

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

CHAPTER 43
HOUSE BILL 2046

AN ACT

AMENDING TITLE 32, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 45; AMENDING TITLE 42, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-1130; AMENDING SECTIONS 43-306, 43-307, 43-401, 43-403, 43-1091 AND 43-1097, ARIZONA REVISED STATUTES; RELATING TO DISASTER RECOVERY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 32, Arizona Revised Statutes, is amended by adding
3 chapter 45, to read:

4 CHAPTER 45

5 REGULATION OF OUT-OF-STATE BUSINESSES AND
6 OUT-OF-STATE EMPLOYEES DURING A DISASTER

7 ARTICLE 1. GENERAL PROVISIONS

8 32-4501. Definitions

9 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

10 1. "DECLARED DISASTER" MEANS A STATE OF EMERGENCY DECLARED BY THE
11 GOVERNOR, A PRESIDENTIAL DECLARATION OF A FEDERAL MAJOR DISASTER OR EMERGENCY
12 IN THIS STATE OR A DISASTER OR EMERGENCY EVENT IN THIS STATE THAT IS
13 DESIGNATED BY THE DIVISION OF EMERGENCY MANAGEMENT AND THAT REQUIRES DISASTER
14 RECOVERY UNDER THIS CHAPTER.

15 2. "DISASTER PERIOD" MEANS A PERIOD THAT IS WITHIN TEN CALENDAR DAYS
16 OF THE DATE OF ISSUANCE OF THE DECLARED DISASTER AND THAT EXTENDS FOR A
17 PERIOD OF SIXTY CALENDAR DAYS AFTER THE END OF THE DECLARED DISASTER OR ANY
18 LONGER PERIOD AUTHORIZED BY THE GOVERNOR.

19 3. "DISASTER RECOVERY" MEANS REPAIRING, RENOVATING, INSTALLING,
20 BUILDING, RENDERING SERVICES OR OTHER BUSINESS ACTIVITIES THAT RELATE TO
21 INFRASTRUCTURE THAT HAS BEEN DAMAGED, IMPAIRED OR DESTROYED BY A DECLARED
22 DISASTER.

23 4. "INFRASTRUCTURE" MEANS PROPERTY AND EQUIPMENT OWNED OR USED BY
24 COMMUNICATIONS NETWORKS, ELECTRIC GENERATION, TRANSMISSION AND DISTRIBUTION
25 SYSTEMS AND GAS DISTRIBUTION SYSTEMS, WATER PIPELINES, PUBLIC ROADS AND
26 BRIDGES AND RELATED SUPPORT FACILITIES THAT SERVICE MULTIPLE CUSTOMERS OR
27 CITIZENS OF THIS STATE AND INCLUDES BUILDINGS, OFFICES, LINES, POLES, PIPES,
28 STRUCTURES AND EQUIPMENT.

29 5. "OUT-OF-STATE BUSINESS" MEANS A BUSINESS ENTITY THAT EXISTED AS AN
30 OPERATING ENTITY BEFORE THE DECLARED DISASTER, INCLUDING AN AFFILIATE SOLELY
31 BY COMMON OWNERSHIP OF A REGISTERED BUSINESS, WHOSE SERVICES ARE REQUESTED BY
32 A REGISTERED BUSINESS IN THIS STATE OR BY THE STATE OR A LOCAL GOVERNMENT FOR
33 THE PURPOSE OF PERFORMING DISASTER RECOVERY IN THIS STATE AND THAT MEETS ALL
34 OF THE FOLLOWING CONDITIONS:

35 (a) IS NOT PRESENT IN THIS STATE.

36 (b) DOES NOT CONDUCT BUSINESS IN THIS STATE.

37 (c) DOES NOT HAVE OR MAINTAIN ANY STATE OR LOCAL REGISTRATIONS,
38 LICENSES OR CERTIFICATIONS IN THIS STATE.

39 (d) DOES NOT MAKE ANY TAX FILINGS IN THIS STATE.

40 6. "OUT-OF-STATE EMPLOYEE" MEANS AN EMPLOYEE WHO DOES NOT WORK IN THIS
41 STATE EXCEPT FOR PERFORMING DISASTER RECOVERY DURING A DISASTER PERIOD.

42 7. "REGISTERED BUSINESS" MEANS A BUSINESS ENTITY THAT IS CURRENTLY
43 REGISTERED TO DO BUSINESS IN THIS STATE AND THAT WAS A REGISTERED BUSINESS
44 BEFORE THE DECLARED DISASTER.

