

43-401. [Withholding tax; rates; election by employee](#)

(L09, Ch. 167, sec. 2. Eff. 1/1/10)

A. Except as provided by subsection B of this section, every employer at the time of the payment of wages, salary, bonus or other emolument to any employee whose compensation is for services performed within this state shall deduct and retain from the compensation an amount that is determined by the department pursuant to subsection D of this section or that is equal to a percentage, determined pursuant to subsection C of this section, of the total amount of the federal income tax deducted and withheld by an employer from the total value of such wages, bonus or other emolument of an employee under the provisions of the United States internal revenue code computed without deductions for any amount withheld.

B. An employer may voluntarily elect to not withhold tax during December by notifying:

1. The department on a form prescribed by the department.
2. The employer's employees in writing in a manner prescribed by the department.

C. The percentage deducted and retained under subsection A of this section:

1. Through April 30, 2009 shall be:

(a) If the employee's annual compensation is less than fifteen thousand dollars, ten per cent, nineteen per cent, twenty-three per cent, twenty-five per cent, thirty-one per cent or thirty-seven per cent, at the employee's election pursuant to subsection G of this section.

(b) If the employee's annual compensation is fifteen thousand dollars or more, nineteen per cent, twenty-three per cent, twenty-five per cent, thirty-one per cent or thirty-seven per cent, at the employee's election pursuant to subsection G of this section.

(c) Zero per cent at the election of an employee who had no state income tax liability in the prior taxable year and expects to have no state income tax liability for the current taxable year.

2. Beginning from and after April 30, 2009 through December 31, 2009, if an employee's rate of withholding under paragraph 1 of this subsection immediately before May 1, 2009 was:

(a) Zero per cent at the election of an employee who had no state income tax liability in the prior taxable year and expects to have no state income tax liability for the current taxable year, the withholding tax rate shall remain zero per cent.

(b) Ten per cent, the withholding tax rate shall be increased to 11.5 per cent.

(c) Nineteen per cent, the withholding tax rate shall be increased to 21.9 per cent.

(d) Twenty-three per cent, the withholding tax rate shall be increased to 26.5 per cent.

(e) Twenty-five per cent, the withholding tax rate shall be increased to 28.8 per cent.

(f) Thirty-one per cent, the withholding tax rate shall be increased to 35.7 per cent.

(g) Thirty-seven per cent, the withholding tax rate shall be increased to 42.6 per cent.

3. Beginning from and after December 31, 2009 through June 30, 2010, if an employee's rate of withholding under paragraph 2 of this subsection immediately before January 1, 2010 was:

(a) Zero per cent at the election of an employee who had no state income tax liability in the prior taxable year and expects to have no state income tax liability for the current taxable year, the withholding tax rate shall remain zero per cent.

(b) 11.5 per cent, the withholding tax rate shall be decreased to 10.7 per cent.

(c) 21.9 per cent, the withholding tax rate shall be decreased to 20.3 per cent.

(d) 26.5 per cent, the withholding tax rate shall be decreased to 24.5 per cent.

(e) 28.8 per cent, the withholding tax rate shall be decreased to 26.7 per cent.

(f) 35.7 per cent, the withholding tax rate shall be decreased to 33.1 per cent.

(g) 42.6 per cent, the withholding tax rate shall be decreased to 39.5 per cent.

D. Beginning from and after June 30, 2010, the amount deducted and retained under subsection A of this section shall be prescribed by tables adopted by the department. On or before March 15, 2010, the department shall submit to the joint legislative budget committee a copy of the table.

E. If the amount collected and payable by the employer to the department in each of the preceding four calendar quarters did not exceed an average of one thousand five hundred dollars, the amount collected shall be paid to the department on or before April 30, July 31, October 31 and January 31 for the preceding calendar quarter. If such amount exceeded one thousand five hundred dollars in each of the preceding four calendar quarters, the employer shall pay to the department the amount the employer deducts and retains pursuant to this section at the same time as the employer is required to make deposits of federal tax pursuant to section 6302 of the internal revenue code. On or before April 30, July 31, October 31 and January 31 each year the employer shall reconcile the amounts payable during the preceding calendar quarter in a manner prescribed by the department, except that if the full amount collected and payable is paid timely to the department under this subsection, the employer may reconcile the amounts on or before May 10, August 10, November 10 and February 10 each year. The department by rule may allow and determine which employers qualify for annual payments of withholding taxes, with an annual report by the employer pursuant to section 43-412, subsection B, if the qualifying employer has established sufficient payment history to indicate that the employer is current and in good standing pursuant to standards established by rule. For any business which has not had a withholding certificate for the four preceding consecutive quarters, the quarterly average shall be computed in a manner prescribed by the department.

F. If an employer fails to make a timely monthly payment because prior to that reporting period it reported on a quarterly basis instead of on a monthly basis, the department shall notify the employer that it is out of compliance with this section. Notwithstanding section 42-1125, the department shall not assess a penalty against an employer for failing to make a timely monthly payment if the employer had filed and remitted all taxes due on a quarterly basis and brings all filings and payments into current compliance within thirty days after being notified by the department.

G. Each employee shall elect the amount authorized by subsection C of this section to be withheld for application toward the employee's state income tax liability. The election provided under this subsection shall be exercised by each employee, in writing on a form prescribed by the department. The election shall be made within five days of employment. Each employer shall notify the employees of the election made available under this subsection and shall have election forms available at all times. Each form shall be completed in triplicate, with one copy each for the department, the employer and the employee. The employer shall file a copy of each completed form with the department. Any employee failing to complete an election form as prescribed shall be deemed to have elected the smallest applicable withholding percentage.

H. Before July 1 of each year, each employer who chooses to not withhold tax pursuant to subsection B of this section shall notify each employee that:

1. State income taxes will not be withheld from compensation in December.
2. The employee may elect to change the rate of withholding tax prescribed by this section to compensate for the resulting change in annual withholdings from the employee's compensation.

I. At an employee's written request, the employer may agree to reduce the amount withheld under this section by the amount of credit that the employee represents to the employer that

the employee will qualify for and be entitled to under sections 43-1088, 43-1089 and 43-1089.01. The employee's request must include the name and address of the qualifying charitable organization, qualified school tuition organization or public school. Within thirty days after agreeing to the employee's request, the employer shall reduce the withholding amount by the amount of the credit, but not below zero, prorated for the number of pay periods remaining in the employee's taxable year after the employee makes the request. If an employer agrees to reduce the withholding amount pursuant to this subsection, the following apply:

1. Within fifteen days after the end of each calendar quarter, the employer must pay the entire amount of the reduction in withholding tax for that quarter to the designated charitable organization, school tuition organization or public school. These payments are considered to be on the employee's behalf, and not the employer's, for the purposes of qualifying for the income tax credits under sections 43-1088, 43-1089 and 43-1089.01.
2. The employee is responsible and accountable for the accuracy and the amount of reduction in withholding tax and the payments to the charitable organization, school tuition organization or public school.
3. The employer is responsible and accountable to the charitable organization, school tuition organization or public school, to the employee and to the department for actually making the required payments.
4. Within thirty days after the end of each calendar year, or within fifteen days after the termination of employment, the employer must furnish to each electing employee and to the department a statement of the amount withheld and paid on behalf of the employee during that year.