

CHAPTER 46
WITHHOLDING

[Prior to 12/17/86, Revenue Department[730]]

701—46.1(422) Who must withhold.

46.1(1) Requirement of withholding.

a. General rule. Every employer maintaining an office or transacting business within this state and required under provisions of Sections 3401 to 3404 of the Internal Revenue Code to withhold and pay federal income tax on compensation paid for services performed in this state to an individual is required to deduct and withhold from such compensation for each payroll period (as defined in Section 3401(b) of the Internal Revenue Code) an amount computed in accordance with subrules 46.2(1) and 46.2(2). Iowa income tax is not required to be withheld on any compensation paid in this state of a character which is not subject to federal income tax withholding (whether or not such compensation is subject to withholding for federal taxes other than income tax, e.g., FICA taxes), except as provided in rule 46.4(422).

b. Examples. Paragraph “a” above may be illustrated by the following examples:

(1) Temporary help. A is a typist in the offices of B corporation, where she has worked regularly for two months. A is, however, supplied to B corporation by C, a temporary help agency located in Iowa. C renders a weekly bill to B corporation for A’s services, and C then pays A. B corporation is not A’s “employer” within Section 3401(d) of the Internal Revenue Code, and B corporation is therefore not required by the Internal Revenue Code to withhold a tax on A’s compensation. Since B corporation is not required to withhold a tax for federal purposes on A’s compensation, B is not required to do so for Iowa purposes. C, the temporary help agency, however, is required to withhold from A’s compensation for federal purposes and must also do so for Iowa purposes.

(2) Domestic help. A is employed as a cook by Mr. and Mrs. B. The B’s are required to withhold FICA (i.e., Social Security) tax from compensation paid to A, but are not required to withhold income tax from such compensation under the Internal Revenue Code, because under Section 3401(a)(3), A’s compensation does not constitute “wages”. Since the B’s are not required to withhold income tax for federal purposes, they are not required to do so for Iowa purposes.

(3) Executives. A is a corporate executive. On January 1, 1998, A entered into an agreement with B corporation under which he was to be employed by B in an executive capacity for a period of five years. Under the contract, A is entitled to a stated annual salary and to additional compensation of \$10,000 for each year. The additional compensation is to be credited to a bookkeeping reserve account and deferred, accumulated and paid in annual installments of \$5,000 on A’s retirement beginning January 1, 2003. In the event of A’s death prior to exhaustion of the account, the balance is to be paid to A’s personal representative. A is not required to render any service to B after December 31, 2002. During 2003, A is paid \$5,000 while a resident of Iowa. The \$5,000 is not excluded from “wages” under Section 3401(a) of the Internal Revenue Code; therefore, B is required to withhold federal income tax, and, since it is compensation paid in this state, B must withhold Iowa income tax on A’s deferred compensation.

(4) Agricultural labor. Wages paid for agricultural labor are subject to withholding for state income tax purposes to the same extent that the wages are subject to withholding for federal income tax purposes.

c. Exemption from withholding. An employer may be relieved of the responsibility to withhold Iowa income tax on an employee who does not anticipate an Iowa income tax liability for the current tax year.

An employee who anticipates no Iowa income tax liability for the current tax year shall file with the employer a withholding allowance certificate claiming exemption from withholding. An employee who meets this criterion may claim an exemption from withholding at any time; however, this exemption from withholding must be renewed by February 15 of each tax year that the criterion is met. If the employee wishes to discontinue or is required to revoke the exemption from withholding, the employee must file a new withholding allowance certificate within ten days from the date the employee anticipates a tax liability or on or before December 31 if a tax liability is anticipated for the next tax year. See subrule 46.3(2).

d. Withholding from lottery winnings. Every person, including employees and agents of the Iowa lottery authority, making any payment of “winnings subject to withholding” shall deduct and withhold a tax in an amount equal to 5 percent of the winnings. The tax shall be deducted and withheld upon payment of the winnings to a payee by the person or payer making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation §31.3402(q)-1, paragraph “e,” with the information required by that paragraph. Payers of winnings subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the lottery winnings by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form shall include the information described in Treasury Regulation §31.3402(q)-1, paragraph “f.”

“Winnings subject to withholding” means any payment where the proceeds from a wager exceed \$600. The rules for determining the amount of proceeds from a wager under Treasury Regulation Section 31.3402(q)-1, paragraph “c,” shall apply when determining whether the proceeds from Iowa lottery winnings are great enough so that withholding is required. This rule shall apply to winnings from tickets purchased from the Powerball and Hot Lotto games or any other similar games to the extent the tickets were purchased within the state of Iowa.

e. Withholding from prizes from games of skill, games of chance, or raffles. Every person making any payment of a “prize subject to withholding” must deduct and withhold a tax in an amount equal to 5 percent of the prize from a game of skill, a game of chance, or a raffle. The tax must be deducted and withheld upon payment of the winnings to a payee by the person making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation Section 31.3402(q)-1, paragraph “e,” with the information required by that paragraph. Payers of prizes subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the prize by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form must include the information described in Treasury Regulation Section 31.3402(q)-1, paragraph “f.”

