Senate Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 2

SENATE BILL 1185

AN ACT

AMENDING SECTIONS 42-1001, 43-105, 43-401, 43-403, 43-404 AND 43-412, ARIZONA REVISED STATUTES; RELATING TO TAXATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 42-1001, Arizona Revised Statutes, is amended to read:

42-1001. Definitions

In this title, unless the context otherwise requires:

1. "Board" or "state board" means either the state board of tax appeals or the state board of equalization, as applicable.

2. "Court" means the tax court or superior court, whichever is applicable.

3. "Department" means the department of revenue.

4. "Director" means the director of the department.

5. "Internal revenue code" means the United States internal revenue code of 1986, as amended and in effect as of January 1, ~~2008~~ 2009, including those provisions that became effective during ~~2007~~ 2008 with the specific adoption of their retroactive effective dates but excluding all changes to the code enacted after January 1, ~~2008~~ 2009.

Sec. 2. Section 43-105, Arizona Revised Statutes, is amended to read:

43-105. Internal revenue code; definition; application

A. FOR PURPOSES OF COMPUTING INCOME TAX PURSUANT TO THIS TITLE, FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2008, "INTERNAL REVENUE CODE" MEANS THE UNITED STATES INTERNAL REVENUE CODE OF 1986, AS AMENDED, IN EFFECT ON JANUARY 1, 2009, INCLUDING THOSE PROVISIONS THAT BECAME EFFECTIVE DURING 2008 WITH THE SPECIFIC ADOPTION OF ALL FEDERAL RETROACTIVE EFFECTIVE DATES, BUT EXCLUDING ANY CHANGE TO THE CODE ENACTED AFTER JANUARY 1, 2009.

~~A.~~ B. For purposes of computing income tax pursuant to this title, for taxable years beginning from and after December 31, 2007 THROUGH DECEMBER 31, 2008, "internal revenue code" means the United States internal revenue code of 1986, as amended, in effect on January 1, 2008, including those provisions that became effective during 2007 with the specific adoption of all federal retroactive effective dates~~, but excluding any change to the code enacted after January 1, 2008~~ AND INCLUDING THOSE PROVISIONS OF THE ECONOMIC STIMULUS ACT OF 2008 (P.L. 110-185), THE HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008 (P.L. 110-245), THE HEARTLAND, HABITAT, HARVEST AND HORTICULTURE ACT OF 2008 (P.L. 110-246), THE HOUSING ASSISTANCE TAX ACT OF 2008 (P.L. 110-289), THE EMERGENCY ECONOMIC STABILIZATION ACT OF 2008 (P.L. 110-343) AND THE WORKER, RETIREE, AND EMPLOYER RECOVERY ACT OF 2008 (P.L. 110-458) THAT ARE RETROACTIVELY EFFECTIVE DURING TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2007 THROUGH DECEMBER 31, 2008.

~~B.~~ C. For purposes of computing income tax pursuant to this title, for taxable years beginning from and after December 31, 2006 through December 31, 2007, "internal revenue code" means the United States internal revenue code of 1986, as amended, in effect on January 1, 2007, including those provisions that became effective during 2006 with the specific adoption of all federal retroactive effective dates and including those provisions of the small business and work opportunity tax act of 2007 (P.L. 110-28), the energy

independence and security act of 2007 (P.L. 110-140), Public Law 110-141, the mortgage forgiveness debt relief act of 2007 (P.L. 110-142), ~~and~~ the tax technical corrections act of 2007 (P.L. 110-172), THE ECONOMIC STIMULUS ACT OF 2008 (P.L. 110-185), THE HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008 (P.L. 110-245), THE HEARTLAND, HABITAT, HARVEST AND HORTICULTURE ACT OF 2008 (P.L. 110-246), THE HOUSING ASSISTANCE TAX ACT OF 2008 (P.L. 110-289), THE EMERGENCY ECONOMIC STABILIZATION ACT OF 2008 (P.L. 110-343) AND THE WORKER, RETIREE, AND EMPLOYER RECOVERY ACT OF 2008 (P.L. 110-458) that are retroactively effective during taxable years beginning from and after December 31, 2006 through December 31, 2007.

