

46.1(3) *Voluntary state income tax withholding from unemployment benefit payments.* Effective for unemployment benefit payments made on or after January 1, 1997, that pertain to a new application for benefits made after December 31, 1996, recipients of the benefits may elect to have state income tax withheld from the benefit payments at a rate of 5 percent. An individual's election to have state income tax withheld from unemployment benefits is separate from any election to have federal income tax withheld from the benefits.

This rule is intended to implement Iowa Code sections 96.3, 99B.21, 99D.16, 99E.19, and 99F.18 and Iowa Code sections 422.7, 422.15, and 422.16 as amended by 1998 Iowa Acts, House File 2513.

701—46.2(422) Computation of amount withheld.

46.2(1) *Amount withheld.*

a. General rules. Every employer required to deduct and withhold a tax on compensation paid in Iowa to an individual shall deduct and withhold for each payroll period an amount the total of which will approximate the employee's annual tax liability. "Payroll period" for Iowa withholding purposes shall have the same definition as in Section 3401 of the Internal Revenue Code and shall include "miscellaneous payroll period" as that term is defined and used in that section and the regulations thereunder.

b. Methods of computations. Employers required to withhold Iowa income tax on compensation paid in this state shall compute the amount of tax to be withheld for each payroll period pursuant to the methods and rules provided herein.

(1) *Tables.* An employer may elect to use the withholding tables provided in the Iowa employers' withholding tax guide and withholding tables, which are available from the department of revenue and finance.

(2) *Formulas.* Formulas are available upon request for employers who have a computerized payroll system.

(3) *Other methods.* An employer may request and be granted the use of an alternate method for computing the amount of Iowa tax to be deducted and withheld for each payroll period so long as the alternate proposal approximates the employee's annual Iowa tax liability. When submitting an alternate formula, the withholding agent should explain the formula and show examples comparing the amount of withholding under the proposed formula with the department's tables or computer formula at various income levels and by using various numbers of personal exemptions. Any alternate formula must be approved by the department prior to its use.

c. Supplemental wage payments. An employee's compensation may consist of wages paid for a payroll period and supplemental wages, such as bonuses, commissions, and overtime pay, paid for the same or a different period or without regard to a particular period. When such supplemental wages are paid, the amount of tax required to be withheld shall be determined by using the current withholding tables or formulas. If supplemental wages are paid at the same time as regular wages, the regular tables or formulas are used in determining the amount of tax to be withheld as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid at any other time, the regular tables or formulas are used in determining the amount of tax to be withheld as if the supplemental wage were a single wage payment for the regular payroll period. See subrule 46.2(3) for withholding on supplemental wage payments made on or after January 1, 1994.

d. Vacation pay. Amounts of so-called "vacation allowances" shall be subject to withholding as though they were regular wage payments made for the period covered by the vacation. If the vacation allowance is paid in addition to the regular wage payment for such period, the allowance shall be treated as supplemental wage payments. See subrule 46.2(3) for withholding on supplemental wage payments made on or after January 1, 1994.

46.2(2) Correction of underwithholding or overwithholding.

a. Underwithholding. If an employer erroneously underwithholds an amount of Iowa income tax required to be deducted and withheld from compensation paid to an employee within a payroll period, the employer should correct the error within the same calendar year by deducting the difference between the amount withheld and the amount required to be withheld from any compensation still owed the employee, even though such compensation may not be subject to withholding. If the error is discovered in a subsequent calendar year, no correction shall be made by the employer.

b. Overwithholding. If an employer erroneously overwithholds an amount of tax required to be deducted and withheld from compensation paid to an employee, repayment of such overwithheld amount shall be made in the same calendar year. Repayment may be made in either of two ways: (1) the amount of overwithholding may be repaid directly to the employee, in which case the employer must obtain written receipt showing the date and amount of the repayment, or (2) the employer may reimburse the employee by applying the overcollection against the tax required to be deducted and withheld on compensation to be paid in the same calendar year in which the overcollection occurred. If the error is discovered in a subsequent calendar year, no repayment shall be made.

c. Cross-reference. For effect on reporting and remitting taxes deducted and withheld when there is an erroneous underpayment or overpayment, see 46.3(3)“h.”

46.2(3) Withholding on supplemental wage payments. When a withholding agent makes a payment of supplemental wages to an employee on or after January 1, 1994, and the employer withholds federal income tax on a flat-rate basis, pursuant to Treasury Regulation §31.3402(g)-1, state income tax shall be withheld from the supplemental wages at a rate of 6 percent without consideration for any withholding allowances or exemptions. A supplemental wage payment is the payment of a bonus, commission, overtime pay, or other special payment that is made in addition to the employee’s regular wage payment in a payroll period.

This rule is intended to implement Iowa Code section 422.16 as amended by 1994 Iowa Acts, Senate File 2057.

701—46.3(422) Forms, returns and reports.

46.3(1) Employer registration. Every employer or payer required to deduct and withhold Iowa income tax must register with the department of revenue and finance by filing an “Application for Withholding Agent’s Identification Number.” The application shall indicate the employer’s or payer’s federal identification number. If an employer or payer has not received a federal employer’s identification number, the employer should obtain one before filing the state application. It must then be filed with the department within 15 days of the date the federal employer’s identification number is assigned.

When initial payment of wages subject to Iowa withholding tax occurs late in the calendar quarter, or before the employer’s or payer’s federal employer’s identification number is assigned by the Internal Revenue Service, the application for Iowa withholding agent’s identification number shall be forwarded along with the first quarterly withholding return. The responsible party(ies) shall be listed on the application.

