shall be  
8 in the form and contain that information which the department  
9 may require, and be submitted in accordance with regulations  
10 which the department shall prescribe."

11 Section 4. The commissioner shall be authorized to  
12 promulgate any rules necessary to implement this act.

13 Section 5. This act shall become effective October  
14 1, 2015, following its passage and approval by the Governor,  
15 or its otherwise becoming law.