~~C.~~ D. For purposes of computing income tax pursuant to this title, for taxable years beginning from and after December 31, 2005 through December 31, 2006, "internal revenue code" means the United States internal revenue code of 1986, as amended, in effect on January 1, 2006, including those provisions that became effective during 2005 with the specific adoption of all federal retroactive effective dates and including those provisions of the tax increase prevention and reconciliation act of 2005 (P.L. 109-222), the pension protection act of 2006 (P.L. 109-280), the tax relief and health care act of 2006 (P.L. 109-432), the small business and work opportunity tax act of 2007 (P.L. 110-28), the mortgage forgiveness debt relief act of 2007 (P.L. 110-142), ~~and~~ the tax technical corrections act of 2007 (P.L. 110-172), THE HEARTLAND, HABITAT, HARVEST AND HORTICULTURE ACT OF 2008 (P.L. 110-246) AND THE HOUSING ASSISTANCE TAX ACT OF 2008 (P.L. 110-289) that are retroactively effective during taxable years beginning from and after December 31, 2005 through December 31, 2006.

~~D.~~ E. For purposes of computing income tax pursuant to this title, for taxable years beginning from and after December 31, 2004 through December 31, 2005, "internal revenue code" means the United States internal revenue code of 1986, as amended, in effect on January 1, 2005, including those provisions that became effective during 2004 with the specific adoption of all federal retroactive effective dates and including those provisions of the Katrina emergency tax relief act of 2005 (P.L. 109-73), the energy tax incentives act of 2005 (title XIII of the energy policy act of 2005 (P.L. 109-58)), the gulf opportunity zone act of 2005 (P.L. 109-135), ~~and~~ the tax technical corrections act of 2007 (P.L. 110-172), THE HEARTLAND, HABITAT, HARVEST AND HORTICULTURE ACT OF 2008 (P.L. 110-246) AND THE HOUSING ASSISTANCE TAX ACT OF 2008 (P.L. 110-289) that are retroactively effective during taxable years beginning from and after December 31, 2004 through December 31, 2005.

~~E.~~ F. For purposes of computing income tax pursuant to this title, for taxable years beginning from and after December 31, 2003 through December 31, 2004, "internal revenue code" means the United States internal revenue code of 1986, as amended, in effect on January 1, 2004, including those provisions that became effective during 2003 with the specific adoption of all federal retroactive effective dates and including those provisions of the

working families tax relief act of 2004 (P.L. 108-311), the American jobs creation act of 2004 (P.L. 108-357), the Katrina emergency tax relief act of 2005 (P.L. 109-73), the energy tax incentives act of 2005 (title XIII of the energy policy act of 2005 (P.L. 109-58)), the gulf opportunity zone act of 2005 (P.L. 109-135), ~~and~~ the tax technical corrections act of 2007 (P.L. 110-172) AND THE HEARTLAND, HABITAT, HARVEST AND HORTICULTURE ACT OF 2008 (P.L. 110-246) that are retroactively effective during taxable years beginning from and after December 31, 2003 through December 31, 2004.

~~F.~~ G. For purposes of computing income tax pursuant to this title, for taxable years beginning from and after December 31, 2002 through December 31, 2003, "internal revenue code" means the United States internal revenue code of 1986, as amended, in effect on January 1, 2003, including those provisions that became effective during 2002 with the specific adoption of all federal retroactive effective dates and including those provisions of the working families tax relief act of 2004 (P.L. 108-311), the American jobs creation act of 2004 (P.L. 108-357), the jobs and growth tax relief reconciliation act of 2003 (P.L. 108-27), the military family tax relief act of 2003 (P.L. 108-121), the medicare prescription drug, improvement, and modernization act of 2003 (P.L. 108-173), ~~and~~ the tax technical corrections act of 2007 (P.L. 110-172) AND THE HEARTLAND, HABITAT, HARVEST AND HORTICULTURE ACT OF 2008 (P.L. 110-246) that are retroactively effective during taxable years beginning from and after December 31, 2002 through December 31, 2003.