46.3(2) Allowance certificate.

a. General rules. On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed Iowa employee's withholding allowance certificate (IA W-4) indicating the number of withholding allowances which the individual claims, which in no event shall exceed the number to which the individual is entitled. The employer is required to request a withholding allowance certificate from each employee. If the employee fails to furnish a certificate, the employee shall be considered as claiming no withholding allowances. See subrule 46.3(4) for information on Form IA W-4P which is to be used by payers of pensions, annuities, deferred compensation, individual retirement accounts and other retirement incomes to the extent the payments of the retirement incomes are made on or after January 1, 1996.

The employer must submit to the department of revenue and finance a copy of a withholding allowance certificate received from an employee if:

- (1) *The employee claimed more than a total of 14 withholding allowances, or
- (2) The employee is claiming an exemption from withholding and it is expected that the employee's wages from that employer will normally exceed \$200 per week.

*On or after January 1, 1991, the employer is to submit the employee's allowance certificate to the department of revenue and finance if the employee claimed more than 22 allowances.

Employers are required to submit withholding certificates on at least a calendar quarter basis to the following address:

Iowa Department of Revenue and Finance
Audit and Compliance Division
Hoover State Office Building
P.O. Box 10456
Des Moines, Iowa 50306

The department will notify the employer whether to honor the withholding certificate or to withhold as though the employee is claiming no withholding allowances.

b. Form and content. The "Iowa Employee's Withholding Allowance Certificate" (IA W-4) must be used to determine the number of allowances that may be claimed by an employee for Iowa income tax withholding purposes. Generally, the greater number of allowances an employee is entitled to claim, the lower the amount of Iowa income tax to be withheld for the employee. The following withholding allowances may be claimed on the IA W-4 form:

(1) Personal allowances. An employee can claim one personal allowance or two if the individual is eligible to claim head of household status. The employee can claim an additional allowance if the employee is 65 years of age or older and another additional allowance if the employee is blind.

If the employee is married and the spouse either does not work or is not claiming an allowance on a separate W-4 form, the employee can claim an allowance for the spouse. The employee may also claim an additional allowance if the spouse is 65 years of age or older and still another allowance if the spouse is blind.

(2) Dependent allowances. The employee can claim an allowance for each dependent that the employee will be able to claim on the employee's Iowa return.

(3) Allowances for itemized deductions. The employee can claim allowances for itemized deductions to the extent the total amount of estimated itemized deductions for the tax year for the employee exceeds the applicable standard deduction amount by \$200. In instances where an employee is married and the employee's spouse is a wage-earner, the total allowances for itemized deductions for the employee and spouse should not exceed the aggregate amount itemized deduction allowances to which both taxpayers are entitled.

(4) Allowances for the child/dependent care credit. Effective for Iowa income taxes withheld on or after January 1, 1991, employees who expect to be eligible for the child/dependent care credit for the tax year can claim withholding allowances for the credit. The allowances are determined from a chart included on the IA W-4 form on the basis of net income shown on the Iowa return for the employee. If the employee is married and has filed a joint federal return with a spouse who earns Iowa wages subject to withholding, the withholding allowances claimed by both spouses for the child/dependent care credit should not exceed the aggregate number of allowances to which both taxpayers are entitled. Note that effective for state income tax withheld on or after January 1, 1994, taxpayers that expect to have a net income of \$40,000 or more for the tax year should not claim withholding allowances for the child and dependent care credit, since they are not eligible for the credit.

c. Change in allowances which affect the current calendar year.

(1) *Decrease.* If, on any day during the calendar year, the number of withholding allowances to which an employee is entitled is less than the number of withholding allowances claimed by the individual on a withholding certificate then in effect, the employee must furnish the employer with a new Iowa withholding allowance certificate relating to the number of withholding allowances which the employee then claims, which must in no event exceed the number to which the employee is entitled on such day.

(2) *Increase.* If, on any day during the calendar year, the number of withholding allowances to which an employee is entitled is more than the number of withholding allowances claimed by the employee on the withholding allowance certificate then in effect, the employee may furnish the employer with a new Iowa withholding allowance certificate on which the employee must in no event claim more than the number of withholding allowances to which the employee is entitled on such day.

d. Change in allowances which affect the next calendar year. If, on any day during the calendar year, the number of withholding allowances to which the employee will be, or may reasonably be expected to be, entitled to for the employee's taxable year which begins in, or with, the next calendar year is different from the number to which the employee is entitled on such day, the following rules shall apply:

(1) If such number is less than the number of withholding allowances claimed by an employee on an Iowa withholding allowance certificate in effect on such day, the employee must within a reasonable time furnish the employee's employer with a new withholding allowance certificate reflecting the decrease.

(2) If such number is greater than the number of withholding allowances claimed by the employee on an Iowa withholding allowance certificate in effect on such day, the employee may furnish the employee's employer with a new withholding allowance certificate reflecting the increase.

e. Duration of allowance certificate. An Iowa withholding allowance certificate which is in effect pursuant to these regulations shall continue in effect until another withholding allowance certificate takes effect.

