

LAWS OF ARIZONA

CHAPTER 68

House Bill 2016

AN ACT

RELATING TO TAXATION OF INCOME; PROVIDING FOR OPTION BY EMPLOYEE TO HAVE HIGHER PERCENTAGE OF COMPENSATION WITHHELD, AND AMENDING SECTION 43-188, ARIZONA REVISED STATUTES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Purpose

The purpose of this act is to provide a system of withholding which permits taxpayers an option to increase withholding percentage to a level sufficient to meet total state income tax liability.

Sec. 2. Section 43-188, Arizona Revised Statutes, is amended to read:

43-188. Collection of tax—information at source; withholding tax

(a) **Information at source and withholding.** This section does not apply to the payment of interest obligations not taxable under this title.

(b) **Information at source, general.** Every individual, estate, trust, partnership, corporation, joint stock company or association, insurance company, business trust, or so-called Massachusetts trust, being a resident or having a place of business in this state, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state or any political subdivision of this state, or any city organized under a charter, or any political body not a subdivision or agency of the state, having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to bearer), dividends, rent (except rent paid by the individual taxpayer with respect to his personal dwelling), salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income amounting to three hundred dollars or over, paid or payable during any year to any taxpayer, shall make a complete return to the tax commission, which shall contain or be verified by a written declaration that it is made under the penalties of perjury, under such regulations and in such form and manner and to such extent as may be prescribed by it setting forth the amount of such gain, profits and income, and the name and address of the recipient of such payment.

LAWS OF ARIZONA

(c) **Information at source returns—patronage dividends.** Any corporation allocating amounts as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, refund, or rebate) shall render a correct return, which shall contain or be verified by a written declaration that it is made under the penalties of perjury stating the name and address of each patron to whom it has made such allocations amounting to one hundred dollars or more during the calendar year, and the amount of such allocations to each patron. If required by the tax commission, any such corporation shall render a correct return, which shall contain or be verified by a written declaration that it is under penalties of perjury, of all patronage dividends, rebates, or refunds made during the calendar year to its patrons. This subsection shall not apply in the case of any corporation exempt from tax under section 43-147.

(d) **Information at source returns, on income from securities.** The return described in subsection (b) may be required, regardless of amounts, in the case of

(1) Payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations.

(2) Dividends paid by corporations.

(3) Collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from corporations created or organized in a foreign country by persons undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

(e) **Withholding, agent entitled to address of recipient.** When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

The commission shall furnish the person paying the income with forms to be signed by the person from whom the tax is being withheld. Such forms shall provide for the information the commission deems necessary.

(f) **Withholding tax.**

(1) On and after January 1, ~~1970~~ 1974, every employer at the time of the payment of wages, salary, bonus or other emolument to any employee

LAWS OF ARIZONA

whose compensation is for services performed within this state shall deduct and retain therefrom an amount equal to ten per cent OR TWENTY PER CENT 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 internal revenue code of the United States computed without deductions for any amount withheld, and shall, quarterly, on or before the last day of April, July, October and January of each year, pay over to the commission the amount so collected during the preceding calendar quarter. EACH EMPLOYEE SHALL ELECT WHICH PERCENTAGE OF THE FEDERAL INCOME TAX DEDUCTED AND WITHHELD, TEN PER CENT OR TWENTY PER CENT, SHALL BE WITHHELD FOR APPLICATION TOWARD HIS STATE INCOME TAX LIABILITY. For the purposes of this section the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person including any officer or department of the state or any political subdivision or agency of the state, or any city organized under a charter, or any political body not a subdivision or agency of the state, except that if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" means the person having control of the payment of such wages.

(2) THE ELECTION PROVIDED UNDER SECTION 43-188 (f) (1) SHALL BE EXERCISED BY EACH EMPLOYEE, IN WRITING ON A FORM PRESCRIBED BY THE COMMISSION. THE ELECTION MUST BE MADE WITHIN FIVE DAYS OF EMPLOYMENT. EACH EMPLOYER SHALL NOTIFY HIS EMPLOYEES OF THE ELECTION MADE AVAILABLE UNDER SECTION 43-188 (f) (1) AND SHALL HAVE ELECTION FORMS AVAILABLE AT ALL TIMES. EACH FORM SHALL BE COMPLETED IN TRIPPLICATE, WITH ONE COPY EACH FOR THE COMMISSION, THE EMPLOYER AND THE EMPLOYEE. IT SHALL BE THE DUTY OF THE EMPLOYER TO FILE A COPY OF EACH COMPLETED FORM WITH THE COMMISSION. ANY EMPLOYEE FAILING TO COMPLETE AN ELECTION FORM AS PRESCRIBED SHALL BE DEEMED TO HAVE ELECTED THE SMALLEST WITHHOLDING PERCENTAGE PROVIDED FOR IN SECTION 43-188 (f) (1).

~~(2)~~ (3) The amounts deducted from the wages of an employee during any calendar year in accordance with the provisions of this subsection shall be considered to be paid in part payment of the tax on such employee's taxable income for his tax year which begins within such calendar year, and the return made by the employer pursuant to paragraph ~~(5)~~ (6) may be accepted by the commission as prima facie evidence of the amounts so deducted from his wages.

LAWS OF ARIZONA

~~(3)~~ (4) No amount shall be deducted or retained from:

(A) Wages paid for active service in the military or naval forces of the United States.