“Prizes subject to withholding” means any payment of a prize where the amount won exceeds \$600.

f. Withholding from winnings from pari-mutuel wagers. Every person making any payment of “winnings subject to withholding” must deduct and withhold a tax in an amount equal to 5 percent of the winnings from pari-mutuel wagers. The tax must be deducted and withheld upon payment of the winnings to a payee by the person making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation Section 31.3402(q)-1, paragraph “e,” with the information required by that paragraph. Payers of winnings subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the winnings by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form must include the information described in Treasury Regulation Section 31.3402(q)-1, paragraph “f.”

“Winnings subject to withholding” are winnings in excess of \$1,000.

g. Withholding from winnings from slot machines on riverboat gambling vessels and from winnings from slot machines at racetracks. Withholding of state income tax is required if the winnings from slot machines on riverboat gambling vessels or from slot machines at racetracks exceed \$1,200.

46.1(2) Withholding on pensions, annuities and other nonwage payments to Iowa residents. State income tax is required to be withheld from payments of pensions, annuities, supplemental unemployment benefits and sick pay benefits and other nonwage income payments made to Iowa residents in those circumstances mentioned in the following paragraphs. This subrule covers those nonwage payments described in Sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code. This includes, but is not limited to, payments from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts, lump-sum distributions from qualified retirement plans, other retirement plans, and annuities, endowments and life insurance contracts issued by life insurance companies. These payments are subject to Iowa withholding tax if they are also subject to federal withholding tax. However, no state income tax withholding is required from nonwage payments to residents to the extent those payments are not subject to state income tax. Generally, no state income

tax is required to be withheld from nonwage payments to residents in circumstances where the payment amounts are less than \$250 or the taxable portions of the payments are less than \$250 in situations where the payers know the taxable amounts. In instances where a payment amount or taxable amount is \$250 or more but the payment amount or the taxable amount for the year is less than \$3,000, no state income tax is required to be withheld. In the case of some nonwage payments to residents, such as payments of pensions and annuities, no state income tax is required to be withheld if no federal income tax is being withheld from the payments of the pensions and annuities. The rate of withholding on the nonwage payments described in this subrule is 5 percent of the payment amounts or 5 percent of the taxable amounts unless specified otherwise.

For purposes of this subrule, an individual receiving nonwage payments will be considered to be an Iowa resident and subject to this subrule if the individual's permanent residence is in Iowa. The fact that a nonwage payment is deposited in a recipient's account in a financial institution located outside Iowa does not mean that the recipient's permanent residence is established in the place where the financial institution is situated.

Payers of pension and annuity benefits and other nonwage payments have the option of either withholding Iowa income tax from these payments on the basis of tables and formulas included in the Iowa withholding tax guide of the department of revenue or withholding Iowa income tax from these payments at the rate of 5 percent. State income tax is required to be withheld by payers in situations when federal income tax is being withheld from the nonwage payments.

a. Withholding from pension and annuity payments to residents. Withholding of state income tax is required from payments of pensions and annuities to Iowa residents to the extent that the recipients of the payments have not filed with the payers of the benefits election forms which specify that no federal income tax is to be withheld. Therefore, state income tax is to be withheld when federal income tax is being withheld from the pensions or annuities. See paragraph "h" for threshold amounts for withholding from payments of pensions, annuities, and other retirement incomes which are made on or after January 1, 2001.

However, although Iowa income tax is ordinarily required to be withheld from pension and annuity payments made to Iowa residents if federal income tax is being withheld from the payments, no state income tax is required to be withheld if pension and annuity payments are not subject to Iowa income tax, as in the case of railroad retirement benefits which are exempt from Iowa income tax by a provision of federal law. In addition, no Iowa income tax is required from a pension or annuity payment made to an Iowa resident to the extent that the payment amounts are less than \$250 or the taxable amounts of the payments are less than \$250 in instances where the payers know the taxable amounts of the payments.

b. Withholding from payments to residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and from annuities, endowments and life insurance contracts issued by life insurance companies. Payments to Iowa residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and payments from life insurance companies for contracts for annuities, endowments or life insurance benefits are subject to withholding of state income tax if federal income tax is withheld from the benefits. However, no state income tax is to be withheld from the income tax payments described above to the extent those income tax payments are exempt from Iowa income tax. See paragraph "h" for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001. In addition, no state income tax is to be withheld in circumstances where payment amounts are less than \$250 or the taxable portions of the payments are less than \$250 in cases when the payer knows the taxable amount of the payment. There is also no state income tax withholding in situations where the payment amount or the taxable amount is \$250 or more but the payment amount or the taxable amount for the year is less than \$3,000.