46.3(3) Reports and payments of income tax withheld.*a. Returns of income tax withheld from wages.*

(1) *Quarterly returns.* Except as otherwise provided in 46.3(3) "a"(3) or 46.3(3) "b," every withholding agent required to deduct and withhold tax on compensation paid for personal services in Iowa shall make a return for the first calendar quarter in which such tax is deducted and withheld and for each subsequent calendar quarter, whether or not compensation is paid therein, until a final return is filed. The withholding agent's "Quarterly Withholding Return" is the form prescribed for making the return required under this paragraph. Monthly tax payments may also be required or semimonthly tax payments may be required instead of quarterly or monthly reports. See subparagraphs (2) and (3) of 46.3(3) "a." In some circumstances, only an annual return and payment of withheld taxes will be required; see 46.3(3) "c."

Payments shall be based upon the tax required to be withheld and must be remitted in full. Payment should not be deferred and should accompany the quarterly return.

A withholding agent is not required to list the name(s) of the agent's employee(s) when filing quarterly returns, nor is the withholding agent required to show on the employee's paycheck or voucher the amount of Iowa income tax withheld.

If a withholding agent's payroll is not constant, and the agent finds that no wages or other compensation was paid during the current quarter, the agent shall enter the word "none" on the return, sign, and submit the return as usual.

(2) *Monthly reports.* Every withholding agent required to file a quarterly withholding return shall also file a monthly tax payment form if the amount of tax deducted and withheld during any calendar month exceeds \$50. A withholding agent needs to file a monthly form even if no payment is due. No monthly form is required for the third month in any calendar quarter. The information otherwise required to be reported on the monthly form for the third month in a calendar quarter shall be reported on the quarterly return filed for that quarter and no monthly form need be filed for such month. The "Monthly Withholding Return" is provided for use with the payments required under this paragraph.

(3) *Semimonthly reports.* Every withholding agent who withholds more than \$8,000 in a semimonthly period must file a semimonthly tax payment form, unless requirements for electronic transmission of tax payments and related information specify otherwise, instead of monthly or quarterly withholding reports. A semimonthly period is defined as the period from the first day of a calendar month through the fifteenth day of a calendar month, or the period from the sixteenth day of a calendar month through the last day of a calendar month. When semimonthly reports or electronic transmission of tax payments and related information are required, a withholding agent need not file monthly or quarterly reports. The withholding agent's "Semimonthly Withholding Return" is provided for use with the payments required under this paragraph unless requirements for electronic transmission of tax payments and related information specify otherwise.

(4) *Final returns.* A withholding agent, who in any return period permanently ceases doing business, shall file the returns and statements required by subparagraphs (1), (2) and (3) of this paragraph as final returns for such period. Each return shall be marked "Final Return." There shall be executed as part of each final return a statement showing the date of the last payment of compensation, the address of which the information in regard to withholding will be kept, the name of the person keeping such records, and if the business of the withholding agent has been sold or otherwise transferred to another person, the name and address of such person and the date of which such sale or transfer took place. If no such sale or transfer took place or if the withholding agent does not know the name and address of the person to whom the business was sold or transferred, that fact should be included in the statement.

b. Time for filing returns.

(1) *Quarterly returns.* Each return required by 46.3(3)“a”(1) shall be filed on or before the last day of the first calendar month following the calendar quarter for which such return is made.

(2) *Monthly tax payments.* Monthly forms required by 46.3(3)“a”(2) shall be filed on or before the fifteenth day of the second and third months of each calendar quarter.

(3) *Semimonthly tax payments.* Semimonthly forms required by 46.3(3)“a”(3) for the semimonthly period from the first day of the month through the fifteenth day of the month shall be filed with payment of the tax on or before the twenty-fifth day of the same month unless requirements for electronic transmission of tax payments and related information specify otherwise. The semimonthly forms required by 46.3(3)“a”(3) for the semimonthly period from the sixteenth day of the month through the last day of the month shall be filed with payment of the tax on or before the tenth day of the month following the month in which the tax is withheld unless requirements for electronic transmission of tax payments and related information specify otherwise.

For withholding that occurs on or after April 1, 1990, semimonthly tax payments of withholding agents required to file semimonthly shall be made electronically in a format and by means specified by the department of revenue and finance. Semimonthly forms are not required to be filed when electronic transmission of tax payments is done in the prescribed format by specified means. Tax payments are considered to have been made on the date that the tax is added to the bank account designated by the treasurer of the state of Iowa.

(4) *Determination of filing status.* Iowa Code section 422.16 provides, based on the amount of tax collected, how often withholding agents file deposits or returns with the department.

The department will determine if the withholding agent’s current filing status is correct by reviewing the most recent four quarters of the withholding agent’s filing history.

The following criteria will be used by the department to determine if a change in filing status is warranted.

<u>Filing Status</u>	<u>Statutory Requirement</u>	<u>Test Criteria</u>
Semimonthly	\$8,000 in tax in a semimonthly period.	Tax remitted in 3 of most recent 4 quarters exceeds \$48,000.
Monthly	\$50 in tax in a month.	Tax remitted in 3 of most recent 4 quarters exceeds \$150.
Quarterly	All other filers.	All other filers except annual filers. See 46.3(3)“c”(2).

When it is determined that a withholding agent’s filing status is to be changed, the withholding agent will be notified and will be given 30 days to provide the department with a written request to prevent the change.

Withholding agents may request that they be allowed to file less frequently than the filing status selected by the department but exceptions will only be granted in two instances:

1. Incorrect historical data is used in the conversion. A business may meet the criteria based on information available to the computer, but upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.

2. Data available may have been distorted by the fact that it reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the income tax division.

