

Conference Engrossed

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SENATE BILL 1151

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 QUALIFIED CHARITABLE ORGANIZATIONS, SCHOOL
38 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 violation; classification

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

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

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

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

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

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

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

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

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

1 year the employer shall reconcile the amounts payable during the preceding
2 calendar quarter in a manner prescribed by the department. For taxable years
3 or reporting periods that begin from and after December 31, 1997, the
4 department by rule may allow and determine which employers qualify for annual
5 payments of withholding taxes, with an annual report by the employer pursuant
6 to section 43-412, subsection B, if the qualifying employer has established
7 sufficient payment history to indicate that the employer is current and in
8 good standing pursuant to standards established by rule. For any business
9 which has not had a withholding certificate for the four preceding
10 consecutive quarters, the quarterly average shall be computed in a manner
11 prescribed by the 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 each year ~~thereafter~~, each
33 employer who chooses to not withhold tax pursuant to subsection B of this
34 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 THE EMPLOYEE'S WRITTEN REQUEST, THE AMOUNT WITHHELD UNDER THIS
41 SECTION MAY BE REDUCED BY THE AMOUNT OF CREDIT THAT THE EMPLOYEE REPRESENTS
42 TO THE EMPLOYER THE EMPLOYEE WILL QUALIFY FOR AND BE ENTITLED TO UNDER
43 SECTIONS 43-1088, 43-1089 AND 43-1089.01. THE EMPLOYEE'S REQUEST MUST
44 INCLUDE THE NAME AND ADDRESS OF THE QUALIFIED CHARITABLE ORGANIZATION, SCHOOL
45 TUITION ORGANIZATION OR PUBLIC SCHOOL. WITHIN THIRTY DAYS AFTER THE

1 EMPLOYEE'S REQUEST, THE EMPLOYER MAY 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.

5 I. IF AN EMPLOYER ELECTS TO REDUCE THE WITHHOLDING AMOUNT PURSUANT TO
6 SUBSECTION H OF THIS SECTION AND ESTABLISHES A CORRESPONDING PAYROLL
7 DEDUCTION PROGRAM TO PAY THE AMOUNT OF THE REDUCED WITHHOLDING TO THE
8 EMPLOYEE'S DESIGNATED QUALIFIED CHARITABLE ORGANIZATION, SCHOOL TUITION
9 ORGANIZATION OR PUBLIC SCHOOL, THE FOLLOWING APPLIES:

10 1. WITHIN FIFTEEN DAYS AFTER THE CLOSE OF EACH PAY PERIOD, THE
11 EMPLOYER SHALL PAY THE ENTIRE AMOUNT OF THE REDUCTION IN WITHHOLDING TAX FOR
12 THAT PAY PERIOD TO THE DESIGNATED QUALIFIED CHARITABLE ORGANIZATION, SCHOOL
13 TUITION ORGANIZATION OR PUBLIC SCHOOL. THESE PAYMENTS ARE CONSIDERED TO BE
14 ON THE EMPLOYEE'S BEHALF, AND NOT THE EMPLOYER'S, FOR THE PURPOSES OF
15 QUALIFYING FOR THE INCOME TAX CREDITS UNDER SECTIONS 43-1088, 43-1089 AND
16 43-1089.01.

17 2. THE EMPLOYEE IS RESPONSIBLE AND ACCOUNTABLE FOR THE ACCURACY AND
18 THE AMOUNT OF REDUCTION IN WITHHOLDING TAX AND THE PAYMENTS TO A QUALIFYING
19 DESIGNATED CHARITABLE ORGANIZATION, SCHOOL TUITION ORGANIZATION OR PUBLIC
20 SCHOOL.

21 3. THE EMPLOYER IS RESPONSIBLE AND ACCOUNTABLE TO THE CHARITABLE
22 ORGANIZATION, SCHOOL TUITION ORGANIZATION OR PUBLIC SCHOOL, THE EMPLOYEE AND
23 THE DEPARTMENT FOR ACTUALLY MAKING THE REQUIRED PAYMENTS.