In cases where the recipients elect withholding of state income tax from the income payments, the payers are to withhold from the payments at a rate of 5 percent on the taxable portion of the payment, if that can be determined by the payer or on the entire income payment if the payer does not know how much of the payment is taxable. Once a recipient makes an election for state income tax withholding, that election will remain in effect until a later election is made.

c. Withholding from payments to residents for supplemental unemployment compensation benefits and sick pay benefits. Income payments made for supplemental unemployment compensation benefits described in Section 3402(o)(2)(a) of the Internal Revenue Code and for sick pay benefits are subject to withholding of state income tax. In the case of supplemental unemployment compensation benefits, those benefits are treated as wages for purposes of state income tax withholding. Therefore, state income tax should be withheld from these payments when federal income tax is withheld. The amount of state income tax withholding should be determined by the withholding tables provided in the Iowa employers' "Withholding Tax Guide."

In the case of state income tax withholding for sick pay benefits, state income tax is to be withheld from the benefits by the payer only if state income tax withholding is requested by the payee of the benefits. However, payees of sick pay benefits should probably not request withholding from the benefits if the payees are eligible for the disability income exclusion authorized in Iowa Code section 422.7 and described in rule 701—40.22(422). If withholding is requested by the payee, the withholding should be done at a 5 percent rate on the sick pay benefits. However, no withholding of state income tax should be made if the benefit payment is less than \$250. Once withholding is started, it should continue until such time as the payee requests that no state income tax be withheld.

d. Voluntary state income tax withholding from unemployment benefit payments. Recipients of unemployment benefit payments described in Section 3402(p)(2) of the Internal Revenue Code 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.

e. Withholding on lump-sum distributions from qualified retirement plans. For lump-sum distribution payments from qualified retirement plans made to Iowa residents, state income tax is required to be withheld under the conditions described in this paragraph. No state income tax is required to be withheld from a lump-sum distribution payment to an Iowa resident in a situation where the payment is not subject to Iowa income tax. See paragraph "h" for thresholds for withholding on lump-sum distributions issued on or after January 1, 2001. In addition, Iowa income tax is not required to be withheld on the distribution to the extent that the amount of the distribution or the taxable amount, if known by the payer, is less than \$3,000. Iowa income tax is to be withheld from a lump-sum distribution made to an Iowa resident to the extent that federal income tax is being withheld from the distribution. The rate of withholding of state income tax from the lump-sum distribution is 5 percent from the total distribution or 5 percent from the taxable amount if that amount is known by the payer. Note that in the case of a lump-sum distribution, the Iowa income tax imposed on the taxable amount of the distribution is 25 percent of the federal income tax on the distribution.

f. Withholding of state income tax from nonwage payments to residents on the basis of tax tables and tax formulas. State income tax from the nonwage payments made to Iowa residents may be withheld on the basis of formulas and tables included in the Iowa withholding tax guide of the department of revenue. See paragraph "h" for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001. When state income tax is being withheld based upon the formulas or tables in the withholding guide, the amounts of the nonwage payments are treated as wage payments for purposes of the tables or the formulas.

The frequency of the nonwage payments determines which of the withholding tables to use or the number of pay periods in the calendar year to use in the formula. For example, if the nonwage payment is made on a monthly basis, the monthly wage bracket withholding table should be utilized for withholding or 12 should be utilized in the formula to indicate that there will be 12 nonwage payments in the year.

The payers of nonwage payments should withhold state income tax from the nonwage payments to Iowa residents when federal income tax is being withheld from the nonwage payments. The payers should withhold from the nonwage payments to Iowa residents from tables or the formulas in the Iowa withholding guide on the basis of the number of withholding exemptions claimed on Form IA W-4 which has been completed by the payees of the payments. However, if a payee of a nonwage payment has not completed an IA W-4 form (Iowa employee's withholding allowance certificate) by the time a nonwage

payment is to be made by the payer of the nonwage payment, the payer is to withhold state income tax on the basis that the payee has claimed one withholding allowance or exemption.