Exceptions will not be granted in instances where the withholding agent's request is based on a decline in business activity, reduction in employees or other potentially temporary business action which will affect current and future reporting.

Withholding agents will be notified in writing of approval or denial to their request for reducing filing periods.

Withholding agents may request that they be allowed to file more frequently than the filing status selected by the department. Approval will be granted based upon justification contained in the withholding agent's request.

c. Reporting annual withholding.

(1) Any withholding agent who does not have employee withholding, but who is required to withhold state income tax from other distributions is exempted from the provisions of subparagraphs (2) and (3) of 46.3(3) "a," if these distributions are made annually in one calendar quarter. These withholding agents need only comply with the reporting requirements of the one calendar quarter in which the tax is withheld, and make the required year-end reports.

(2) Every withholding agent employing not more than two individuals and who expects to employ either or both for the full calendar year, may pay with the withholding tax return due for the first calendar quarter of the year, the full amount of income taxes which would be required to be withheld from the wages for the full calendar year. The withholding agent shall advise the withholding section of the Iowa department of revenue and finance that annual reporting is contemplated, and shall also state the number of persons employed. The withholding agent shall compute the annual withholding from wages by determining the normal withholding for one pay period and multiply this amount by the total number of pay periods within the calendar year. No lump sum of payment of withheld income tax shall be made without the written consent of all employee(s) involved. Consent may be affected by having the employee(s) complete the form "Iowa Employees Consent to Advance Annual Withholding." The withholding agent shall be entitled to recover from the employee(s) any part of such lump-sum payment that represents an advance to the employee(s). If a withholding agent pays a lump sum with the first quarterly return, the agent shall be excused from filing further quarterly returns for the calendar year involved unless the agent hires other or additional employees. Information returns and the "Verified Summary Report" shall be filed at the end of the tax year.

d. Reports for employee.

(1) *General rule.* Every employer required to deduct and withhold tax from compensation of an employee must furnish to each employee with respect to the compensation paid in Iowa by such employer during the calendar year, a statement in duplicate containing the following information: the name, address, and federal employer identification number of the employer; the name, address, and social security number of the employee; the total amount of compensation paid in Iowa; the total amount deducted and withheld as tax under 46.1(1).

(2) *Form of statement.* The information required to be furnished an employee under the preceding paragraph shall be furnished on an Internal Revenue Service combined Wage and Tax Statement, Form W-2, hereinafter referred to as "combined W-2." Any reproduction, modification or substitution for a combined W-2 by the employer must be approved by the department.

(3) *Time for furnishing statement.* Each statement required by this section to be furnished for a calendar year, and each corrected statement required for any prior year shall be furnished to the employee on or before January 31 of the year succeeding such calendar year, or if an employee's employment is terminated before the close of a calendar year, without expectation that it will resume during the same calendar year, within 30 days from the day on which the last payment of compensation is made, if requested by such employee. See 46.3(3) "e" for provisions relating to the filing of copies of combined W-2 with the Iowa department of revenue and finance.

(4) *Corrections.* An employer must furnish a corrected combined W-2 to an employee if, after the original statement has been furnished, an error is discovered in either the amount of compensation shown to have been paid in Iowa for the prior year or the amount of tax shown to have been deducted and withheld in the prior year. Such statement shall be marked "corrected by the employer." See 46.3(3) "e" for provisions relating to the filing of a corrected combined W-2 with the department.

(5) *Undelivered combined W-2.* Any employee's copy of the combined W-2 which, after reasonable effort, cannot be delivered to an employee, shall be transmitted to the department with a letter of explanation.

(6) *Lost or destroyed.* If the combined W-2 is lost or destroyed, the employer shall furnish two substitute copies to the employee and one copy to the department. All such copies shall be clearly marked "Reissued by Employer."

e. Annual verified summary of payments reports.

(1) Every withholding agent required to withhold Iowa income tax under subrules 46.1(1), 46.1(2), 46.1(3), and 46.4(1) is to furnish to the department of revenue and finance on or before the last day of February following the tax year a withholding information statement entitled Annual Verified Summary of Payments Report. With the Verified Summary of Payments Report (VSP), the withholding agent is to provide copies of wage statement W-2 form showing Iowa income tax withheld during the tax year from payments of wages for personal services and copies of 1099 form showing Iowa income tax withheld from various types of income payments made in the tax year. See subparagraph (3) below for the Verified Summary of Payments Report forms to be filed for calendar year 2000 and for those years after 2000.

(2) The W-2 forms and 1099 forms to be submitted with the Verified Summary of Payments Report can be provided on magnetic tape, computer printout, cartridge or diskette. The department of revenue and finance booklet Income Information Return Reporting Guidelines includes specifications for providing W-2 forms and 1099 form data to the department. The withholding agent completing the VSP form must enter the total Iowa income tax withheld that is shown on the W-2 forms and 1099 forms for the year, the new jobs credits, supplemental jobs credits and housing assistance credits claimed on withholding reports for the year. In addition, the withholding agent must enter on the VSP the withholding payments made for the year. If the amount of Iowa income tax withholding tax remitted to the department of revenue and finance for the year is less than the withholding tax and withholding credits claimed, the withholding agent is to remit the additional withholding tax due on a withholding amended return and mail the payment to Department of Revenue and Finance, P.O. Box 10411, Des Moines, Iowa 50306.

However, if the Iowa income tax shown as withheld on the W-2s and 1099s issued for the tax year is less than the amount of withholding tax remitted to the department of revenue and finance by the withholding agent, the agent should file a claim for refund with the department for the excess tax paid.

