

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HOUSE BILL 2287

AN ACT

AMENDING SECTIONS 42-2001, 43-401, 43-1088, 43-1089 AND 43-1089.01, ARIZONA
REVISED STATUTES; RELATING TO WITHHOLDING TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 42-2001, Arizona Revised Statutes, is amended to
3 read:
4 42-2001. Definitions
5 In this article, unless the context otherwise requires:
6 1. "Affidavits" includes forms received to report nontaxable estates.
7 2. "Confidential information":
8 (a) Includes the following information whether it concerns individual
9 taxpayers or is aggregate information for specifically identified taxpayers:
10 (i) Returns and reports filed with the department for income tax,
11 withholding tax, transaction privilege tax, luxury tax, use tax, rental
12 occupancy tax, property tax, estate tax and severance tax.
13 (ii) Affidavits, reports or other information filed relating to
14 taxable and nontaxable estates.
15 (iii) Applications for transaction privilege licenses, luxury tax
16 licenses, use tax licenses and withholding licenses.
17 (iv) Information discovered concerning taxes and receipts by the
18 department, whether or not by compulsory process.
19 (v) Return information obtained from the United States internal
20 revenue service and United States bureau of alcohol, tobacco and firearms.
21 (vi) Information supplied at the special request of the department by
22 a taxpayer which the taxpayer requests to be held in confidence.
23 (vii) Guidelines, standards or procedures that are established by the
24 department for, or other information relating to, selecting returns or
25 taxpayers for examination or settling or compromising any tax liability.
26 (viii) A taxpayer's identity, the nature, source or amount of the
27 taxpayer's income, payments, receipts, deductions, exemptions, credits,
28 assets, liabilities, net worth, tax liability, tax withheld, deficiencies,
29 overassessments or tax payments, whether the taxpayer's return was, is being
30 or will be examined or subject to investigation, collection or processing or
31 any other data received by, recorded by, prepared by, furnished to or
32 collected by the department with respect to a return or with respect to the
33 termination, or possible existence, of liability of any person for any tax,
34 penalty or interest imposed pursuant to this title or title 43.
35 (ix) INFORMATION SUPPLIED BY AN EMPLOYEE TO AN EMPLOYER REGARDING THE
36 EMPLOYEE'S ELECTION TO HAVE THE EMPLOYEE'S WITHHOLDING TAX REDUCED FOR THE
37 PURPOSES OF CONTRIBUTIONS TO QUALIFYING CHARITABLE ORGANIZATIONS, QUALIFIED
38 SCHOOL TUITION ORGANIZATIONS OR PUBLIC SCHOOLS PURSUANT TO SECTION 43-401,
39 SUBSECTION H.
40 (b) Does not include information which is otherwise a public record.
41 3. "Report" includes a notice of insurance payments, a request for a
42 release of a bank account and an inventory of a safe deposit box.
43 4. "Return" includes any form prescribed by the department and any
44 supporting schedules, attachments and lists.

1 5. "Tax administration" includes assessment, collection,
2 investigation, litigation, statistical gathering functions, enforcement,
3 policy making functions or management of those functions of the tax revenue
4 laws of this state.

5 6. "Taxpayer", with respect to a joint return, means either party.

6 Sec. 2. Section 43-401, Arizona Revised Statutes, is amended to read:

7 43-401. Withholding tax; rates; election by employee

8 A. Except as provided by subsection B of this section, every employer
9 at the time of the payment of wages, salary, bonus or other emolument to any
10 employee whose compensation is for services performed within this state shall
11 deduct and retain from the compensation an amount equal to a percentage,
12 determined pursuant to subsection C of this section, of the total amount of
13 the federal income tax deducted and withheld by an employer from the total
14 value of such wages, bonus or other emolument of an employee under the
15 provisions of the United States internal revenue code computed without
16 deductions for any amount withheld.

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

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

20 2. The employer's employees in writing in a manner prescribed by the
21 department.

22 C. The percentage deducted and retained under subsection A of this
23 section shall be:

24 1. If the employee's annual compensation is less than fifteen thousand
25 dollars, ten per cent, nineteen per cent, twenty-three per cent, twenty-five
26 per cent, thirty-one per cent or thirty-seven per cent, at the employee's
27 election pursuant to subsection F of this section.

28 2. If the employee's annual compensation is fifteen thousand dollars
29 or more, nineteen per cent, twenty-three per cent, twenty-five per cent,
30 thirty-one per cent or thirty-seven per cent, at the employee's election
31 pursuant to subsection F of this section.

32 3. Zero per cent at the election of an employee who had no state
33 income tax liability in the prior taxable year and expects to have no state
34 income tax liability for the current taxable year.