In a situation when a payee of a nonwage payment completes Form IA W-4 and claims exemption from state income tax withholding when federal income tax is being withheld from the nonwage payment, the payer of the nonwage payment should withhold state income tax using one withholding allowance or exemption unless the payee has verified exemption from state income tax.

g. Withholding on distributions from qualified retirement plans that are not directly rolled over. State income tax is to be withheld at a rate of 5 percent from the gross amount or taxable amount if known by the payer of the distribution made to Iowa residents if the distributions are not transferred directly to an IRA, Section 403(a) annuity or another qualified retirement plan. The distributions that are subject to state income tax withholding are those distributions that are subject to 20 percent withholding for federal income tax purposes. However, if the gross amount or taxable amount of a distribution is less than \$3,000, state income tax withholding is not required. See paragraph “h” for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans which are made on or after January 1, 1999.

h. Withholding from distributions made on or after January 1, 2001, from pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans. Effective for distributions made on or after January 1, 2001, from pension plans, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans, state income tax is generally required to be withheld from the distributions when federal income tax is being withheld from the distributions, unless one of the exceptions for withholding in this paragraph applies. For purposes of this paragraph, the term “pensions and other retirement plans” includes all distributions of retirement benefits covered by the partial exemption described in rule 701—40.47(422).

State income tax is not required to be withheld from a distribution from a pension or other retirement plan if the distribution is an income which is not subject to Iowa income tax, such as a distribution of railroad retirement benefits. State income tax is also not required to be withheld from a pension plan or other retirement plan if the amount of the distribution is \$500 per month or less or if the taxable amount is \$500 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422), if the state taxable amount can be determined by the payee of the distribution. There is also no requirement for withholding state income tax from a pension or other retirement plan if the distribution is \$1,000 per month or less or if the taxable amount is \$1,000 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422) and that person has indicated an intention to file a joint state income tax return for the year in which the distribution is made. In instances where the distribution amount or the taxable amount is more than \$500 per month but less than \$6,000 for the year, no state income tax will be required to be withheld, if the person receiving the distribution is eligible for the partial exemption of retirement benefits.

Finally, there is no requirement for withholding from a lump-sum payment from a qualified retirement plan if the lump-sum payment is \$6,000 or less, the recipient is eligible for the partial exemption of distributions from pensions and other retirement plans, and the lump-sum payment is the only distribution from the retirement plan in the year.

46.1(3) *Voluntary state income tax withholding from unemployment benefit payments.* Rescinded IAB 3/2/05, effective 4/6/05.

This rule is intended to implement Iowa Code sections 96.3, 99B.21, 99D.16, 99E.19, 99F.18, 422.5, 422.7, and 422.16.

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 associated regulations.

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.

(2) Formulas. Formulas that are provided in the Iowa employers’ withholding tax guide and tax tables are available 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. 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. 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. When a withholding agent makes a payment of supplemental wages to an employee 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.

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.

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. Rescinded IAB 3/2/05, effective 4/6/05.

46.2(3) Withholding on supplemental wage payments. Rescinded IAB 3/2/05, effective 4/6/05.

This rule is intended to implement Iowa Code section 422.16.

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 by filing an “Iowa Business Tax Registration Form.” The form 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 department will issue a temporary identification number. The employer or payer must notify the department when the federal employer 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 Iowa business tax registration form shall be forwarded along with the first quarterly withholding return. The responsible party(ies) shall be listed on the form.

If an employer deducts and withholds Iowa income tax but does not file the Iowa business tax registration form, the department may register the employer using the best information available. If an employer uses a service provider to report and remit Iowa withholding tax on behalf of the employer, the department may use information obtained from the service provider to register the employer if an Iowa business tax registration form is not filed. This information would include, but is not limited to, the name, address, federal employer’s identification number, filing frequency, withholding agent and responsible party(ies) of the employer.

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.

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

- (1) The employee claimed more than a total of 22 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.

Employers required to submit withholding certificates should use the following address:

Iowa Department of Revenue
Compliance Division
Examination Section
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. 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. Taxpayers that expect to have a net income of \$45,000 or more for a tax year beginning on or after January 1, 2006, should not claim withholding allowances for the child and dependent care credit, since these taxpayers are not eligible for the credit.

(5) Allowances for adjustments to income. For tax years beginning on or after January 1, 2008, employees can claim allowances for adjustments to income which are set forth in Treasury Regulation §31.3402(m)-1, paragraph "b." This includes adjustments to income such as alimony, deductible IRA contributions, student loan interest and moving expenses which are allowed as deductions in computing income subject to Iowa income tax. In instances where an employee is married and the employee's spouse is a wage earner, the withholding allowances claimed by both spouses for adjustments to income for the employee and spouse should not exceed the aggregate number of allowances to which both taxpayers are entitled.

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. Employers should retain copies of the IA W-4 forms for at least four years.

46.3(3) Reports and payments of income tax withheld.

a. Returns of income tax withheld from wages.

(1) Quarterly returns. Every withholding agent required to withhold tax on compensation paid for personal services in Iowa shall make a return for the first calendar quarter in which tax is 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 deposits or semimonthly tax deposits may be required in addition to quarterly returns. See subparagraphs (2) and (3) of paragraph 46.3(3)"*a.*" In some circumstances, only an annual return and payment of withheld taxes will be required; see paragraph 46.3(3)"*c.*"

Payments shall be based upon the tax required to be withheld and must be remitted in full.