(3) For Verified Summary of Payments Report forms filed with the department of revenue and finance for the year 2000 and for years after 2000, the withholding agents filing the reports are not to submit W-2 forms and 1099 forms with the reports. However, the withholding agents should supply W-2 forms or 1099 forms as requested by personnel of the department of revenue and finance, if the request for the forms is made within three years from the end of the year for which the W-2 forms or 1099 forms apply. Therefore, if a request is made to a withholding agent for a W-2 form or a 1099 form for the year 2000, the request is valid if the request is postmarked, faxed or made on or before December 31, 2003.

f. Withholding deemed to be held in trust. Funds withheld from wages for Iowa income tax purposes are deemed to be held in trust for payment to the Iowa department of revenue and finance. The state and department shall have a lien upon all the assets of the employer and all the property used in the conduct of the employer's business to secure the payment of the tax as withheld under the provisions of this rule. An owner, conditional vendor, or mortgagee of property subject to such lien may exempt the property from the lien granted to Iowa by requiring the employer to obtain a certificate from the department, certifying that such employer has posted with the department security for the payment of the amounts withheld under this rule.

g. Payment of tax deducted and withheld. The amount of tax shown to be due on each return required to be filed under 46.3(3) shall be due on or before the date on which such return is required to be filed.

h. Correction of underpayment or overpayment of taxes withheld.

(1) *Underpayment.* If a return is filed for a return period under 46.3(422) and less than the correct amount of tax is reported on the return and paid to the department, the employer shall report and pay the additional amount due by reason of the underpayment on the next quarterly return. An explanation must be attached to the return for the period in which the underpayment is corrected, and the appropriate entry made on the quarterly withholding return.

(2) *Overpayment.* If an employer remits more than the correct amount of tax for a return period under this rule and the overpayment is discovered in a subsequent return period under this rule and within the same calendar year of the overpayment, the employer may correct the error on a subsequent return to be filed for a period within the same calendar year. An explanation must be attached to the return on which the error is corrected. If the overpayment is discovered in a subsequent calendar year, the employer may correct the error by filing a "Claim for Refund" form with the department.

46.3(4) Iowa W-4P—withholding certificate for pension or annuity payments. Effective for payments made on or after January 1, 1996, from pension plans, annuity plans, individual retirement accounts, or deferred compensation plans to residents of Iowa, payors of these retirement benefits are to use Form IA W-4P for withholding of state income tax from the benefits. Generally, state income tax is required to be withheld from payments of distributions from the retirement incomes described above when federal income tax is being withheld from the payments. However, no state income tax is required to be withheld from a payment to the extent the monthly payment amount is \$250 or less or the taxable amount is \$250 or less in cases where the payor knows the taxable amount of the payment. In addition, no state income tax is required to be withheld to the extent the payment amount is \$500 or less or the taxable amount of the payment is \$500 or less if the payee is eligible for the retirement benefits exclusion described in rule 701—40.47(422) and the payee indicates intention on the IA W-4P of filing a joint Iowa individual income tax return with a spouse for the tax year.

Form IA W-4P is available from the department for payors of retirement benefits that intend to withhold at a rate of 5 percent from the payment amount or taxable payment amount after the \$3,000 to \$6,000 exclusion is considered. Note that the \$3,000 to \$6,000 exclusion is to be allocated to all retirement benefit payments made in the year and not just the first \$3,000 to \$6,000 in payments made in the year to an individual. If an individual receives retirement benefits on or after January 1, 1996, and the individual has not completed Form IA W-4P, the payor is to withhold Iowa income tax from the retirement benefit payment after a \$3,000 exclusion is allowed on an annual basis.

Payors of retirement benefits who want to use withholding formulas or tables to withhold state income tax instead of at the 5 percent rate may design their own IA W-4P withholding certificate form without approval of the department.

The payors are not responsible for improper choices made by a payee in completion of the IA W-4P. However, payors cannot accept a request for exemption from the withholding of state income tax made by a payee if federal income tax is being withheld unless the payee is eligible for exemption from withholding.

This rule is intended to implement Iowa Code sections 422.7 and 422.12C and Iowa Code Supplement section 422.16.

701—46.4(422) Withholding on nonresidents.

46.4(1) General rules. Payers of Iowa income to nonresidents are required to withhold Iowa income tax and to remit the tax to the department on all payments of Iowa income to nonresidents except payments of wages to nonresidents engaged in film production or television production made on or after January 1, 1986, described in subrule 46.4(5), income payments for agricultural commodities or products made on or after January 1, 1985, which are described in subrule 46.4(6), and deferred compensation payments, pension, and annuity payments made on or after January 1, 1992, attributable to personal services in Iowa by the nonresidents. Withholding agents should use the following methods and rates in withholding for nonresidents:

a. Wages or salaries. Use the same withholding procedures, tables, formulas, and rates as are used for residents. See rule 46.2(422). Subrule 46.4(5) is an exception to the general rule.

b. Payments other than wages or salaries for tax years beginning before January 1, 1988. For tax years beginning before January 1, 1988, withholding on payments other than wages or salaries or other compensation for personal services shall be computed using the current withholding tables on gross receipts remitted to the nonresident if the withholding agent has no control over related expenses; or on net income if proper books and records are available to the withholding agent. Subrule 46.4(6) describes an exception to withholding on income payments made to nonresidents on or after January 1, 1985, for the sale of agricultural commodities or products.

c. Payments other than wages, salaries, and other compensation for personal services for tax years beginning on or after January 1, 1988. For tax years beginning on or after January 1, 1988, in lieu of using withholding tables or computer formulas to determine the amount of Iowa income tax to be withheld from payments made to nonresidents other than for salaries, wages, or other compensation for personal services, or income payments to nonresidents for agricultural commodities or products, Iowa income tax should be withheld at a rate of 5 percent of the amount of the payment. Subrule 46.4(6) describes the optional exemption from withholding of income payments made on or after January 1, 1985, to nonresidents for the sale of agricultural commodities or products.

