

## **422.16 Withholding of income tax at source penalties interest declaration of estimated tax bond.**

1. Every withholding agent and every employer as defined in this chapter and further defined in the Internal Revenue Code, with respect to income tax collected at source, making payment of wages to a nonresident employee working in Iowa, or to a resident employee, shall deduct and withhold from the wages an amount which will approximate the employee's annual tax liability on a calendar year basis, calculated on the basis of tables to be prepared by the department and schedules or percentage rates, based on the wages, to be prescribed by the department. Every employee or other person shall declare to the employer or withholding agent the number of the employee's or other person's personal exemptions and dependency exemptions or credits to be used in applying the tables and schedules or percentage rates. However, no greater number of personal or dependency exemptions or credits may be declared by the employee or other person than the number to which the employee or other person is entitled except as allowed under section 3402(m)(1) of the Internal Revenue Code and as allowed for the child and dependent care credit provided in section 422.12C. The claiming of exemptions or credits in excess of entitlement is a serious misdemeanor.

Nonresidents engaged in any facet of feature film, television, or educational production using the film or videotape disciplines in the state are not subject to Iowa withholding if the employer has applied to the department for exemption from the withholding requirement and the department has determined that any nonresident receiving wages would be entitled to a credit against Iowa income taxes paid.

For the purposes of this subsection, state income tax shall be withheld from pensions, annuities, other similar periodic payments, and other income payments of those persons whose primary residence is in Iowa in those circumstances in which those persons have federal income tax withheld from pensions, annuities, other similar periodic payments, and other income payments under sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code at a rate to be specified by the department.

For the purposes of this subsection, state income tax shall be withheld on winnings in excess of six hundred dollars derived from gambling activities authorized under chapter 99B or 99G. State income tax shall be withheld on winnings in excess of one thousand dollars from gambling activities authorized under chapter 99D. State income tax shall be withheld on winnings in excess of twelve hundred dollars derived from slot machines authorized under chapter 99F.

For the purposes of this subsection, state income tax at the rate of six percent shall be withheld from supplemental wages of employees in those circumstances in which the employer treats the supplemental wages as wholly separate from regular wages for purposes of withholding and federal income tax is withheld from the supplemental wages under section 3402(g) of the Internal Revenue Code.

2. A withholding agent required to deduct and withhold tax under subsections 1 and 12 shall file a return and remit to the department the amount of tax on or before the last day of the month following the close of the quarterly period on forms prescribed by the director. However, a withholding agent who withholds more than five hundred dollars in any one month and not more than five thousand dollars in a semimonthly period shall deposit with the department the amount withheld, with a monthly deposit form as prescribed by the director. The monthly deposit form is due on or before the fifteenth day of the month following the month of withholding, except that a deposit is not required for the third month of the calendar quarter. The total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly return due on or before the last day of the month following the close of the quarterly period on forms prescribed by the director. However, a withholding agent who withholds more than five thousand dollars in a semimonthly period shall deposit with the department the amount withheld, with a semimonthly deposit form as prescribed by the director. The first semimonthly deposit form for the period from the first of the month through the fifteenth of the month is due on the twenty-fifth day of the month in which the withholding occurs. The second semimonthly deposit form for the period from the sixteenth of the month through the end of the month is due on the tenth day of the month following the month in which the withholding occurs. A withholding agent must also file a quarterly return which reconciles the amount of tax withheld for the

quarter with the amount of semimonthly deposits. The quarterly return is due on or before the last day of the month following the close of the quarterly period on forms prescribed by the director.

Every withholding agent on or before the end of the second month following the close of the calendar year in which the withholding occurs shall make an annual reporting of taxes withheld and other information prescribed by the director and send to the department copies of wage and tax statements with the return. At the discretion of the director, the withholding agent shall not be required to send wage statements and tax statements with the annual reporting return form if the information is available from the internal revenue service or other state or federal agencies.

If the director has reason to believe that the collection of the tax provided for in subsections 1 and 12 is in jeopardy, the director may require the employer or withholding agent to make the report and pay the tax at any time, in accordance with section 422.30. The director may authorize incorporated banks, trust companies, or other depositories authorized by law which are depositories or financial agents of the United States or of this state, to receive any tax imposed under this chapter, in the manner, at the times, and under the conditions the director prescribes. The director shall also prescribe the manner, times, and conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.