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 numeral "zero" on the return and submit the return as usual.

(2) Monthly deposits. Every withholding agent required to file a quarterly withholding return shall also file a monthly deposit if the amount of tax withheld during any calendar month exceeds \$500, but is less than \$10,000. A withholding agent needs to file a monthly deposit even if no payment is due. No monthly deposit is required for the third month in any calendar quarter. The information otherwise required to be reported on the monthly deposit for the third month in a calendar quarter shall be reported on the quarterly return filed for that quarter, and no monthly deposit need be filed for such month.

(3) Semimonthly deposits. Every withholding agent who withholds more than \$5,000 in a semimonthly period must file a semimonthly tax deposit. 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 deposits are required, a withholding agent must still file a quarterly return.

(4) Final returns. A withholding agent who in any return period permanently ceases doing business shall file the returns required by subparagraphs (1), (2) and (3) of paragraph 46.3(3)"*a*" as final returns for such period. The withholding agent shall cancel the withholding tax registration by notifying the department.

b. Time for filing returns.

(1) Quarterly returns. Each return required by subparagraph 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 deposits. Monthly deposits required by subparagraph 46.3(3)"*a*"(2) shall be filed on or before the fifteenth day of the second and third months of each calendar quarter for the first and second months of each calendar quarter, respectively.

(3) Semimonthly tax deposits. Semimonthly deposits required by subparagraph 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. The semimonthly deposits required by subparagraph 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.

For withholding that occurs on or after January 1, 2005, quarterly returns, amended returns, monthly deposits and semimonthly deposits shall be made electronically in a format and by means specified by the department of revenue. Tax payments are considered to have been made on the date that the tax is transmitted and released by the vendor to the department.

(4) Determination of filing status. Effective July 1, 2002, the department and the department of management have the authority to change filing thresholds by department rule. This paragraph sets forth the filing thresholds for each filer based on the amount withheld for withholding that occurs on or after January 1, 2003.

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

<u>Filing Status</u>	<u>Threshold</u>	<u>Test Criteria</u>
Semimonthly	Greater than \$120,000 in annual withholding taxes (more than \$5,000 in a semimonthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds \$30,000.
Monthly	Between \$6,000 and \$120,000 in annual withholding taxes (more than \$500 in a monthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds \$1,500 per quarter.
Quarterly	Less than \$6,000 in annual withholding taxes.	Tax remitted in 3 of most recent 4 quarters examined is less than \$1,500 per quarter.
Annual	Less than 3 employees.	

When it is determined that a withholding agent's filing status is to be changed, the withholding agent shall be notified in writing. A withholding agent has the option of requesting, within 30 days of the department's notice of a change in filing frequency, that the withholding agent file more or less frequently than required by the department. To request filing on a less frequent basis than assigned by the department, the request must be in writing and submitted to the department. A withholding agent's written request to be allowed to file less frequently than the filing status assigned by the department will be reviewed by the department, and a written determination will be issued to the withholding agent who made the request.

A change in assigned filing status to file on a less frequent basis will be granted in only two instances:

- Incorrect historical data is used in the conversion. A business may meet the criteria based on the original filing data, 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.
- Data available may have been distorted by the fact that the data reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the department.

A withholding agent may also request to file more frequently than assigned by the department. This request may be made orally, in writing, in person, or by telephone.

The department and the department of management may perform review of filing thresholds every five years or as needed based on department discretion. Factors the departments will consider in determining if the filing thresholds need to be changed include, but are not limited to: tax rate changes, inflation, the need to maintain consistency with required multistate compacts, changes in law, and migration between filing brackets.

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 paragraph 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 department of revenue 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. 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. The "Verified Summary of Payments 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 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 subrule 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. Employers should keep copies of the combined W-2 for four years from the end of the year for which the combined W-2 applies.

(3) Time for furnishing statement. Each statement required by paragraph "d" 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 paragraph 46.3(3) "e" for provisions relating to the filing of copies of the combined W-2 with the department of revenue.

(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 paragraph 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 a substitute copy to the employee. The copy 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 on or before the last day of February 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, 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, 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 department of revenue. The state and the 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 deposit or return required to be filed under subrule 46.3(3) shall be due on or before the date on which such deposit or 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 rule 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 filing an amended withholding tax return.

(2) Overpayment. If an employer remits more than the correct amount of tax for a return period, the employer must file an amended withholding tax return and report the correct amount of withholding tax due.