Nonresidents who prefer to make Iowa estimate payments instead of having Iowa income tax withheld from income payments from Iowa sources should refer to subrule 46.4(3) and rule 701—49.3(422).

46.4(2) Income of nonresidents subject to withholding. Listed below are various types of income paid to nonresidents which are subject to withholding tax. The list is for illustrative purposes only and is not deemed to be all-inclusive.

1. Personal service, including salaries, wages, commissions and fees for personal service wholly performed within this state and such portions of similar income of nonresident traveling salespersons or agents as may be derived from services rendered in this state.

2. Rents and royalties from real or personal property located within this state.

3. Interest or dividends derived from securities or investments within this state, when such interests or dividends constitute income of any business, trade, profession or occupation carried on within this state and subject to taxation.

4. Income derived from any business of a temporary nature carried on within this state by a nonresident, such as contracts for construction and similar contracts.

5. The distributive share of a nonresident beneficiary of an estate or trust, limited, however, to the portion thereof subject to Iowa income tax in the hands of the nonresident.

6. Income derived from sources within this state by attorneys, physicians, engineers, accountants, and similar sources as compensation for services rendered clients in this state.

7. Compensation received by nonresident actors, singers, performers, entertainers, and wrestlers for performances in this state. See subrule 46.4(5) for an exception to this rule.

8. For compensation or wages paid prior to July 6, 1990, to nonresident employees rendering regular services for interstate common carriers such as railroads, trucking firms, airlines, bus companies, towing firms, etc., in more than one state, the wages shall be subject to Iowa withholding on that portion of the wages for services in Iowa providing more than 50 percent of the compensation paid by the carrier to such employee is earned in Iowa during the preceding calendar year. If the nonresident employee of the interstate carrier does not earn more than 50 percent of the compensation from the carrier in Iowa during the preceding calendar year, then withholding for Iowa income tax is not required. Similar provisions are likewise applicable to the wages received by nonresident employees of private property motor vehicle carriers. If the employee of the interstate common carrier or the private property carrier is a resident of Iowa, withholding on the total wages of the resident employee is required if the resident employee does not earn more than 50 percent of the compensation from the carrier in any one state. (Additional information may be obtained by referring to P.L. 91-569 as passed by the U.S. Congress and signed by the President, effective January 1, 1971.) For withholding on compensation or wages paid on or after July 6, 1990, to nonresidents or part-year residents who earn compensation in Iowa and one or more states as an employee for an interstate motor carrier or an interstate rail company, see paragraph 12 in this subrule.

9. The Iowa gross income of a nonresident, who is employed and receiving compensation for services, shall include compensation for personal services which are rendered within this state. Compensation for personal services rendered by a nonresident wholly without the state is excluded from gross income of the nonresident even though the payment of such compensation may be made by a resident individual, partnership or corporation.

10. The gross income from commissions earned by a nonresident traveling salesperson, agent or other employee for services performed or sales made whose compensation depends directly on volume of business transacted by the nonresident, includes that proportion of the total compensation received which the volume of business or sales by the employee within this state bears to the total volume of business or sales within and without the state.

11. Payments made to landlords by agents, including elevator operators, for grain or other commodities which have been received by the landlord as rent constitute taxable income of the landlord when sold by the landlord. See subrule 46.4(6) for the exemption from withholding on incomes paid on or after January 1, 1985, to nonresidents for the sale of agricultural commodities or products.

12. Wages paid on or after July 6, 1990, to nonresidents of Iowa who earn the compensation from regularly assigned duties in Iowa and one or more other states for a railway company or for a motor carrier are not taxable to Iowa. Pursuant to P.L. 101-322, the nonresidents in this situation are subject only to the income tax laws of their states of residence. Thus, when an Iowa resident performs regularly assigned duties in two or more states for a railroad or a motor carrier, the only state income tax that should be withheld from the wages paid for these duties is Iowa income tax. P.L. 101-322 was effective on July 6, 1990, and is the Amtrak Reauthorization and Improvement Act of 1990.

46.4(3) Nonresident certificate of release. Where a nonresident payee makes the option to pay estimated Iowa income tax, a certificate of release from withholding will be issued by the Iowa department of revenue and finance, estimate tax section, to the designated payers. The certificate of release will be forwarded to the specified withholding agent(s) and payer(s), and will state the amount of income covered by the estimated tax payment. Any income paid in excess of the amount so stated will be subject to withholding tax at the current rate. See 701—Chapter 49 for information on making estimate payments.

46.4(4) *Recovering excess tax withheld.* A nonresident payee may recover any excess Iowa income tax withheld from income of the payee by filing an Iowa income tax return after the close of the tax year and reporting income from Iowa sources in accordance with the income tax return instructions.