The director, in cooperation with the department of management, may periodically change the filing and remittance thresholds by administrative rule if in the best interest of the state and the taxpayer.

3. Every withholding agent employing not more than two persons who expects to employ either or both of such persons for the full calendar year may, with respect to such persons, pay with the withholding tax return due for the first calendar quarter of the year the full amount of income taxes required to be withheld from the wages of such persons for the full calendar year. The amount to be paid shall be computed as if the employee were employed for the full calendar year for the same wages and with the same pay periods as prevailed during the first quarter of the year with respect to such employee. No such lump sum payment of withheld income tax shall be made without the written consent of all employees involved. The withholding agent shall be entitled to recover from the employee any part of such lump sum payment that represents an advance to the employee. If a withholding agent pays a lump sum with the first quarterly return the withholding agent shall be excused from filing further quarterly returns for the calendar year involved unless the withholding agent hires other or additional employees.

4. Every withholding agent who fails to withhold or pay to the department any sums required by this chapter to be withheld and paid, shall be personally, individually, and corporately liable therefor to the state of Iowa, and any sum or sums withheld in accordance with the provisions of subsections 1 and 12, shall be deemed to be held in trust for the state of Iowa. Notwithstanding sections 490A.601 and 490A.602, this subsection applies to a member or manager of a limited liability company.

5. In the event a withholding agent fails to withhold and pay over to the department any amount required to be withheld under subsections 1 and 12 of this section, such amount may be assessed against such employer or withholding agent in the same manner as prescribed for the assessment of income tax under the provisions of divisions II and VI of this chapter.

6. Whenever the director determines that any employer or withholding agent has failed to withhold or pay over to the department sums required to be withheld under subsections 1 and 12 of this section the unpaid amount thereof shall be a lien as defined in section 422.26, shall attach to the property of said employer or withholding agent as therein provided, and in all other respects the procedure with respect to such lien shall apply as set forth in said section 422.26.

7. Every withholding agent required to deduct and withhold a tax under subsections 1 and 12 of this section shall furnish to such employee, nonresident, or other person in respect of the remuneration paid by such employer or withholding agent to such employee, nonresident, or other person during the calendar year, on or

before January 31 of the succeeding year, or, in the case of employees, if the employee's employment is terminated before the close of such calendar year, within thirty days from the day on which the last payment of wages is made, if requested by such employee, but not later than January 31 of the following year, a written statement showing the following:

- a.* The name and address of such employer or withholding agent, and the identification number of such employer or withholding agent.
- b.* The name of the employee, nonresident, or other person and that person's federal social security account number, together with the last known address of such employee, nonresident, or other person to whom wages have been paid during such period.
- c.* The gross amount of wages, or other taxable income, paid to the employee, nonresident, or other person.
- d.* The total amount deducted and withheld as tax under the provisions of subsections 1 and 12 of this section.
- e.* The total amount of federal income tax withheld.

The statements required to be furnished by this subsection in respect of any wages or other taxable Iowa income shall be in such form or forms as the director may, by regulation, prescribe.

8. An employer or withholding agent shall be liable for the payment of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, under subsections 1 and 12 of this section; and any amount deducted and withheld as tax under subsections 1 and 12 of this section during any calendar year upon the wages of any employee, nonresident, or other person shall be allowed as a credit to the employee, nonresident, or other person against the tax imposed by section 422.5, irrespective of whether or not such tax has been, or will be, paid over by the employer or withholding agent to the department as provided by this chapter.

9. The amount of any overpayment of the individual income tax liability of the employee taxpayer, nonresident, or other person which may result from the withholding and payment of withheld tax by the employer or withholding agent to the department under subsections 1 and 12, as compared to the individual income tax liability of the employee taxpayer, nonresident, or other person properly and correctly determined under the provisions of section 422.4, to and including section 422.25, may be credited against any income tax or installment thereof then due the state of Iowa and any balance of one dollar or more shall be refunded to the employee taxpayer, nonresident or other person with interest at the rate in effect under section 421.7 for each month or fraction of a month, the interest to begin to accrue on the first day of the second calendar month following the date the return was due to be filed or was filed, whichever is the later date. Amounts less than one dollar shall be refunded to the taxpayer, nonresident, or other person only upon written application, in accordance with section 422.73, and only if the application is filed within twelve months after the due date of the return. Refunds in the amount of one dollar or more provided for by this subsection shall be paid by the treasurer of state by warrants drawn by the director of the department of administrative services, or an authorized employee of the department, and the taxpayer's return of income shall constitute a claim for refund for this purpose, except in respect to amounts of less than one dollar. There is appropriated, out of any funds in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this subsection.