1 RECOVERY BY AN OUT-OF-STATE BUSINESS DOES NOT INCREASE THE AMOUNT OF INCOME
2 APPORTIONED TO THIS STATE.

3 D. ON REQUEST, AN OUT-OF-STATE BUSINESS THAT ENTERS THIS STATE SHALL
4 PROVIDE THE DEPARTMENT WITH NOTICE THAT IT IS IN THIS STATE FOR THE PURPOSE
5 OF PERFORMING DISASTER RECOVERY. THE NOTICE SHALL INCLUDE THE BUSINESS'S
6 NAME, STATE OF DOMICILE, PRINCIPAL BUSINESS ADDRESS, FEDERAL TAX
7 IDENTIFICATION NUMBER, DATE OF ENTRY AND CONTACT INFORMATION.

8 E. ON REQUEST, A REGISTERED BUSINESS SHALL PROVIDE THE NOTICE REQUIRED
9 BY SUBSECTION D OF THIS SECTION FOR ANY OUT-OF-STATE BUSINESS AFFILIATE THAT
10 ENTERS THIS STATE. THE NOTICE SHALL INCLUDE THE CONTACT INFORMATION FOR THE
11 REGISTERED BUSINESS.

12 F. FOR THE PURPOSES OF THIS SECTION:

13 1. "DECLARED DISASTER" MEANS A STATE OF EMERGENCY DECLARED BY THE
14 GOVERNOR, A PRESIDENTIAL DECLARATION OF A FEDERAL MAJOR DISASTER OR EMERGENCY
15 IN THIS STATE OR A DISASTER OR EMERGENCY EVENT IN THIS STATE THAT IS
16 DESIGNATED BY THE DIVISION OF EMERGENCY MANAGEMENT AND THAT REQUIRES DISASTER
17 RECOVERY UNDER THIS SECTION.

18 2. "DISASTER PERIOD" MEANS A PERIOD THAT IS WITHIN TEN CALENDAR DAYS
19 OF THE DATE OF ISSUANCE OF THE DECLARED DISASTER AND THAT EXTENDS FOR A
20 PERIOD OF SIXTY CALENDAR DAYS AFTER THE END OF THE DECLARED DISASTER OR ANY
21 LONGER PERIOD AUTHORIZED BY THE GOVERNOR.

22 3. "DISASTER RECOVERY" MEANS REPAIRING, RENOVATING, INSTALLING,
23 BUILDING, RENDERING SERVICES OR OTHER BUSINESS ACTIVITIES THAT RELATE TO
24 INFRASTRUCTURE THAT HAS BEEN DAMAGED, IMPAIRED OR DESTROYED BY A DECLARED
25 DISASTER.

26 4. "INFRASTRUCTURE" MEANS PROPERTY AND EQUIPMENT OWNED OR USED BY
27 COMMUNICATIONS NETWORKS, ELECTRIC GENERATION, TRANSMISSION AND DISTRIBUTION
28 SYSTEMS AND GAS DISTRIBUTION SYSTEMS, WATER PIPELINES, PUBLIC ROADS AND
29 BRIDGES AND RELATED SUPPORT FACILITIES THAT SERVICE MULTIPLE CUSTOMERS OR
30 CITIZENS OF THIS STATE AND INCLUDES BUILDINGS, OFFICES, LINES, POLES, PIPES,
31 STRUCTURES AND EQUIPMENT.

32 5. "OUT-OF-STATE BUSINESS" MEANS A BUSINESS ENTITY THAT EXISTED AS AN
33 OPERATING ENTITY BEFORE THE DECLARED DISASTER, INCLUDING AN AFFILIATE SOLELY
34 BY COMMON OWNERSHIP OF A REGISTERED BUSINESS, WHOSE SERVICES ARE REQUESTED BY
35 A REGISTERED BUSINESS IN THIS STATE OR BY THE STATE OR A LOCAL GOVERNMENT FOR
36 THE PURPOSE OF PERFORMING DISASTER RECOVERY IN THIS STATE AND THAT MEETS ALL
37 OF THE FOLLOWING CONDITIONS:

38 (a) IS NOT PRESENT IN THIS STATE.

39 (b) DOES NOT CONDUCT BUSINESS IN THIS STATE.

40 (c) DOES NOT HAVE OR MAINTAIN ANY STATE OR LOCAL REGISTRATIONS,
41 LICENSES OR CERTIFICATIONS IN THIS STATE.

