

**ARIZONA DEPARTMENT OF REVENUE**  
**ARIZONA WITHHOLDING TAX RULING WTR 92-3**

(On March 4, 2020, references to the employee completing a second copy of Arizona Form WEC to be submitted to the department was deleted. The department no longer requires the receipt of Form WEC. References to Arizona withholding being a percentage of federal income tax withheld was changed to Arizona withholding being the percentages reported on Arizona Form A-4. A footnote was added on page 2 acknowledging a 1997 amendment providing employers the option on not withholding Arizona income tax on nonresidents until the employee is physically present in Arizona for 60 days or more.)

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

**ISSUE:**

Arizona Income Tax Withholding for:

- I. Nonresident individuals working in Arizona.
- II. Resident individuals working outside of Arizona.

**APPLICABLE LAW:**

Arizona Revised Statutes (A.R.S.) § 43-401 requires every employer to withhold from wages, salary, bonus or other emolument paid to any employee for services performed within the state.

A.R.S. § 43-434 provides an exemption from withholding for certain nonresident employees.

## **DISCUSSION:**

### **I. Nonresident Individuals Working In Arizona:**

Withholding is required from nonresident individuals when the service performed is within Arizona (A.R.S. § 43-401).<sup>1</sup>

A nonresident employee who performs services for an employer within Arizona may claim an exemption from Arizona withholding taxes (A.R.S. § 43-434). The exemption is allowed if the nonresident employee would be allowed a credit for income taxes paid to his state of residency or domicile under A.R.S. § 43-1096 against an income tax liability upon wages and salaries paid such nonresident individual taxpayer. The Arizona credit allowed to the nonresident individual pursuant to A.R.S. § 43-1096 is based upon reciprocal statutory provisions which provide that Arizona residents receive similar credits or are not subject to tax by the other state on income from sources within that state. Attached is an appendix listing the states which currently offer such provisions and for which the Arizona exemption is allowed.

Application for exemption from Arizona withholding taxes must be made by the employee prior to payment of wages. The necessary form used for this exemption is Arizona Form WEC. The employee completes Form WEC and submits the completed form to the employer. The employer retains the form for its records.

Although a nonresident employee may be exempt from Arizona withholding tax, he may be required to file an Arizona nonresident individual income tax return (Form 140NPR) if he meets the statutory requirements for filing individual income tax returns which are set forth in A.R.S. § 43-301.

### **II. Resident Individuals Working Outside of Arizona:**

Arizona withholding is required from income received for services performed within Arizona pursuant to A.R.S. § 43-401. Since withholding is required only for services performed within Arizona, an employer is not required to withhold

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<sup>1</sup> A.R.S. § 43-403(5) states employers are not required to withhold Arizona income taxes on nonresident employees who are physically present in Arizona for less than 60 days in a calendar year for the purpose of performing a service for the benefit of the employer.

Arizona taxes on compensation derived from services not performed within Arizona.

Although withholding is not required in this case, the Department allows it when an employer, as a service to its employees that are subject to Arizona income tax, decides to withhold Arizona income tax. However, due to the statutory provisions and Departmental systems and procedures, it is necessary for the employer who voluntarily withholds these taxes to comply with the same statutory provisions (A.R.S. §§ 43-401 and 43-412) and in the same manner as those employers who are required to withhold Arizona income taxes. Therefore, the taxes withheld must be based on one of the specified percentages indicated on Arizona Form A-4 and reports must be filed in a timely manner.

**RULING:**

I. Withholding is required from nonresident individuals when the service performed is within Arizona pursuant to A.R.S. § 43-401. However, a nonresident employee who performs services for an employer within Arizona may claim an exemption from Arizona withholding taxes pursuant to A.R.S. § 43-434.

II. Since withholding is required only for services performed within Arizona, an employer is not required to withhold Arizona taxes on compensation derived from services not performed within Arizona. However, the Department of Revenue will accept such withholding provided that the withholding is made in the same manner as those employers who are required to withhold Arizona income taxes.

Paul Waddell, Director Signed October 1, 1993

## **APPENDIX TO ARIZONA WITHHOLDING TAX RULING - WTR 92-3**

A nonresident employee who performs services for an employer within Arizona may claim an exemption from Arizona withholding taxes if the employee is a resident of or is domiciled in one of the following states:

California

Indiana

Oregon

Virginia