10. *a.* An employer or withholding agent required under this chapter to furnish a statement required by this chapter who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish the statement is, for each failure, subject to a civil penalty of five hundred dollars, the penalty to be in addition to any criminal penalty otherwise provided by the Code.

*b.* In addition to the tax or additional tax, any person or withholding agent shall pay a penalty as provided in

section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the semimonthly, monthly, or quarterly deposit form was required to be filed. The penalty and interest become a part of the tax due from the withholding agent.

*c.* If any withholding agent, being a domestic or foreign corporation, required under the provisions of this section to withhold on wages or other taxable Iowa income subject to this chapter, fails to withhold the amounts required to be withheld, make the required returns or remit to the department the amounts withheld, the director may, having exhausted all other means of enforcement of the provisions of this chapter, certify such fact or facts to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority (as the case may be) of such corporation, and the rights of such corporation to carry on business in the state of Iowa shall thereupon cease. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by the secretary of state. The provisions of section 422.40, subsection 3, shall be applicable.

*d.* The department shall upon request of any fiduciary furnish said fiduciary with a certificate of acquittance showing that no liability as a withholding agent exists with respect to the estate or trust for which said fiduciary acts, provided the department has determined that there is no such liability.

11. *a.* A person or married couple filing a return shall make estimated tax payments if the person's or couple's Iowa income tax attributable to income other than wages subject to withholding can reasonably be expected to amount to two hundred dollars or more for the taxable year, except that, in the cases of farmers and fishermen, the exceptions provided in the Internal Revenue Code with respect to making estimated payments apply. The estimated tax shall be paid in quarterly installments. The first installment shall be paid on or before the last day of the fourth month of the taxpayer's tax year for which the estimated payments apply. The other installments shall be paid on or before the last day of the sixth month of the tax year, the last day of the ninth month of the tax year, and the last day of the first month after the tax year. However, at the election of the person or married couple, an installment of the estimated tax may be paid prior to the date prescribed for its payment. If a person or married couple filing a return has reason to believe that the person's or couple's Iowa income tax may increase or decrease, either for purposes of meeting the requirement to make estimated tax payments or for the purpose of increasing or decreasing estimated tax payments, the person or married couple shall increase or decrease any subsequent estimated tax payments accordingly.

*b.* In the case of persons or married couples filing jointly, the total balance of the tax payable after credits for taxes paid through withholding, as provided in subsection 1 of this section, or through payment of estimated tax, or a combination of withholding and estimated tax payments is due and payable on or before April 30 following the close of the calendar year, or if the return is to be made on the basis of a fiscal year, then on or before the last day of the fourth month following the close of the fiscal year.

*c.* If a taxpayer is unable to make the taxpayer's estimated tax payments, the payments may be made by a duly authorized agent, or by the guardian or other person charged with the care of the person or property of the taxpayer.

*d.* Any amount of estimated tax paid is a credit against the amount of tax found payable on a final, completed return, as provided in subsection 9, relating to the credit for the tax withheld against the tax found payable on a return properly and correctly prepared under sections 422.5 through 422.25, and any overpayment of one dollar or more shall be refunded to the taxpayer and the return constitutes a claim for refund for this purpose. Amounts less than one dollar shall not be refunded. The method provided by the Internal Revenue Code for determining what is applicable to the addition to tax for underpayment of the tax payable applies to persons required to make payments of estimated tax under this section except the amount to be added to the tax for underpayment of estimated tax is an amount determined at the rate in effect under section 421.7. This addition to tax specified for underpayment of the tax payable is not subject to waiver provisions relating to reasonable cause, except as provided in the Internal Revenue Code. Underpayment of estimated tax shall be

determined in the same manner as provided under the Internal Revenue Code and the exceptions in the Internal Revenue Code also apply.