46.3(4) Iowa W-4P—withholding certificate for pension or annuity payments. For payments made from pension plans, annuity plans, individual retirement accounts, or deferred compensation plans to residents of Iowa, payers 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 to the extent the monthly payment amount is \$500 or less or the taxable amount per month is \$500 or less if the payee is eligible for the retirement benefits exclusion described in rule 701—40.47(422). In addition, no state income tax is required to be withheld to the extent the monthly payment amount is \$1,000 or less or the taxable amount per month is \$1,000 or less if the payee is married and eligible for the retirement benefits exclusion described in rule 701—40.47(422).

Form IA W-4P is available from the department for payers of retirement benefits that intend to withhold at a rate of 5 percent from the payment amount or taxable payment amount after the \$6,000 to \$12,000 exclusion is considered. Note that the \$6,000 to \$12,000 exclusion is to be allocated to all retirement benefit payments made in the year and not just the first \$6,000 to \$12,000 in payments made in the year to an individual. If an individual receives retirement benefits and has not completed Form IA W-4P, the payer is directed to withhold Iowa income tax from the retirement benefit payment after a \$6,000 exclusion is allowed on an annual basis.

Payers of retirement benefits that 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 payers are not responsible for improper choices made by a payee in completion of the IA W-4P. However, payers 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 section 422.16 as amended by 2007 Iowa Acts, House File 904, section 3.

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 described in subrule 46.4(5); income payments for agricultural commodities or products described in subrule 46.4(6); deferred compensation payments, pension, and annuity payments attributable to personal services in Iowa by nonresidents described in subrule 46.4(7); and partnership distributions from certain publicly traded partnerships described in subrule 46.4(8). 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. In addition, in accordance with the reciprocal tax agreement between Iowa and Illinois described in 701—subrule 38.13(1), Iowa withholding tax is not withheld on wages of Illinois residents who perform personal services in Iowa.

b. Payments other than wages, salaries, and other compensation for personal services. 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 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 to 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. Income received by a nonresident partner or shareholder of a partnership or S corporation doing business in Iowa. See subrule 46.4(8) for the exemption from withholding for partnership distributions from certain publicly traded partnerships.

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 to nonresidents for the sale of agricultural commodities or products.

12. Wages paid 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 the Amtrak Reauthorization and Improvement Act of 1990, 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.

13. Wages paid to nonresidents of Iowa who earn compensation from regularly assigned duties in Iowa and one or more states for an airline company. In accordance with Public Law 103-272 enacted by Congress, airline employees who are nonresidents of Iowa are subject only to the income tax laws of their states of residence or the state in which they perform 50 percent or more of their duties.

14. Wages paid to nonresidents of Iowa who earn compensation from regularly assigned duties in Iowa for a merchant marine company. In accordance with Public Law 106-489 enacted by Congress, interstate waterway workers who are nonresidents of Iowa are subject only to the income tax laws of their states of residence.

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 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.* 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.

Applications for exemption from withholding for nonresident employees engaged in film production or television production should be directed to the Iowa Department of Revenue, Compliance Division, Examination Section, Hoover State Office Building, P.O. Box 10456, Des Moines, Iowa 50306.

46.4(6) *Exemption from withholding for the sale of agricultural commodities or products.* 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 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. 701—subrule 49.3(4) 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.

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 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 with the information specified in paragraph “*b*” of this subrule.

b. Information to be provided to the department 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 by withholding agents electing exemption from withholding of state income tax on income payments made in the calendar 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) 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 in which livestock is 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 connection with Iowa as described in subparagraph 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 connection 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, diskette or other electronic reporting, provided the submission meets departmental guidelines described in 701—paragraph 8.3(1)“*e.*”

The listing, magnetic tape or other electronic submission should be sent to the following address: Iowa Department of Revenue, Compliance Division, Examination Section, Hoover State Office Building, P.O. Box 10456, Des Moines, Iowa 50306; idr@iowa.gov.

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 with information on income payments made during the year by April 1 of the subsequent year.

c. Rescinded IAB 3/2/05, effective 4/6/05.

46.4(7) Exemption from withholding of payments made to nonresidents for deferred compensation, pensions, and annuities. Iowa income tax withholding is not required from payments of deferred compensation, pensions, and annuities made to nonresidents which are attributable to personal services of the nonresidents in Iowa since these payments are not subject to Iowa income tax. See rule 701—40.45(422) for the exclusion from Iowa income tax for these payments received by nonresidents.

46.4(8) Exemption from withholding of partnership distributions made to nonresidents of certain publicly traded partnerships. For tax years beginning on or after January 1, 2008, a nonresident who is a partner in a publicly traded partnership as defined in Section 7704(b) of the Internal Revenue Code is not subject to state withholding tax on the partner's pro rata share, provided that the publicly traded partnership submits the following information to the department for each partner whose Iowa income from the partnership exceeded \$500:

- a. Partner's name.
- b. Partner's address.
- c. Partner's taxpayer identification number.
- d. Partner's pro rata share of Iowa income from the partnership for the tax year.

