Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

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

CHAPTER 167

HOUSE BILL 2287

AN ACT

AMENDING SECTION 42-2001, ARIZONA REVISED STATUTES; AMENDING SECTION 43-401, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2009, CHAPTER 2, SECTION 3; AMENDING SECTIONS 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.

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

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

Sec. 2. Section 43-401, Arizona Revised Statutes, as amended by Laws 2009, chapter 2, section 3, is amended to read:

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

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

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

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

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

C. The percentage deducted and retained under subsection A of this section:

1. Through April 30, 2009 shall be:

(a) If the employee's annual compensation is less than fifteen thousand dollars, ten per cent, nineteen per cent, twenty-three per cent, twenty-five per cent, thirty-one per cent or thirty-seven per cent, at the employee's election pursuant to subsection G of this section.

(b) If the employee's annual compensation is fifteen thousand dollars or more, nineteen per cent, twenty-three per cent, twenty-five per cent, thirty-one per cent or thirty-seven per cent, at the employee's election pursuant to subsection G of this section.

(c) Zero per cent at the election of an employee who had no state income tax liability in the prior taxable year and expects to have no state income tax liability for the current taxable year.

2. Beginning from and after April 30, 2009 through December 31, 2009, if an employee's rate of withholding under paragraph 1 of this subsection immediately before May 1, 2009 was:

(a) Zero per cent at the election of an employee who had no state income tax liability in the prior taxable year and expects to have no state income tax liability for the current taxable year, the withholding tax rate shall remain zero per cent.

(b) Ten per cent, the withholding tax rate shall be increased to 11.5 per cent.

(c) Nineteen per cent, the withholding tax rate shall be increased to 21.9 per cent.

(d) Twenty-three per cent, the withholding tax rate shall be increased to 26.5 per cent.

(e) Twenty-five per cent, the withholding tax rate shall be increased to 28.8 per cent.

(f) Thirty-one per cent, the withholding tax rate shall be increased to 35.7 per cent.

(g) Thirty-seven per cent, the withholding tax rate shall be increased to 42.6 per cent.

3. Beginning from and after December 31, 2009 through June 30, 2010, if an employee's rate of withholding under paragraph 2 of this subsection immediately before January 1, 2010 was:

(a) Zero per cent at the election of an employee who had no state income tax liability in the prior taxable year and expects to have no state income tax liability for the current taxable year, the withholding tax rate shall remain zero per cent.

(b) 11.5 per cent, the withholding tax rate shall be decreased to 10.7 per cent.

(c) 21.9 per cent, the withholding tax rate shall be decreased to 20.3 per cent.

(d) 26.5 per cent, the withholding tax rate shall be decreased to 24.5 per cent.

(e) 28.8 per cent, the withholding tax rate shall be decreased to 26.7 per cent.

(f) 35.7 per cent, the withholding tax rate shall be decreased to 33.1 per cent.

(g) 42.6 per cent, the withholding tax rate shall be decreased to 39.5 per cent.

D. Beginning from and after June 30, 2010, the amount deducted and retained under subsection A of this section shall be prescribed by tables adopted by the department. On or before March 15, 2010, the department shall submit to the joint legislative budget committee a copy of the table.

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

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

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

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

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

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

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

I. AT AN EMPLOYEE'S WRITTEN REQUEST, THE EMPLOYER MAY AGREE TO REDUCE THE AMOUNT WITHHELD UNDER THIS SECTION BY THE AMOUNT OF CREDIT THAT THE EMPLOYEE REPRESENTS TO THE EMPLOYER THAT THE EMPLOYEE WILL QUALIFY FOR AND BE ENTITLED TO UNDER SECTIONS 43-1088, 43-1089 AND 43-1089.01. THE EMPLOYEE'S

REQUEST MUST INCLUDE THE NAME AND ADDRESS OF THE QUALIFYING CHARITABLE ORGANIZATION, QUALIFIED SCHOOL TUITION ORGANIZATION OR PUBLIC SCHOOL. WITHIN THIRTY DAYS AFTER AGREEING TO THE EMPLOYEE'S REQUEST, THE EMPLOYER SHALL REDUCE THE WITHHOLDING AMOUNT BY THE AMOUNT OF THE CREDIT, BUT NOT BELOW ZERO, PRORATED FOR THE NUMBER OF PAY PERIODS REMAINING IN THE EMPLOYEE'S TAXABLE YEAR AFTER THE EMPLOYEE MAKES THE REQUEST. IF AN EMPLOYER AGREES TO REDUCE THE WITHHOLDING AMOUNT PURSUANT TO THIS SUBSECTION, THE FOLLOWING APPLY:

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

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

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

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

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

43-1088. <u>Credit for contribution to charitable organization that provides assistance to the working poor; definitions</u>

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

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

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

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

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

C. If the allowable tax credit exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this

title, the taxpayer may carry forward the amount of the claim not used to offset the taxes under this title for not more than five consecutive taxable years' income tax liability.

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

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

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

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

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

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

H. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The name and address of the school.

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

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

G. For the purposes of this section:

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

(a) Hearing impairment.

(b) Visual impairment.

(c) Preschool moderate delay.

(d) Preschool severe delay.

(e) Preschool speech or language delay.

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

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

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

43-1089.01. <u>Tax credit; public school fees and contributions; definitions</u>

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

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

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

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

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

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

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

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

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

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

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

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

G. For the purposes of this section:

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

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

(a) Band uniforms.

(b) Equipment or uniforms for varsity athletic activities.

(c) Scientific laboratory materials.

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

Sec. 6. Effective date

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

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.

Passed the House May 13, 2009

by the following vote: 36 Ayes,

11 Nays, 13 Not Voting

Speaker of the House

Norman L. Moore

Chief Clerk of the House

Passed the Senate June 25, 2009

by the following vote: 18 Ayes,

9 Nays, 3 Not Voting

President of the Senate

Chauncia Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

1st day of July, 2009

at 8:25 o'clock A. M.

Susan K Myers

Secretary to the Governor

Approved this _____ day of

_____

at _____ o'clock _____ M.

_____

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____ M.

_____

Secretary of State

H.B. 2287

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

June 29, 2009,

by the following vote: 33 Ayes,

20 Nays, 7 Not Voting

Speaker of the House

Norman L. Moore

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

1st day of July, 2009,

at 8:25 o'clock A. M.

Susan K. Myers

Secretary to the Governor

Approved this 13th day of

July, 2009,

at 5:32 o'clock P M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 13th day of July, 2009,

at 7:35 o'clock P M.

Ken Bennett

Secretary of State

H.B. 2287