*e.* In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return for the taxable year credited to the taxpayer's tax liability for the following taxable year.

12. In the case of nonresidents having income subject to taxation by Iowa, but not subject to withholding of such tax under subsection 1 hereof, withholding agents shall withhold from such income at the same rate as provided in subsection 1 hereof, and such withholding agents and such nonresidents shall be subject to the provisions of this section, according to the context, except that such withholding agents may be absolved of such requirement to withhold taxes from such nonresident's income upon receipt of a certificate from the department issued in accordance with the provisions of section 422.17, as hereby amended. In the case of nonresidents having income from a trade or business carried on by them in whole or in part within the state of Iowa, such nonresident shall be considered to be subject to the provisions of this subsection unless such trade or business is of such nature that the business entity itself, as a withholding agent, is required to and does withhold Iowa income tax from the distributions made to such nonresident from such trade or business.

Notwithstanding this subsection, withholding agents are not required to withhold state income tax from payments subject to taxation made to nonresidents for commodity credit certificates, grain, livestock, domestic fowl, or other agricultural commodities or products sold to the withholding agents by the nonresidents or their representatives, if the withholding agents provide on forms prescribed by the department information relating to the sales required by the department to determine the state income tax liabilities of the nonresidents. However, the withholding agents may elect to make estimated tax payments on behalf of the nonresidents on the basis of the net incomes of the nonresidents from the agricultural commodities or products, if the estimated tax payments are made on or before the last day of the first month after the end of the tax years of the nonresidents.

13. The director shall enter into an agreement with the secretary of the treasury of the United States with respect to withholding of income tax as provided by this chapter, pursuant to an Act of Congress, section 1207 of the Tax Reform Act of 1976, Public Law 94-455, amending title 5, section 5517 of the United States Code.

14. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond, issued by a surety company authorized to conduct business in this state and approved by the insurance commissioner as to solvency and responsibility, in an amount as the director may fix, to secure the payment of the tax and penalty due or which may become due. In lieu of the bond, securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax and penalty due. Upon a sale, any surplus above the amounts due under this section shall be returned to the employer or withholding agent who deposited the securities.

If the withholding agent fails to file the bond as requested by the director to secure collection of the tax, the withholding agent is subject to penalty for failure to file the bond. The penalty is equal to fifteen percent of the tax the withholding agent is required to withhold on an annual basis. However, the penalty shall not exceed five thousand dollars.

[C39, § **6943.048**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 422.16; 81 Acts, ch 131, § 46, ch 133, § 1, 4; 82 Acts, ch 1022, § 1, 2, 8, ch 1023, § 29, ch 1180, § 2, 8]

83 Acts, ch 160, § 3, 4; 83 Acts, ch 179, § 11; 84 Acts, ch 1173, § 4; 86 Acts, ch 1007, § 2325; 86 Acts, ch 1208, § 1; 86 Acts, ch 1241, § 16; 87 Acts, ch 115, § 55; 87 Acts, ch 214, § 4; 87 Acts, 1st Ex, ch 1, § 26; 88 Acts, ch 1028, §25, 26; 88 Acts, ch 1157, §1; 89 Acts, ch 6, § 4, 5; 89 Acts, ch 251, § 17, 18; 90 Acts, ch

1172, § 8; 90 Acts, ch 1248, § 11

[Unnumbered paragraph 2 of subsection 1 was inadvertently deleted in the 1991 Code and 1991 Code Supplement]

91 Acts, ch 215, § 4, 8; 92 Acts, 2nd Ex, ch 1001, § 238; 94 Acts, ch 1165, §1315, 45, 47, 48; 99 Acts, ch 151, §6, 89; 2002 Acts, ch 1151, §6; 2003 Acts, ch 145, §286; 2003 Acts, ch 178, §111, 121; 2003 Acts, ch 179, §142; 2004 Acts, ch 1101, §46; 2005 Acts, ch 140, §40, 73

2005 amendment to subsection 2, unnumbered paragraph 1, takes effect June 3, 2005, and applies to calendar quarters ending on or after that date for income taxes withheld for tax years beginning on or after January 1, 2005; 2005 Acts, ch 140, §73