

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2100

AN ACT

AMENDING SECTIONS 42-2001, 43-401, 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 QUALIFIED SCHOOL TUITION ORGANIZATIONS OR PUBLIC
38 SCHOOLS PURSUANT TO SECTION 43-401, SUBSECTION H.
39 (b) Does not include information which is otherwise a public record.
40 3. "Report" includes a notice of insurance payments, a request for a
41 release of a bank account and an inventory of a safe deposit box.
42 4. "Return" includes any form prescribed by the department and any
43 supporting schedules, attachments and lists.
44 5. "Tax administration" includes assessment, collection,
45 investigation, litigation, statistical gathering functions, enforcement,

1 policy making functions or management of those functions of the tax revenue
2 laws of this state.

3 6. "Taxpayer", with respect to a joint return, means either party.
4 Sec. 2. Section 43-401, Arizona Revised Statutes, is amended to read:
5 43-401. Withholding tax; rates; election by employee;
6 violation; classification

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

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

- 18 1. The department on a form prescribed by the department.
- 19 2. The employer's employees in writing in a manner prescribed by the
20 department.

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

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

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

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

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

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

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

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

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

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

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

40 H. AT AN EMPLOYEE'S WRITTEN REQUEST, THE EMPLOYER MAY AGREE TO REDUCE
41 THE AMOUNT WITHHELD UNDER THIS SECTION BY THE AMOUNT OF CREDIT THAT THE
42 EMPLOYEE REPRESENTS TO THE EMPLOYER THAT THE EMPLOYEE WILL QUALIFY FOR AND BE
43 ENTITLED TO UNDER SECTION 43-1089 OR 43-1089.01, OR BOTH. THE EMPLOYEE'S
44 REQUEST MUST INCLUDE THE NAME AND ADDRESS OF THE QUALIFIED SCHOOL TUITION
45 ORGANIZATION OR PUBLIC SCHOOL. WITHIN THIRTY DAYS AFTER AGREEING TO THE

1 EMPLOYEE'S REQUEST, THE EMPLOYER SHALL REDUCE THE WITHHOLDING AMOUNT BY THE
2 AMOUNT OF THE CREDIT, BUT NOT BELOW ZERO, PRORATED FOR THE NUMBER OF PAY
3 PERIODS REMAINING IN THE EMPLOYEE'S TAXABLE YEAR AFTER THE EMPLOYEE MAKES THE
4 REQUEST. IF AN EMPLOYER AGREES TO REDUCE THE WITHHOLDING AMOUNT PURSUANT TO
5 THIS SUBSECTION, THE FOLLOWING APPLY:

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

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

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

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

22 I. AN EMPLOYER THAT FRAUDULENTLY APPROPRIATES, OR THAT CONCEALS WITH A
23 FRAUDULENT INTENT TO APPROPRIATE, TO ANY OTHER USE OR PURPOSE ANY PART OF
24 REDUCED WITHHOLDING TAXES UNDER SUBSECTION H OF THIS SECTION IS GUILTY OF A
25 CLASS 1 MISDEMEANOR.

26 Sec. 3. Section 43-1089, Arizona Revised Statutes, is amended to read:
27 43-1089. Credit for contributions to school tuition
28 organization; definitions

29 A. A credit is allowed against the taxes imposed by this title for the
30 amount of voluntary cash contributions ~~made~~ by the taxpayer **OR ON THE**
31 **TAXPAYER'S BEHALF PURSUANT TO SECTION 43-401, SUBSECTION H** during the taxable
32 year to a school tuition organization, but not exceeding:

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

35 2. Eight hundred twenty-five dollars in taxable year 2005 for a
36 married couple filing a joint return.

37 3. One thousand dollars in taxable year 2006 and any subsequent
38 **TAXABLE** year for a married couple filing a joint return.

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

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

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

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

6 E. The tax credit is not allowed if the taxpayer designates the
7 taxpayer's contribution to the school tuition organization for the direct
8 benefit of any dependent of the taxpayer.

9 F. A school tuition organization that receives a voluntary cash
10 contribution pursuant to subsection A shall report to the department, in a
11 form prescribed by the department, by February 28 of each year the following
12 information:

13 1. The name, address and contact name of the school tuition
14 organization.

15 2. The total number of contributions received during the previous
16 calendar year.

17 3. The total dollar amount of contributions received during the
18 previous calendar year.

19 4. The total number of children awarded educational scholarships or
20 tuition grants during the previous calendar year.

21 5. The total dollar amount of educational scholarships and tuition
22 grants awarded during the previous calendar year.

23 6. For each school to which educational scholarships or tuition grants
24 were awarded:

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

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

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

30 G. For the purposes of this section:

31 1. "Handicapped student" means a student who has any of the following
32 conditions:

33 (a) Hearing impairment.

34 (b) Visual impairment.

35 (c) Preschool moderate delay.

36 (d) Preschool severe delay.

37 (e) Preschool speech or language delay.

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

43 3. "School tuition organization" means a charitable organization in
44 this state that is exempt from federal taxation under section 501(c)(3) of
45 the internal revenue code and that allocates at least ninety per cent of its

1 annual revenue for educational scholarships or tuition grants to children to
2 allow them to attend any qualified school of their parents' choice. In
3 addition, to qualify as a school tuition organization the charitable
4 organization shall provide educational scholarships or tuition grants to
5 students without limiting availability to only students of one school.

6 Sec. 4. Section 43-1089.01, Arizona Revised Statutes, is amended to
7 read:

8 43-1089.01. Tax credit; public school fees and contributions;
9 definitions

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

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

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

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

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

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

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

32 E. The site council of the public school that receives contributions
33 that are not designated for a specific purpose shall determine how the
34 contributions are used at the school site. If a charter school does not have
35 a site council, the principal, director or chief administrator of the charter
36 school shall determine how the contributions that are not designated for a
37 specific purpose are used at the school site.

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

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

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

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

3 G. For the purposes of this section:

4 1. "Character education programs" means a program described in section
5 15-719.

6 2. "Extracurricular activities" means school sponsored activities that
7 require enrolled students to pay a fee in order to participate including fees
8 for:

9 (a) Band uniforms.

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

11 (c) Scientific laboratory materials.

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

15 Sec. 5. Effective date

16 This act is effective from and after December 31, 2008.