42 (d) DOES NOT MAKE ANY TAX FILINGS IN THIS STATE.

43 6. "OUT-OF-STATE EMPLOYEE" MEANS AN EMPLOYEE WHO DOES NOT WORK IN THIS
44 STATE EXCEPT FOR PERFORMING DISASTER RECOVERY DURING A DISASTER PERIOD.

1 7. "REGISTERED BUSINESS" MEANS A BUSINESS ENTITY THAT IS CURRENTLY
2 REGISTERED TO DO BUSINESS IN THIS STATE AND THAT WAS A REGISTERED BUSINESS
3 BEFORE THE DECLARED DISASTER.

4 Sec. 3. Section 43-306, Arizona Revised Statutes, is amended to read:
5 43-306. Partnership returns

6 A. Every partnership shall make a return for each taxable year,
7 stating the taxable income computed in accordance with subtitle A, chapter 1,
8 subchapter K of the internal revenue code and any adjustments required
9 pursuant to chapter 14 of this title. The return shall include the names and
10 addresses of the individuals, whether residents or nonresidents, who would be
11 entitled to share in the taxable income if distributed and the amount of the
12 distributive share of each individual. The allocation and apportionment of
13 income of a partnership which has nonresident partners shall be made pursuant
14 to chapter 11, article 4 of this title. The return shall contain or be
15 verified by a written declaration that it is made under the penalties of
16 perjury and signed by one of the partners.

17 B. AN OUT-OF-STATE PARTNERSHIP THAT IS TEMPORARILY IN THIS STATE AND
18 WHOSE ONLY INCOME IN THIS STATE IS FROM PERFORMING DISASTER RECOVERY FROM A
19 DECLARED DISASTER DURING A DISASTER PERIOD AS DEFINED IN SECTION 42-1130 IS
20 NOT REQUIRED TO FILE A PARTNERSHIP RETURN IN THIS STATE.

21 Sec. 4. Section 43-307, Arizona Revised Statutes, is amended to read:
22 43-307. Corporation returns

23 A. Every corporation subject to the tax imposed by this title shall
24 make a return to the department. Every corporation return required by this
25 title to be filed with the department shall be signed by one or more of the
26 following officers:

- 27 1. The president.
- 28 2. The treasurer.
- 29 3. Any other principal officer of the taxpayer.

30 B. If receivers, trustees in bankruptcy or assignees are operating the
31 property or business of a corporation, such receivers, trustees or assignees
32 shall make returns for such corporation in the same manner and form as such a
33 corporation is required to make a return. Any tax due on the basis of
34 returns made by receivers, trustees or assignees shall be collected in the
35 same manner as if collected from the corporation of whose business or
36 property they have custody and control.

37 C. This section applies regardless of whether a corporation is
38 required to file a return under the internal revenue code or whether the
39 corporation has any federal taxable income for the taxable year.

40 D. AN OUT-OF-STATE CORPORATION THAT IS TEMPORARILY IN THIS STATE AND
41 WHOSE ONLY INCOME IN THIS STATE IS FROM PERFORMING DISASTER RECOVERY FROM A
42 DECLARED DISASTER DURING A DISASTER PERIOD AS DEFINED IN SECTION 42-1130 IS
43 NOT REQUIRED TO FILE A CORPORATION RETURN IN THIS STATE. THIS SUBSECTION
44 DOES NOT PRECLUDE THE CORPORATION FROM BEING INCLUDED IN A CONSOLIDATED OR
45 COMBINED GROUP RETURN SUBJECT TO SECTION 42-1130, SUBSECTION C.

1 Sec. 5. Section 43-401, Arizona Revised Statutes, is amended to read:
2 43-401. Withholding tax; rates; election by employee

3 A. Except as provided by ~~subsection~~ SUBSECTIONS B AND H of this
4 section, every employer at the time of the payment of wages, salary, bonus or
5 other emolument to any employee whose compensation is for services performed
6 within this state shall deduct and retain from the compensation an amount
7 prescribed by tables adopted by the department.

8 B. An employer may voluntarily elect to not withhold tax during
9 December by notifying:

10 1. The department on a form prescribed by the department.

11 2. The employer's employees in writing in a manner prescribed by the
12 department.