35 D. If the amount collected and payable by the employer to the
36 department in each of the preceding four calendar quarters did not exceed an
37 average of one thousand five hundred dollars, the amount collected shall be
38 paid to the department on or before April 30, July 31, October 31 and January
39 31 for the preceding calendar quarter. If such amount exceeded one thousand
40 five hundred dollars in each of the preceding four calendar quarters, the
41 employer shall pay to the department the amount the employer deducts and
42 retains pursuant to this section at the same time as the employer is required
43 to make deposits of federal tax pursuant to section 6302 of the internal
44 revenue code. On or before April 30, July 31, October 31 and January 31 each
45 year the employer shall reconcile the amounts payable during the preceding

1 calendar quarter in a manner prescribed by the department, except that if the
2 full amount collected and payable is paid timely to the department under this
3 subsection, the employer may reconcile the amounts on or before May 10,
4 August 10, November 10 and February 10 each year. The department by rule may
5 allow and determine which employers qualify for annual payments of
6 withholding taxes, with an annual report by the employer pursuant to section
7 43-412, subsection B, if the qualifying employer has established sufficient
8 payment history to indicate that the employer is current and in good standing
9 pursuant to standards established by rule. For any business which has not
10 had a withholding certificate for the four preceding consecutive quarters,
11 the quarterly average shall be computed in a manner prescribed by the
12 department.

13 E. If an employer fails to make a timely monthly payment because prior
14 to that reporting period it reported on a quarterly basis instead of on a
15 monthly basis, the department shall notify the employer that it is out of
16 compliance with this section. Notwithstanding section 42-1125, the
17 department shall not assess a penalty against an employer for failing to make
18 a timely monthly payment if the employer had filed and remitted all taxes due
19 on a quarterly basis and brings all filings and payments into current
20 compliance within thirty days after being notified by the department.

21 F. Each employee shall elect the amount authorized by subsection C of
22 this section to be withheld for application toward the employee's state
23 income tax liability. The election provided under this subsection shall be
24 exercised by each employee, in writing on a form prescribed by the
25 department. The election shall be made within five days of employment. Each
26 employer shall notify the employees of the election made available under this
27 subsection and shall have election forms available at all times. Each form
28 shall be completed in triplicate, with one copy each for the department, the
29 employer and the employee. The employer shall file a copy of each completed
30 form with the department. Any employee failing to complete an election form
31 as prescribed shall be deemed to have elected the smallest applicable
32 withholding percentage.

33 G. Before ~~October 1, 2005 and before~~ July 1 ~~OF~~ each year ~~thereafter~~,
34 each employer who chooses to not withhold tax pursuant to subsection B of
35 this section shall notify each employee that:

36 1. State income taxes will not be withheld from compensation in
37 December.

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

41 H. AT AN EMPLOYEE'S WRITTEN REQUEST, THE EMPLOYER MAY AGREE TO REDUCE
42 THE AMOUNT WITHHELD UNDER THIS SECTION BY THE AMOUNT OF CREDIT THAT THE
43 EMPLOYEE REPRESENTS TO THE EMPLOYER THAT THE EMPLOYEE WILL QUALIFY FOR AND BE
44 ENTITLED TO UNDER SECTIONS 43-1088, 43-1089 AND 43-1089.01. THE EMPLOYEE'S
45 REQUEST MUST INCLUDE THE NAME AND ADDRESS OF THE QUALIFYING CHARITABLE

1 ORGANIZATION, QUALIFIED SCHOOL TUITION ORGANIZATION OR PUBLIC SCHOOL. WITHIN
2 THIRTY DAYS AFTER AGREEING TO THE EMPLOYEE'S REQUEST, THE EMPLOYER SHALL
3 REDUCE THE WITHHOLDING AMOUNT BY THE AMOUNT OF THE CREDIT, BUT NOT BELOW
4 ZERO, PRORATED FOR THE NUMBER OF PAY PERIODS REMAINING IN THE EMPLOYEE'S
5 TAXABLE YEAR AFTER THE EMPLOYEE MAKES THE REQUEST. IF AN EMPLOYER AGREES TO
6 REDUCE THE WITHHOLDING AMOUNT PURSUANT TO THIS SUBSECTION, THE FOLLOWING
7 APPLY:

8 1. WITHIN FIFTEEN DAYS AFTER THE END OF EACH CALENDAR QUARTER, THE
9 EMPLOYER MUST PAY THE ENTIRE AMOUNT OF THE REDUCTION IN WITHHOLDING TAX FOR
10 THAT QUARTER TO THE DESIGNATED CHARITABLE ORGANIZATION, SCHOOL TUITION
11 ORGANIZATION OR PUBLIC SCHOOL. THESE PAYMENTS ARE CONSIDERED TO BE ON THE
12 EMPLOYEE'S BEHALF, AND NOT THE EMPLOYER'S, FOR THE PURPOSES OF QUALIFYING FOR
13 THE INCOME TAX CREDITS UNDER SECTIONS 43-1088, 43-1089 AND 43-1089.01.