(B) Wages or salary paid to an employee of a common carrier when such employee is a nonresident of Arizona as defined in section 43-101 and regularly performs services both within and without the state of Arizona.

(C) Wages paid for domestic service in a private home.

(D) Wages paid for casual labor not in the course of the employer's trade or business.

(E) Wages paid to part-time or seasonal employees whose services to the employer consist solely of labor in connection with the planting, cultivating, harvesting or field packing of seasonal agricultural crops, except such employees whose principal duties are operating any mechanically driven device in such operations.

~~(4)~~ (5) In the case of nonresident employees who are residents of another state of the United States or the District of Columbia and are allowed a tax credit for income taxes paid to their state of residency or domicile under the provisions of section 43-128(b) (1) sufficient in amount to offset the tax required by this section to be withheld from the wages of an employee, the tax commission may by rules and regulations relieve the employers of such employees from withholding requirements of this section with respect to such employees.

~~(5)~~ (6) When the total amount deducted under this subsection exceeds the amount of the tax on the employee's entire taxable income as computed under this title, the commission shall, after auditing the annual return filed by the employee in accordance with section 43-142, and without requiring a filing of a refund claim as provided in section 43-184(b) (1), refund the amount of the excess deducted, without interest thereon. Failure of the commission to make such refund shall not limit the right of the taxpayer to file a claim for a refund as provided in section 43-184. No refund shall be made to an employee who fails to file such return within one year from the due date of the return in respect of which the tax withheld might have been credited. If the excess tax deducted is less than one dollar, no refund shall be made unless specifically requested by the taxpayer at the time such return is filed. In no event shall any excess be allowed as a credit against any tax accruing on a return filed for a year subsequent to the year during which such excess was withheld, the provisions of section 43-184 notwithstanding.

LAWS OF ARIZONA

The commission may make separate refunds of withheld taxes upon request by a husband or wife who has filed a joint return, the refund payable to each spouse being proportioned to the gross earnings of each shown by the information returns filed by the employer or otherwise shown to the satisfaction of the commission. If a taxpayer entitled to a refund under this subsection dies, the commission may certify to the commissioner of finance that the refund be made to the taxpayer's executor, administrator, or duly appointed representative.

~~(6)~~ (7) Every employer shall, with each payment made by him to the commission, deliver to the commission a return in the form prescribed by the commission, showing the total amount of wages, salaries, bonuses or other emoluments paid to his employees, the amount deducted therefrom in accordance with the provisions of this subsection, and such other information as the commission may require. The employer is charged with the duty of advising the employee of the amount of moneys withheld, in accordance with such regulations as the commission may prescribe, using printed forms furnished by the commission for such purposes, or when requested by the employer upon forms approved by the commission.

The employer shall make an annual return for the calendar year to the commission on forms provided by it, summarizing the total compensation paid and the tax withheld for each employee during the calendar year and shall file the same with the commission before February 16 of the year following the year for which the report is made. The return required in the preceding sentence shall contain or be verified by a written declaration that it is made under the penalties of perjury, and the information contained in said return shall satisfy the requirements of section 43-188(b) relating to the salaries and wages included in the report required under this paragraph.

The employer shall, within thirty days after the end of each calendar year, furnish such employee with either a statement of the amount withheld during the previous tax year, showing the gross earnings and the amount of tax withheld, or, if the termination of employment is prior to the end of the year, then, within fifteen days after the termination of employment, a summary statement showing the total earnings for the tax year and the amount of taxes withheld from compensation.

(g) Liability for failure to withhold; penalty for failure to remit.

(1) The employer shall be liable to the tax commission for the payment of the tax required to be deducted and withheld under this section, and the employee shall not thereafter be liable for the amount of any such

LAWS OF ARIZONA

payment, nor shall the employer be liable to any person or any employee for the amount of any such payment. For the purpose of making penalty sections of this title applicable, any amount deducted or required to be deducted and remitted to the commission under this section shall be considered the tax of the employer and with respect to such amounts he shall be considered as a taxpayer.

(2) Whenever any employer is required to collect or withhold the tax imposed by this title from any employee and to pay such tax over to the tax commission, the amount of tax so collected or withheld shall be held to be a special fund in trust for the state of Arizona. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

(3) Any employer intrusted with, or having in his control any tax required to be collected or withheld and constituting a "special fund in trust for the state of Arizona" pursuant to this subsection, who fraudulently appropriates, or secretes with a fraudulent intent to appropriate, to any use or purpose not in the due and lawful execution of the trust, pursuant to this section, any portion thereof, shall be guilty of embezzlement under section 13-682, and shall be punishable as provided in sections 13-688 and 13-689.

(h) **Withholding agent, must pay without resorting to action.** Any person required to withhold and transmit any amount pursuant to this section shall comply with the requirement without resort to any legal or equitable action in a court of law or equity.

(i) **Withholding tax, refund therefor.** Any taxpayer from whom a tax is collected by withholding under this title is entitled to the remedies set forth in sections 43-163(b), 43-175(1), 43-184 to 43-186 and 43-195(c) except where such sections are in conflict with this section.

Sec. 3. Effective date

The provisions of this act shall become effective with the taxable year beginning from and after December 31, 1973.

Approved by the Governor—April 18, 1973

Filed in the Office of the Secretary of State—April 18, 1973