13 C. If the amount collected and payable by the employer to the
14 department in each of the preceding four calendar quarters did not exceed an
15 average of one thousand five hundred dollars, the amount collected shall be
16 paid to the department on or before April 30, July 31, October 31 and January
17 31 for the preceding calendar quarter. If such amount exceeded one thousand
18 five hundred dollars in each of the preceding four calendar quarters, the
19 employer shall pay to the department the amount the employer deducts and
20 retains pursuant to this section at the same time as the employer is required
21 to make deposits of federal tax pursuant to section 6302 of the internal
22 revenue code. On or before April 30, July 31, October 31 and January 31 each
23 year, the employer shall reconcile the amounts payable during the preceding
24 calendar quarter in a manner prescribed by the department, except that if the
25 full amount collected and payable is paid timely to the department under this
26 subsection, the employer may reconcile the amounts on or before May 10,
27 August 10, November 10 and February 10 each year. The department by rule may
28 allow and determine which employers qualify for annual payments of
29 withholding taxes, with an annual report by the employer pursuant to section
30 43-412, subsection B, if the qualifying employer has established sufficient
31 payment history to indicate that the employer is current and in good standing
32 pursuant to standards established by rule. For any business which has not
33 had a withholding certificate for the four preceding consecutive quarters,
34 the quarterly average shall be computed in a manner prescribed by the
35 department.

36 D. If an employer fails to make a timely monthly payment because prior
37 to that reporting period it reported on a quarterly basis instead of on a
38 monthly basis, the department shall notify the employer that it is out of
39 compliance with this section. Notwithstanding section 42-1125, the
40 department shall not assess a penalty against an employer for failing to make
41 a timely monthly payment if the employer had filed and remitted all taxes due
42 on a quarterly basis and brings all filings and payments into current
43 compliance within thirty days after being notified by the department.

44 E. Each employee shall elect the amount authorized by subsection A of
45 this section to be withheld for application toward the employee's state

1 income tax liability. The election provided under this subsection shall be
2 exercised by each employee, in writing on a form prescribed by the
3 department. The election shall be made within five days of employment. Each
4 employer shall notify the employees of the election made available under this
5 subsection and shall have election forms available at all times. Each form
6 shall be completed in triplicate, with one copy each for the department, the
7 employer and the employee. The employer shall file a copy of each completed
8 form with the department. Any employee failing to complete an election form
9 as prescribed shall be deemed to have elected the withholding percentage
10 prescribed by the department.

11 F. Before July 1 of each year, each employer who chooses to not
12 withhold tax pursuant to subsection B of this section shall notify each
13 employee that:

14 1. State income taxes will not be withheld from compensation in
15 December.

16 2. The employee may elect to change the rate of withholding tax
17 prescribed by this section to compensate for the resulting change in annual
18 withholdings from the employee's compensation.

19 G. At an employee's written request, the employer may agree to reduce
20 the amount withheld under this section by the amount of credit that the
21 employee represents to the employer that the employee will qualify for and be
22 entitled to under sections 43-1088, 43-1089, 43-1089.01 and 43-1089.03. The
23 employee's request must include the name and address of the qualifying
24 charitable organization, qualified school tuition organization or public
25 school. Within thirty days after agreeing to the employee's request, the
26 employer shall reduce the withholding amount by the amount of the credit, but
27 not below zero, prorated for the number of pay periods remaining in the
28 employee's taxable year after the employee makes the request. If an employer
29 agrees to reduce the withholding amount pursuant to this subsection, the
30 following apply:

31 1. Within fifteen days after the end of each calendar quarter, the
32 employer must pay the entire amount of the reduction in withholding tax for
33 that quarter to the designated charitable organization, school tuition
34 organization or public school. These payments are considered to be on the
35 employee's behalf, and not the employer's, for the purposes of qualifying for
36 the income tax credits under sections 43-1088, 43-1089, 43-1089.01 and
37 43-1089.03.

38 2. The employee is responsible and accountable for the accuracy and
39 the amount of reduction in withholding tax and the payments to the charitable
40 organization, school tuition organization or public school.

41 3. The employer is responsible and accountable to the charitable
42 organization, school tuition organization or public school, to the employee
43 and to the department for actually making the required payments.

44 4. Within thirty days after the end of each calendar year, or within
45 fifteen days after the termination of employment, the employer must furnish

1 to each electing employee and to the department a statement of the amount
2 withheld and paid on behalf of the employee during that year.

