

**REVENUE DEPARTMENT[701]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14, 422.16, and 422.68, the Department of Revenue hereby amends Chapter 46, “Withholding,” Iowa Administrative Code.

Iowa will now require W-2 forms to be filed electronically with the Department on an annual basis. Iowa may require 1099 forms to be filed with the Department for tax year 2016. Iowa will require 1099 forms to be filed with the Department on an annual basis, beginning for tax year 2017. The Department will use the W-2 and 1099 forms to combat tax fraud. The Internal Revenue Service already requires withholding agents to file W-2s at the federal level, and with these amendments, Iowa is conforming with federal practice. Because withholding agents or employers are already required to file W-2s with the Internal Revenue Service, this is not an additional burden on withholding agents or employers. In addition, by reinstating a requirement to file W-2 and 1099 forms with the Department, Iowa will join most other states that have withholding requirements. For tax year 2016, only withholding agents with at least 50 employees will be required to electronically file W-2 forms with the Department, and withholding agents with at least fifty 1099 forms may file 1099 forms with the Department. For tax year 2017, all withholding agents are required to electronically file W-2 and 1099 forms with the Department. In addition, annual verified summary of payment reports will be due on or before the last day of January following the tax year. A withholding agent can request in writing an extension to electronically file due to hardship.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2616C** on July 6, 2016.

Public comments received stated that the rules will help to combat tax fraud, that the rules should conform with federal law, that maintaining the existing exemption for small employers with less than 250 employees will combat an undue burden on small employers, that taxpayers should have access to prior year withholding information free of charge, and that the Department should retain withholding information for as long as there is a possibility of assessment or collection activity.

Changes have been made from the amendments published under Notice in order to separate the filing processes for W-2 and 1099 forms. While the Department will still accept electronically filed 1099s beginning with tax year 2016, filing 1099s will not be mandatory for withholding agents until tax year 2017. W-2Gs, which are statements of gambling earnings, are typically required to be filed along with 1099s. As a result, that specific form type is included with the requirements for filing 1099s.

The Department of Revenue adopted these amendments on August 30, 2016.

After analysis and review of this rule making, the Department finds that the amendments to these rules are not likely to have a significant impact on jobs.

These amendments are intended to implement Iowa Code section 422.16(2).

These amendments will become effective November 2, 2016.

The following amendments are adopted.

ITEM 1. Amend paragraph **46.3(3)“e”** as follows:

*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 on or before the last day of ~~February~~ January following the tax year an annual “Verified Summary of Payments Report” (VSP).

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, accelerated career education credits and housing assistance credits claimed on withholding returns 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 remitted to the department of revenue for the year is less than the withholding tax and withholding credits claimed, the withholding agent is to report the additional withholding tax due on an amended return and submit payment to the department.

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 by the withholding agent, the agent should file an amended return with the department reflecting the excess tax paid.

(2) For Verified Summary of Payments Report forms filed with the department of revenue for the year 2000 ~~and subsequent years~~ through the year 2016, the withholding agents 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 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~~ 2013, the request is valid if the request is postmarked, faxed or made on or before December 31, ~~2003~~ 2016.

ITEM 2. Reletter paragraphs **46.3(3)“f”** to **“h”** as **46.3(3)“h”** to **“j.”**

ITEM 3. Adopt the following new paragraph **46.3(3)“f”**:

*f. W-2 forms.*

(1) Beginning in 2017 for tax year 2016, withholding agents with at least 50 employees are required to electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year. Withholding agents with fewer than 50 employees may, but are not required to, electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year.

(2) Beginning in 2018 for tax year 2017, all withholding agents are required to electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year.

(3) The department of revenue may, in a case involving a hardship, extend the requirement to electronically file to the 2019 tax year. No extension of time shall be granted unless the withholding agent makes a written request to the department of revenue for such action.

(4) Penalty. Failure to meet the filing requirements set out in this paragraph will subject withholding agents to the penalties under Iowa Code section 422.16(10).

ITEM 4. Adopt the following new paragraph **46.3(3)“g”**:

*g. 1099 forms and W-2G forms.*

(1) Beginning in 2017 for tax year 2016, withholding agents with at least fifty 1099 forms and W-2G forms may file 1099 forms and W-2G forms with the department of revenue on or before the last day of January following the tax year.

(2) Beginning in 2018 for tax year 2017, all withholding agents are required to electronically file all 1099 forms and W-2G forms on or before the last day of January following the tax year.

(3) The department of revenue may, in a case involving a hardship, extend the requirement to electronically file to the 2019 tax year. No extension of time shall be granted unless the withholding agent makes a written request to the department of revenue for such action.

(4) Penalty. Failure to meet the filing requirements set out in this paragraph will subject withholding agents to the penalties under Iowa Code section 422.16(10).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/28/16.