A partnership is a publicly traded partnership if the interests in the partnership are traded on an established securities market or the interests in the partnership are readily traded on a secondary market or its substantial equivalent.

This rule is intended to implement Iowa Code section 422.15, Iowa Code section 422.16 as amended by 2007 Iowa Acts, House File 923, section 3, and Iowa Code sections 422.17 and 422.73.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

701—46.5(422) Penalty and interest.

46.5(1) Penalty. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

46.5(2) Computation of interest on unpaid tax. Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, with each fraction of a month considered to be an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

46.5(3) Computation of interest on overpayments. If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code sections 421.27, 422.16 and 422.25.

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, the community college which provided the training is to notify the Iowa department of economic development of the amount paid by the employer or business to the community college during the previous 12 months. The Iowa department of economic development is to notify the department of revenue 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 \$4 million for fiscal years beginning on or after July 1, 2001.

This rule is intended to implement Iowa Code section 422.16A.

701—46.7(422) ACE training program credits from withholding. The accelerated career education (ACE) program is a training program administered by the Iowa department of economic development to provide technical training in state community colleges for employees in highly skilled jobs in the state to the extent that the training is authorized in an agreement between an employer or group of employers and a community college for the training of certain employees of the employer or group of employers. If a community college and an employer or group of employers enter into a program agreement for ACE training, a copy of the agreement is to be sent to the department of revenue. No costs incurred prior to the date of the signing between a community college and an employer or group of employers may be reimbursed or are eligible for program job credits, including job credits from withholding unless the costs are incurred on or after July 1, 2000.

46.7(1) The costs of the ACE training program may be paid from the following sources:

- a. Program job credits which the employer receives on the basis of the number of program job positions agreed to by the employer for the training program;
- b. Cash or in-kind contributions by the employer toward the costs of the program which must be at least 20 percent of the total cost of the program;
- c. Tuition, student fees, or special charges fixed by the board of directors of the community college to defray costs of the program;
- d. Guarantee by the employer of payments to be received under paragraphs “a” and “b” of this subrule.

This rule pertains only to the program job credits from withholding described in paragraph “a.”

46.7(2) ACE training programs financed by job credits from withholding. In situations when an employer or group of employers and a community college have entered into an agreement for training under the ACE program and the agreement provides that the training will be financed by credits from withholding, the amount of funding will be determined by the program job credits identified in the agreement. Eligibility for the program job credits is based on certification of program job positions and program job wages by the employer at the time established in the agreement with the community college. An amount of up to 10 percent of the gross program job wage as certified by the employer in the agreement shall be credited from the total amount of Iowa income tax withheld by the employer. For example, if there were 20 employees designated to be trained in the agreement and their gross wages were \$600,000, the gross program job wage would be \$600,000. Therefore, 10 percent of the gross program job wage in this case would be \$60,000, and this amount would be credited against Iowa income tax which would ordinarily be withheld from the wages of all employees of the employer and remitted to the department of revenue on a quarterly basis. The amount credited against the withholding tax liability of the employer would be paid to the community college training the employer’s employees under the ACE program. The employer may take the credits against withholding tax on returns filed with the department of revenue until such time as the program costs of the ACE program are considered to be satisfied.

This rule is intended to implement Iowa Code sections 260G.4A and 422.16.

701—46.8(260E) New job tax credit from withholding. The Iowa industrial new jobs training program is a program administered by the Iowa department of economic development for projects established by a community college for the creation of jobs by providing education and training of workers for new jobs for new or expanding industries. For employers that have entered into an agreement with a community college under Iowa Code chapter 260E, a credit equal to 1.5 percent of the wages paid by the employer to each employee covered by the agreement can be taken on the Iowa withholding tax return. If the amount of withholding by the employer is less than 1.5 percent of the wages paid to the employees covered by the agreement, the employer can take the remaining credit against Iowa tax withheld for other employees.

The administrative rules for the Iowa industrial new jobs training program administered by the Iowa department of economic development may be found in 261—Chapter 5.

This rule is intended to implement Iowa Code section 260E.5.

701—46.9(15) Supplemental new jobs credit from withholding and alternative credit for housing assistance programs.

46.9(1) *Supplemental new jobs credit from withholding.* For eligible businesses approved by the Iowa department of economic development under the new jobs and income program or the enterprise zone program, a credit equal to an additional 1.5 percent of the wages paid to employees in new jobs covered under these programs can be taken on the Iowa withholding tax return. This supplemental new jobs credit is in addition to the credit described in rule 46.8(260E). The administrative rules for the new jobs and income program and the enterprise zone program administered by the Iowa department of economic development may be found in 261—Chapters 58 and 59.