14 2. THE EMPLOYEE IS RESPONSIBLE AND ACCOUNTABLE FOR THE ACCURACY AND
15 THE AMOUNT OF REDUCTION IN WITHHOLDING TAX AND THE PAYMENTS TO THE CHARITABLE
16 ORGANIZATION, SCHOOL TUITION ORGANIZATION OR PUBLIC SCHOOL.

17 3. THE EMPLOYER IS RESPONSIBLE AND ACCOUNTABLE TO THE CHARITABLE
18 ORGANIZATION, SCHOOL TUITION ORGANIZATION OR PUBLIC SCHOOL, TO THE EMPLOYEE
19 AND TO THE DEPARTMENT FOR ACTUALLY MAKING THE REQUIRED PAYMENTS.

20 4. WITHIN THIRTY DAYS AFTER THE END OF EACH CALENDAR YEAR, OR WITHIN
21 FIFTEEN DAYS AFTER THE TERMINATION OF EMPLOYMENT, THE EMPLOYER MUST FURNISH
22 TO EACH ELECTING EMPLOYEE AND TO THE DEPARTMENT A STATEMENT OF THE AMOUNT
23 WITHHELD AND PAID ON BEHALF OF THE EMPLOYEE DURING THAT YEAR.

24 Sec. 3. Section 43-1088, Arizona Revised Statutes, is amended to read:
25 43-1088. Credit for contribution to charitable organization
26 that provides assistance to the working poor:
27 definitions

28 A. For taxable years beginning from and after December 31, 1997, a
29 credit is allowed against the taxes imposed by this title for voluntary cash
30 contributions ~~made~~ by the taxpayer OR ON THE TAXPAYER'S BEHALF PURSUANT TO
31 SECTION 43-401, SUBSECTION H during the taxable year to a qualifying
32 charitable organization as determined pursuant to subsection F of this
33 section, but not exceeding:

34 1. Two hundred dollars in any taxable year for a single individual or
35 a head of household.

36 2. Three hundred dollars in taxable year 2005 for a married couple
37 filing a joint return.

38 3. Four hundred dollars in taxable year 2006 and any subsequent
39 TAXABLE year for a married couple filing a joint return.

40 B. A husband and wife who file separate returns for a taxable year in
41 which they could have filed a joint return may each claim only one-half of
42 the tax credit that would have been allowed for a joint return.

43 C. If the allowable tax credit exceeds the taxes otherwise due under
44 this title on the claimant's income, or if there are no taxes due under this
45 title, the taxpayer may carry forward the amount of the claim not used to

1 offset the taxes under this title for not more than five consecutive taxable
2 years' income tax liability.

3 D. The credit allowed by this section is in lieu of a deduction
4 pursuant to section 170 of the internal revenue code and taken for state tax
5 purposes.

6 E. Taxpayers taking a credit authorized by this section shall provide
7 the name of the qualifying charitable organization and the amount of the
8 contribution to the department of revenue on forms provided by the
9 department.

10 F. The credit under this section applies only to contributions to
11 qualifying charitable organizations that exceed the total amount deducted
12 pursuant to section 170 of the internal revenue code in the taxpayer's
13 baseline year. The taxpayer's baseline year is:

14 1. The 1996 taxable year if the taxpayer deducted charitable
15 contributions pursuant to section 170 of the internal revenue code in the
16 1996 taxable year.

17 2. If the taxpayer did not deduct charitable contributions pursuant to
18 section 170 of the internal revenue code in the 1996 taxable year, the
19 taxpayer's baseline year is the first taxable year after 1996 that the
20 taxpayer deducted charitable contributions pursuant to section 170 of the
21 internal revenue code.

22 G. A qualifying charitable organization shall provide the department
23 of revenue with a written certification that it meets all criteria to be
24 considered a qualifying charitable organization. The organization shall also
25 notify the department of any changes that may affect the qualifications under
26 this section. The department shall compile and make available to the public
27 a list of the qualifying organizations.

28 H. For the purposes of this section:

29 1. "Low income residents" means persons whose household income is less
30 than one hundred fifty per cent of the federal poverty level.