46.4(5) *Exemption from withholding of nonresidents engaged in film production or television production in this state.* For tax years beginning on or after January 1, 1986, nonresidents engaged in film production or television production in this state are not subject to state withholding on wages earned from this activity if the nonresidents' employer has applied to the department for exemption from withholding of state income tax and the employer's application includes the following information about the nonresident employees:

- a. The employees' names.
- b. The employees' permanent mailing addresses.
- c. The employees' social security numbers.
- d. The estimated amounts the employees are to be paid for services provided by the employees in this state.

The employer's application for exemption from withholding for the nonresident employees will not be approved by the department if the employer fails to provide all the required information.

Only those nonresident employees described in the application for exemption from withholding will be covered when the application is approved by the department. If additional nonresident employees are hired after the initial application for exemption is filed, those employees should be described in an amendment to the application for exemption which must be filed with the department of revenue and finance.

Applications for exemption from withholding for nonresident employees engaged in film production or television production should be directed to the Taxpayer Services Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

46.4(6) *Retroactive exemption from withholding of state income tax from income payments made to nonresidents by withholding agents for the sale of agricultural commodities or products if the withholding agents making the income payments provide the department of revenue and finance with certain information about the sales.* Retroactive to January 1, 1985, withholding agents are not required to withhold state income tax from income payments made to nonresidents or representatives of the nonresidents for the sales of agricultural commodities or products, if the withholding agents provide certain information to the department of revenue and finance about the sales. The following paragraphs describe the agricultural commodities and products that are included in the exemption from withholding, specify the information needed on the sales and clarify other issues related to the exemption from withholding. Subrule 49.3(3) describes an election for withholding agents to make estimate payments on behalf of nonresident taxpayers for net incomes of the nonresidents from agricultural commodities or products in tax years beginning on or after January 1, 1989.

- a. Agricultural commodities or products included in the exemption from withholding. Withholding agents are not required to withhold state income tax from income payments they make on or after January 1, 1985, to nonresidents or representatives of the nonresidents for the sale of commodity credit certificates, grain (corn, soybeans, wheat, oats, etc.), livestock (cattle, hogs, sheep, horses, etc.), domestic fowl (chickens, ducks, turkeys, geese, etc.), or any other agricultural commodities or products, if the withholding agents provide the department of revenue and finance with the information specified in paragraph "b" of this subrule.

b. Information to be provided to the department for years beginning in 1988 by withholding agents claiming exemption from withholding on income payments made to nonresidents for the sales of agricultural items. The following information is to be provided on a listing to the department of revenue and finance by withholding agents electing exemption from withholding of state income tax on income payments, made in the calendar year, starting with the 1988 year, to nonresidents or representatives of the nonresidents on the sales of agricultural commodities or products made in the year:

- (1) Name of the nonresident (last name, first name and middle initial).
- (2) Home address of the nonresident.
- (3) Social security number of the nonresident.
- (4) Aggregate payments made in the calendar year for the nonresident (includes payments made to a representative of the nonresident on behalf of the nonresident).
- (5) Nexus verification—Two digit Iowa county code number of the first one of the following that applies to the nonresident:
 1. County in which the nonresident owns real property or personal property.
 2. County in which the nonresident leases real property or personal property.
 3. County in which the nonresident has agricultural products stored or livestock was located.
 4. County where the nonresident has performed custom farming activities in the year.
 5. County where the nonresident has other business activities in Iowa other than merely sales activities.

If a nonresident does not own or lease property in Iowa or have other nexus or connection with Iowa as described in 46.4(6)“*b*”(5), items “3,” “4,” and “5,” the nonresident is not subject to Iowa income tax on the income payments for agricultural commodities or products and the nonresident’s income payments should not be included on the listing.

In a situation where a withholding agent is unable to get all the information that is to be provided to the department on income payments on sales of agricultural items, the agent is relieved of the requirement to withhold if the agent can provide written evidence showing an attempt was made to acquire all the information.

The listing of aggregate income payments to nonresidents with an Iowa nexus for sales of agricultural commodities and products in the calendar year should be sent to the department by the withholding agent on or before April 1 of the year following the year in which the income payments were made. In lieu of the listing, the withholding agent may compile the information on aggregate income payments to nonresidents on a magnetic tape, provided the tape meets departmental guidelines described in rule 701—8.31(421,422).

The listing or magnetic tape should be sent to the following address: Iowa Department of Revenue and Finance, Audit and Compliance Division, Individual Section, Hoover State Office Building, P.O. Box 10456, Des Moines, Iowa 50306.

A withholding agent is not exempt from withholding of state income tax on income payments to nonresidents on sales of agricultural commodities or products if the withholding agent does not provide the department of revenue and finance with information on income payments made during the year by April 1 of the subsequent year.

c. Information which may be required from withholding agents claiming exemption from withholding on income payments made in the 1985, 1986, and 1987 years. Withholding agents claiming exemption from withholding of state income tax on income payments made to nonresidents for sales of agricultural commodities or products in 1985, 1986, and 1987 may be required to provide the department of revenue and finance the same information on the sales transactions as was described in 46.4(6)“*b*,” paragraphs (1) to (5). However, the withholding agent is not to submit the information to the department unless the withholding agent receives a specific request for the information from the department of revenue and finance.

Withholding agents claiming exemption from withholding of state income tax from income payments made in 1985, 1986, and 1987 to nonresidents on sales of agricultural commodities and products are not exempt from withholding if the withholding agents do not provide the information on the sales transactions which is requested by the department of revenue and finance.