24 4. WITHIN THIRTY DAYS AFTER THE END OF EACH CALENDAR YEAR, OR WITHIN
25 FIFTEEN DAYS AFTER THE TERMINATION OF EMPLOYMENT, THE EMPLOYER SHALL FURNISH
26 TO EACH ELECTING EMPLOYEE AND TO THE DEPARTMENT A STATEMENT OF THE AMOUNT
27 WITHHELD AND PAID ON BEHALF OF THE EMPLOYEE DURING THAT YEAR.

28 J. AN EMPLOYER THAT FRAUDULENTLY APPROPRIATES, OR THAT CONCEALS WITH A
29 FRAUDULENT INTENT TO APPROPRIATE, TO ANY OTHER USE OR PURPOSE ANY PART OF
30 REDUCED WITHHOLDING TAXES UNDER SUBSECTION I OF THIS SECTION IS GUILTY OF A
31 CLASS 1 MISDEMEANOR.

32 Sec. 3. Section 43-1088, Arizona Revised Statutes, is amended to read:

33 43-1088. Credit for contribution to charitable organization
34 that provides assistance to the working poor;
35 definitions

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

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

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

1 3. Four hundred dollars in taxable year 2006 and any subsequent year
2 for a married couple filing a joint return.

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

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

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

14 E. Taxpayers taking a credit authorized by this section shall provide
15 the name of the qualifying charitable organization and the amount of the
16 contribution to the department of revenue on forms provided by the
17 department.

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

22 1. The 1996 taxable year if the taxpayer deducted charitable
23 contributions pursuant to section 170 of the internal revenue code in the
24 1996 taxable year.

25 2. If the taxpayer did not deduct charitable contributions pursuant to
26 section 170 of the internal revenue code in the 1996 taxable year, the
27 taxpayer's baseline year is the first taxable year after 1996 that the
28 taxpayer deducted charitable contributions pursuant to section 170 of the
29 internal revenue code.

30 G. A qualifying charitable organization shall provide the department
31 of revenue with a written certification that it meets all criteria to be
32 considered a qualifying charitable organization. The organization shall also
33 notify the department of any changes that may affect the qualifications under
34 this section. The department shall compile and make available to the public
35 a list of the qualifying organizations.

36 H. For the purposes of this section:

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

39 2. "Qualifying charitable organization" means a charitable
40 organization that is exempt from federal income taxation under section
41 501(c)(3) of the internal revenue code or is a designated community action
42 agency that receives community services block grant program monies pursuant
43 to 42 United States Code section 9901. The organization must spend at least
44 fifty per cent of its budget on services to residents of this state who
45 receive temporary assistance for needy families benefits or low income

1 residents of this state and their households. Taxpayers choosing to make
2 donations through an umbrella charitable organization that collects donations
3 on behalf of member charities shall designate that the donation be directed
4 to a member charitable organization that would qualify under this section on
5 a stand-alone basis.

6 3. "Services" means cash assistance, medical care, child care, food,
7 clothing, shelter, job placement and job training services or any other
8 assistance that is reasonably necessary to meet immediate basic needs and
9 that is provided and used in this state.

10 Sec. 4. Section 43-1089, Arizona Revised Statutes, is amended to read:

11 43-1089. Credit for contributions to school tuition
12 organization; definitions

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

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

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

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

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

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

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

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

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

41 1. The name, address and contact name of the school tuition
42 organization.

43 2. The total number of contributions received during the previous
44 calendar year.

1 3. The total dollar amount of contributions received during the
2 previous calendar year.

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

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

7 6. For each school to which educational scholarships or tuition grants
8 were awarded:

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

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

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

14 G. For the purposes of this section:

15 1. "Handicapped student" means a student who has any of the following
16 conditions:

17 (a) Hearing impairment.

18 (b) Visual impairment.

19 (c) Preschool moderate delay.

20 (d) Preschool severe delay.

21 (e) Preschool speech or language delay.

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

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

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

37 43-1089.01. Tax credit; public school fees and contributions;
38 definitions

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

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

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

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

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

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

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

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

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

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

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

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

32 G. For the purposes of this section:

33 1. "Character education programs" means a program described in section
34 15-719.

35 2. "Extracurricular activities" means school sponsored activities that
36 require enrolled students to pay a fee in order to participate including fees
37 for:

38 (a) Band uniforms.

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

40 (c) Scientific laboratory materials.

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

44 Sec. 6. Effective date

45 This act is effective from and after December 31, 2006.