31 2. "Qualifying charitable organization" means a charitable
32 organization that is exempt from federal income taxation under section
33 501(c)(3) of the internal revenue code or is a designated community action
34 agency that receives community services block grant program monies pursuant
35 to 42 United States Code section 9901. The organization must spend at least
36 fifty per cent of its budget on services to residents of this state who
37 receive temporary assistance for needy families benefits or low income
38 residents of this state and their households. Taxpayers choosing to make
39 donations through an umbrella charitable organization that collects donations
40 on behalf of member charities shall designate that the donation be directed
41 to a member charitable organization that would qualify under this section on
42 a stand-alone basis.

1 6. For each school to which educational scholarships or tuition grants
2 were awarded:

3 (a) The name and address of the school.

4 (b) The number of educational scholarships and tuition grants awarded
5 during the previous calendar year.

6 (c) The total dollar amount of educational scholarships and tuition
7 grants awarded during the previous calendar year.

8 G. For the purposes of this section:

9 1. "Handicapped student" means a student who has any of the following
10 conditions:

11 (a) Hearing impairment.

12 (b) Visual impairment.

13 (c) Preschool moderate delay.

14 (d) Preschool severe delay.

15 (e) Preschool speech or language delay.

16 2. "Qualified school" means a nongovernmental primary school or
17 secondary school or a preschool for handicapped students that is located in
18 this state, that does not discriminate on the basis of race, color, handicap,
19 familial status or national origin and that satisfies the requirements
20 prescribed by law for private schools in this state on January 1, 1997.

21 3. "School tuition organization" means a charitable organization in
22 this state that is exempt from federal taxation under section 501(c)(3) of
23 the internal revenue code and that allocates at least ninety per cent of its
24 annual revenue for educational scholarships or tuition grants to children to
25 allow them to attend any qualified school of their parents' choice. In
26 addition, to qualify as a school tuition organization the charitable
27 organization shall provide educational scholarships or tuition grants to
28 students without limiting availability to only students of one school.

29 Sec. 5. Section 43-1089.01, Arizona Revised Statutes, is amended to
30 read:

31 43-1089.01. Tax credit; public school fees and contributions;
32 definitions

33 A. A credit is allowed against the taxes imposed by this title for the
34 amount of any fees or cash contributions ~~made~~ by a taxpayer **OR ON THE**
35 **TAXPAYER'S BEHALF PURSUANT TO SECTION 43-401, SUBSECTION H** during the taxable
36 year to a public school located in this state for the support of
37 extracurricular activities or character education programs of the public
38 school, but not exceeding:

39 1. Two hundred dollars for a single individual or a head of household.

40 2. Three hundred dollars in taxable year 2005 for a married couple
41 filing a joint return.

42 3. Four hundred dollars in taxable year 2006 and any subsequent
43 **TAXABLE** year for a married couple filing a joint return.

1 B. A husband and wife who file separate returns for a taxable year in
2 which they could have filed a joint return may each claim only one-half of
3 the tax credit that would have been allowed for a joint return.

4 C. The credit allowed by this section is in lieu of any deduction
5 pursuant to section 170 of the internal revenue code and taken for state tax
6 purposes.

7 D. If the allowable tax credit exceeds the taxes otherwise due under
8 this title on the claimant's income, or if there are no taxes due under this
9 title, the taxpayer may carry the amount of the claim not used to offset the
10 taxes under this title forward for not more than five consecutive taxable
11 years' income tax liability.

12 E. The site council of the public school that receives contributions
13 that are not designated for a specific purpose shall determine how the
14 contributions are used at the school site. If a charter school does not have
15 a site council, the principal, director or chief administrator of the charter
16 school shall determine how the contributions that are not designated for a
17 specific purpose are used at the school site.

18 F. A public school that receives fees or a cash contribution pursuant
19 to subsection A of this section shall report to the department, in a form
20 prescribed by the department, by February 28 of each year the following
21 information:

22 1. The total number of fee and cash contribution payments received
23 during the previous calendar year.

24 2. The total dollar amount of fees and contributions received during
25 the previous calendar year.

26 3. The total dollar amount of fees and contributions spent by the
27 school during the previous calendar year.

28 G. For the purposes of this section:

29 1. "Character education programs" means a program described in section
30 15-719.

31 2. "Extracurricular activities" means school sponsored activities that
32 require enrolled students to pay a fee in order to participate including fees
33 for:

34 (a) Band uniforms.

35 (b) Equipment or uniforms for varsity athletic activities.

36 (c) Scientific laboratory materials.

37 (d) In-state or out-of-state trips that are solely for competitive
38 events. Extracurricular activities do not include any senior trips or events
39 that are recreational, amusement or tourist activities.

40 Sec. 6. Effective date

41 This act is effective from and after December 31, 2009.