Claims for refund for withholding tax that was paid for income payments made in 1985, 1986, and 1987 will be approved to the extent the withholding tax was attributable to income payments to nonresidents for the sales of agricultural commodities and products and to the extent that the claims for refund were made within the statute of limitations for refunds provided in Iowa Code section 422.73. Therefore, the refund claims will be considered valid if the claims were filed within three years of the date the withholding tax was due or within one year from the time the withholding tax was paid, whichever time is later.

46.4(7) *Exemption from withholding of payments made to nonresidents for deferred compensation, pensions, and annuities.* For tax years beginning on or after January 1, 1992, state income tax withholding is not required from payments of deferred compensation, pensions, and annuities made to nonresidents of Iowa which are attributable to personal services of the nonresidents in Iowa. However, the payments are subject to Iowa income tax except in situations where the deferred compensation, pension, or annuity was earned from personal services in Iowa by Illinois residents during the period where the Iowa-Illinois reciprocal agreement was applicable.

Effective for payments of deferred compensation, pensions and annuities made to nonresidents of Iowa on or after January 1, 1993, payers of these payments can elect to withhold Iowa income tax from the payments if the payers choose to withhold Iowa income tax and the recipients of the payments request that Iowa income tax be withheld.

This rule is intended to implement Iowa Code sections 422.15, 422.16, 422.17, and 422.73.

701—46.5(422) Penalty and interest. Renumbered as 701—10.50(422), IAB 1/23/91.

701—46.6(422) Withholding tax credit to workforce development fund. Upon payment in full of a certificate of participation or other obligation issued to fund a job training program under Iowa Code chapter 260E which occurs on or after July 1, 1995, the community college which provided the training is to notify the department of economic development of the amount paid by the employer or business to the community college during the previous 12 months. The department of economic development is to notify the department of revenue and finance of this amount. The department is to credit 25 percent of this amount to the workforce development fund in each quarter for the next ten years from the withholding tax paid by the employer or business. If the withholding tax paid by the employer or business for a quarter is not sufficient to cover the sum to be credited to the workforce development fund, the sum to be credited is to be reduced accordingly. The aggregate amount from all employers to be transferred to the workforce development fund in a year is not to exceed \$10 million. For purposes of this rule, “year” means the period from July 1, 1995, through June 30, 1996, the period from July 1, 1996, through June 30, 1997, and subsequent fiscal year periods.

This rule is intended to implement Iowa Code Supplement section 422.16A as amended by 1996 Iowa Acts, Senate File 2351.

[Filed 12/12/74]

- [Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]
- [Filed emergency 4/28/78—published 5/17/78, effective 4/28/78]
- [Filed emergency 3/2/79—published 3/21/79, effective 3/2/79]
- [Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
- [Filed 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]
- [Filed emergency 3/5/82—published 3/31/82, effective 4/1/82]
- [Filed 7/16/82, Notice 6/9/82—published 8/4/82, effective 9/8/82]
- [Filed 12/16/83, Notice 11/9/83—published 1/4/84, effective 2/8/84]
- [Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]
- [Filed 10/19/84, Notice 9/12/84—published 11/7/84, effective 12/12/84]
- [Filed 5/31/85, Notice 4/24/85—published 6/19/85, effective 7/24/85]
- [Filed 9/6/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]
- [Filed 3/7/86, Notice 1/29/86—published 3/26/86, effective 4/30/86]
- [Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
- [Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]
- [Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
- [Filed emergency 7/2/87—published 7/29/87, effective 7/2/87]
- [Filed 11/12/87, Notice 7/29/87—published 12/2/87, effective 1/6/88]
- [Filed 3/3/88, Notice 1/27/88—published 3/23/88, effective 4/27/88]
- [Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]
- [Filed 1/4/89, Notice 11/30/88—published 1/25/89, effective 3/1/89]
- [Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
- [Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
- [Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]
- [Filed 11/9/90, Notice 10/3/90—published 11/28/90, effective 1/2/91]
- [Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]
- [Filed 11/20/91, Notice 10/16/91—published 12/11/91, effective 1/15/92]
- [Filed emergency 2/14/92—published 3/4/92, effective 2/14/92]
- [Filed 4/10/92, Notice 3/4/92—published 4/29/92, effective 6/3/92]
- [Filed 10/9/92, Notice 9/2/92—published 10/28/92, effective 12/2/92]
- [Filed 11/20/92, Notice 10/14/92—published 12/9/92, effective 1/13/93]
- [Filed 7/1/93, Notice 5/26/93—published 7/21/93, effective 8/25/93]
- [Filed 9/10/93, Notice 8/4/93—published 9/29/93, effective 11/3/93]
- [Filed 5/20/94, Notice 4/13/94—published 6/8/94, effective 7/13/94]
- [Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
- [Filed 2/24/95, Notice 1/4/95—published 3/15/95, effective 4/19/95]
- [Filed 7/14/95, Notice 6/7/95—published 8/2/95, effective 9/6/95]
- [Filed 1/12/96, Notice 12/6/95—published 1/31/96, effective 3/6/96]
- [Filed 8/23/96, Notice 7/17/96—published 9/11/96, effective 10/16/96]
- [Filed 5/15/98, Notice 4/8/98—published 6/3/98, effective 7/8/98]
- [Filed 10/2/98, Notice 8/26/98—published 10/21/98, effective 11/25/98]
- [Filed 12/23/99, Notice 11/17/99—published 1/12/00, effective 2/16/00]
- [Filed 3/30/00, Notice 2/23/00—published 4/19/00, effective 5/24/00]