3 H. AN EMPLOYER SHALL NOT WITHHOLD TAX ON THE WAGES OF THE EMPLOYER'S
4 NONRESIDENT EMPLOYEES WHO ARE IN THIS STATE ON A TEMPORARY BASIS FOR THE
5 PURPOSE OF PERFORMING DISASTER RECOVERY FROM A DECLARED DISASTER DURING A
6 DISASTER PERIOD AS DEFINED IN SECTION 42-1130.

7 Sec. 6. Section 43-403, Arizona Revised Statutes, is amended to read:

8 43-403. Employment excluded from withholding

9 A. No amount shall be deducted or retained from:

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

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

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

16 4. Wages paid to part-time or seasonal employees whose services to the
17 employer consist solely of labor in connection with the planting,
18 cultivating, harvesting or field packing of seasonal agricultural crops,
19 except such employees whose principal duties are operating any
20 mechanically-driven device in such operations.

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

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

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

31 (i) In transit.

32 (ii) Engaging in personal activities.

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

36 6. WAGES OR SALARY PAID TO A NONRESIDENT WHO IS IN THIS STATE ON A
37 TEMPORARY BASIS FOR THE PURPOSE OF PERFORMING DISASTER RECOVERY FROM A
38 DECLARED DISASTER DURING A DISASTER PERIOD AS DEFINED IN SECTION 42-1130.

39 B. In addition to the exemptions from the withholding provisions
40 contained in subsection A of this section, because of the temporary nature of
41 such employment, no amount shall be deducted or retained from wages paid to a
42 nonresident of this state engaged in any phase of motion picture production
43 when, prior to the time of payment of such wages, an application is made by
44 the employer to the department, on forms prescribed by the department, for an
45 exemption from the withholding provisions of this section and the department

1 determines that the nonresident would be allowed a credit under section
2 43-1096 against all of the taxes upon such wages imposed by this chapter.

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

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

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

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

12 Sec. 7. Section 43-1091, Arizona Revised Statutes, is amended to read:

13 43-1091. Gross income of a nonresident

14 A. In the case of nonresidents, Arizona gross income includes only
15 that portion of federal adjusted gross income which represents income from
16 sources within this state.

17 B. INCOME OF A NONRESIDENT FROM THE WAGES OR SALARY RECEIVED BY THE
18 NONRESIDENT EMPLOYEE WHO IS IN THIS STATE ON A TEMPORARY BASIS FOR THE
19 PURPOSE OF PERFORMING DISASTER RECOVERY FROM A DECLARED DISASTER DURING A
20 DISASTER PERIOD AS DEFINED IN SECTION 42-1130 IS NOT CONSIDERED INCOME FROM
21 SOURCES WITHIN THIS STATE.

22 Sec. 8. Section 43-1097, Arizona Revised Statutes, is amended to read:

23 43-1097. Change of residency status

24 A. During the tax year in which a taxpayer changes from a resident to
25 a nonresident, Arizona taxable income shall include all of the following:

26 1. All income and deductions realized or recognized, or both,
27 depending on the taxpayer's method of accounting, during the period the
28 individual was a resident, and any income accrued by a cash basis taxpayer
29 prior to the time the taxpayer became a nonresident of this state.

30 2. All income and deductions earned in Arizona or derived from Arizona
31 sources after the time the taxpayer became a nonresident of this state.

32 B. During the tax year in which a taxpayer changes from a nonresident
33 to a resident, Arizona taxable income shall include all of the following:

34 1. All income and deductions realized or recognized, or both,
35 depending on the taxpayer's method of accounting, during the period the
36 individual was a resident, except any income accrued by a cash basis taxpayer
37 prior to the time the taxpayer became a resident of this state.

38 2. All income and deductions earned in Arizona or derived from Arizona
39 sources prior to the time the taxpayer became a resident of this state.

40 C. INCOME RECEIVED WHILE A NONRESIDENT FROM THE WAGES OR SALARY
41 RECEIVED BY AN EMPLOYEE WHO IS IN THIS STATE ON A TEMPORARY BASIS FOR THE
42 PURPOSE OF PERFORMING DISASTER RECOVERY FROM A DECLARED DISASTER DURING A
43 DISASTER PERIOD AS DEFINED IN SECTION 42-1130 IS NOT CONSIDERED INCOME
44 DERIVED FROM SOURCES WITHIN THIS STATE.

45 Sec. 9. Effective date

H.B. 2046

1 This act is effective from and after December 31, 2014.

APPROVED BY THE GOVERNOR APRIL 16, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2014.