46.9(2) *Alternative credit for housing assistance programs.* As an alternative to the credit described in subrule 46.9(1) for eligible businesses in an enterprise zone, a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs. A credit equal to 1.5 percent of the wages paid to employees participating in a housing assistance program may be claimed on the Iowa withholding tax return. The administrative rules for the enterprise zone program administered by the Iowa department of economic development may be found in 261—Chapter 59.

This rule is intended to implement Iowa Code section 15E.196 and Supplement section 15E.197.

701—46.10(403) Targeted jobs withholding tax credit. For employers that created targeted jobs in an urban renewal area and that enter into a withholding agreement with pilot project cities approved by the Iowa department of economic development, a credit equal to 3 percent of the gross wages paid to employees under the withholding agreement can be taken on the Iowa withholding tax return. The employer shall remit the amount of the credit to the pilot project city. The administrative rules for the targeted jobs withholding tax credit program administered by the Iowa department of economic development may be found in 261—Chapter 71.

If the amount of withholding by the employer is less than 3 percent of the wages paid to the employees covered under the withholding agreement, the employer can take the remaining credit against Iowa tax withheld for other employees or may carry the credit forward for up to ten years or until depleted, whichever is the earlier.

If an employer also has a new job credit from withholding provided in rule 701—46.8(260E) or the supplemental new jobs credit from withholding provided in subrule 46.9(1), these credits shall be collected and disbursed prior to the collection and disbursement of the targeted jobs withholding tax credit.

The following nonexclusive examples illustrate how this rule applies:

EXAMPLE 1: Company A does not have a withholding credit under Iowa Code chapter 260E or a supplemental new jobs credit under Iowa Code chapter 15E. Company A enters into a withholding agreement, and the withholding rate for employees covered under the agreement is 4 percent of the wages paid. Company A will be allowed a credit on the Iowa withholding return equal to 3 percent of the wages paid to each employee covered under the withholding agreement, since the targeted jobs withholding tax credit cannot exceed 3 percent.

EXAMPLE 2: Company B does not have a withholding credit under Iowa Code chapter 260E or a supplemental new jobs credit under Iowa Code chapter 15E. Company B enters into a withholding agreement, and the withholding rate for employees covered under the agreement is 2.5 percent of the wages paid. Company B will be allowed a credit on the Iowa withholding return equal to 3 percent of the wages paid to each employee covered under the withholding agreement. The extra withholding credit equal to 0.5 percent may be used to offset withholding tax for Company B's employees not covered under the withholding agreement.

EXAMPLE 3: Company C has a withholding credit under Iowa Code chapter 260E of 1.5 percent of the wages paid to new employees and a supplemental new jobs credit under Iowa Code chapter 15E of 1.5 percent of the wages paid to new employees. Company C also enters into a withholding agreement for the same employees covered under the 260E agreement and supplemental new jobs credit agreement, and the withholding rate for employees covered under these agreements is 5 percent of the wages paid. Company C will be allowed a credit on the Iowa withholding return equal to 5 percent of the wages paid to each employee covered under these agreements. Since the community college receives disbursement of the credit before the pilot project city, the community college will receive 3 percent of the wages paid to each employee covered under the agreements, and the pilot project city will receive the remaining 2 percent of the wages paid to each employee covered under the agreements.

EXAMPLE 4: Company D has a withholding credit under Iowa Code chapter 260E of 1.5 percent of the wages paid to new employees and a supplemental new jobs credit under Iowa Code chapter 15E of 1.5 percent of the wages paid to new employees. Company D also enters into a withholding agreement for the same employees covered under the 260E agreement and supplemental new jobs credit agreement, and the withholding rate for employees covered under the agreement is 2.5 percent of the wages paid. Company D will be allowed a credit on the Iowa withholding tax return equal to 6 percent of the wages paid to each employee covered under these agreements. The extra withholding credit equal to 3.5 percent may be used to offset withholding tax for Company D's employees not covered under these agreements.

46.10(1) Notification by the employer. Once a withholding agreement is entered into with a pilot project city, the employer shall notify the department of revenue that an agreement has been executed. With this notification, the employer must also provide its address, tax identification number and the number of new jobs created under the agreement. In addition, for each year that the withholding agreement is in place, the employer must notify the department of revenue by January 31 of the number of new jobs created as of December 31 of the preceding year.

46.10(2) Notification by the pilot project city. The pilot project city must notify the department of revenue on a quarterly basis of the amount of the targeted jobs withholding credit that each employer covered by a withholding agreement remitted to the city. This notification must occur within 45 days after the end of each calendar quarter. In addition, the pilot project city must notify the department of revenue immediately when a withholding agreement with an employer is terminated.

This rule is intended to implement Iowa Code Supplement section 403.19A.

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