~~G.~~ H. For purposes of computing income tax pursuant to this title, for taxable years beginning from and after December 31, 2001 through December 31, 2002, "internal revenue code" means the United States internal revenue code of 1986, as amended, in effect on March 9, 2002, including those provisions that became effective during 2001 with the specific adoption of all federal retroactive effective dates and including those provisions of the working families tax relief act of 2004 (P.L. 108-311), the American jobs creation act of 2004 (P.L. 108-357), the jobs and growth tax relief reconciliation act of 2003 (P.L. 108-27), the military family tax relief act of 2003 (P.L. 108-121), ~~and~~ the tax technical corrections act of 2007 (P.L. 110-172) AND THE HEARTLAND, HABITAT, HARVEST AND HORTICULTURE ACT OF 2008 (P.L. 110-246) that are retroactively effective during taxable years beginning from and after December 31, 2001 through December 31, 2002.

~~H.~~ I. For purposes of computing income tax pursuant to this title, for taxable years beginning from and after December 31, 2000 through December 31, 2001, "internal revenue code" means the United States internal revenue code of 1986, as amended, in effect on January 1, 2001, including those provisions that became effective during 2000 with the specific adoption of all federal retroactive effective dates and including those provisions of the working families tax relief act of 2004 (P.L. 108-311), the American jobs creation act of 2004 (P.L. 108-357), the economic growth and tax relief reconciliation act of 2001 (P.L. 107-16), the job creation and worker

assistance act of 2002 (P.L. 107-147), the military family tax relief act of 2003 (P.L. 108-121) and the tax technical corrections act of 2007 (P.L. 110-172) that are retroactively effective during taxable years beginning from and after December 31, 2000 through December 31, 2001.

~~I.~~ J. For purposes of computing income tax pursuant to this title, for taxable years beginning from and after December 31, 1999 through December 31, 2000, "internal revenue code" means the United States internal revenue code of 1986, as amended, in effect on January 1, 2000, including those provisions that became effective during 1999 with the specific adoption of all federal retroactive effective dates and including those provisions of the community renewal tax relief act of 2000 (P.L. 106-554), the installment tax correction act of 2000 (P.L. 106-573), FSC repeal and extraterritorial income exclusion act of 2000 (P.L. 106-519), the trade and development act of 2000 (P.L. 106-200), the economic growth and tax relief reconciliation act of 2001 (P.L. 107-16), the job creation and worker assistance act of 2002 (P.L. 107-147) and the military family tax relief act of 2003 (P.L. 108-121) that are retroactively effective during taxable years beginning from and after December 31, 1999 through December 31, 2000.

~~J.~~ K. For purposes of computing income tax pursuant to this title, for taxable years beginning from and after December 31, 1998 through December 31, 1999, "internal revenue code" means the United States internal revenue code of 1986, as amended, in effect on January 1, 1999, including those provisions that became effective during 1998 with the specific adoption of all federal retroactive effective dates and including those provisions of the miscellaneous trade and technical corrections act of 1999 (P.L. 106-36), the ticket to work and work incentives improvement act of 1999 (P.L. 106-170), the community renewal tax relief act of 2000 (P.L. 106-554), the installment tax correction act of 2000 (P.L. 106-573) and the military family tax relief act of 2003 (P.L. 108-121) that are retroactively effective during taxable years beginning from and after December 31, 1998 through December 31, 1999.

~~K. For purposes of computing income tax pursuant to this title, for taxable years beginning from and after December 31, 1997 through December 31, 1998, "internal revenue code" means the United States internal revenue code of 1986, as amended, in effect on January 1, 1998, including those provisions that became effective during 1997 with the specific adoption of all federal retroactive effective dates and including those provisions of the IRS restructuring and reform act of 1998 (P.L. 105-206), the tax and trade relief extension act of 1998 (P.L. 105-277), the surface transportation revenue act of 1998 (P.L. 105-178), the miscellaneous trade and technical corrections act of 1999 (P.L. 106-36) and the military family tax relief act of 2003 (P.L. 108-121) that are retroactively effective during the taxable years beginning from and after December 31, 1997 through December 31, 1998.~~

Sec. 3. Section 43-401, Arizona Revised Statutes, is amended to read:

43-401. Withholding tax; rates; election by employee

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:

~~1.~~ (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 ~~F~~ G of this section.

~~2.~~ (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 ~~F~~ G of this section.

~~3.~~ (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.

~~D.~~ 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.

~~E.~~ 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.

~~F.~~ 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.

~~G.~~ H. Before October 1, 2005 and before July 1 each year thereafter, 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.

Sec. 4. Section 43-403, Arizona Revised Statutes, is amended to read:

43-403. <u>Employment excluded from withholding</u>

A. No amount shall be deducted or retained from:

1. Wages or salary paid to an employee of a common carrier when such employee is a nonresident of this state as defined in section 43-104 and regularly performs services both within and without this state.

2. Wages paid for domestic service in a private home.

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

4. 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.

5. Wages or salary paid to a nonresident of this state who is:

(a) An employee of an individual, fiduciary, partnership, corporation or limited liability company having property, payroll and sales in this state, or of a related entity having more than fifty per cent direct or indirect common ownership.

(b) Physically present in this state for less than sixty days in a calendar year for the purpose of performing a service that will benefit the employer or the related entity. For purposes of determining the number of days of service in this state, days spent in the following activities are not included:

(i) In transit.

(ii) Engaging in personal activities.

(iii) Participating in training or professional development activities or attending meetings that are not directly connected to the Arizona operations of the employer or the related entity.

B. In addition to the exemptions from the withholding provisions contained in subsection A of this section, because of the temporary nature of such employment, no amount shall be deducted or retained from wages paid to a nonresident of this state engaged in any phase of motion picture production when, prior to the time of payment of such wages, an application is made by the employer to the department, on forms prescribed by the department, for an exemption from the withholding provisions of this section and the department determines that the nonresident would be allowed a credit under section 43-1096 against all of the taxes upon such wages imposed by this chapter.

C. Subsection A, paragraph 5 of this section does not apply to a nonresident employee who is in this state solely for athletic or entertainment purposes.

D. Notwithstanding subsection A, paragraph 5 of this section:

1. The nonresident employee may elect to have withholding deducted in the manner prescribed by section 43-401, subsection ~~F~~ G and the employer shall withhold tax pursuant to that election.

2. The employer may elect to withhold tax from the nonresident employee before the sixty day limitation has elapsed.

Sec. 5. Section 43-404, Arizona Revised Statutes, is amended to read:

43-404. <u>Extension of withholding to military retirement pensions and to other annuities; definition</u>

A. For the purposes of this title, any payment of an amount as retired or retainer pay for service in the military or naval forces of the United States, or payments received under the United States civil service retirement system from the United States government service retirement and disability

fund, if at the time the payment is made a request by the individual that such pay be subject to withholding under this section is in effect, shall be treated as if it were a payment of wages by an employer to an employee for a payroll period. In addition, a payment of any other annuity to an individual, if at the time the payment is made a request by the individual that such annuity be subject to withholding under this section is in effect, shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

B. A request that retired or retainer pay or an annuity be subject to withholding under this section shall be made by the payee in writing to the person making the annuity payments and shall be accompanied by a form, prescribed by the department, executed in accordance with section 43-401, subsection ~~F~~ G. Such a request may be terminated by furnishing to the person making the payment a written statement of termination.

C. For THE purposes of this section, "annuity" means any amount paid to an individual as a pension or annuity, but only to the extent that the amount is includible in the Arizona gross income of such individual.

Sec. 6. Section 43-412, Arizona Revised Statutes, is amended to read:

43-412. Returns of withholding to be filed with department

A. Every employer at the time of filing a reconciliation pursuant to section 43-401, subsection ~~D~~ E shall deliver to the department a return in the form prescribed by the department showing the total amount of wages, salaries, bonuses or other emoluments paid to employees, the amount deducted pursuant to this chapter and such other information as the department may require. The employer shall advise the employee of the amount of monies withheld, in accordance with such rules as the department may prescribe, using printed forms furnished by the department for such purposes or, when requested by the employer, upon forms approved by the department.

B. The employer shall make an annual return for the calendar year to the department on forms provided by it summarizing the total compensation paid and the tax withheld for each employee during the calendar year and shall file such return with the department on or before February 28 of the year following the year for which the report is made. The department may extend the filing deadline on a showing of good cause by the employer. The return required by this section shall contain or be verified by a written declaration that it is made under the penalties of perjury.

Sec. 7. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

APPROVED BY THE GOVERNOR APRIL 9, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2009.