



Montana Department of Revenue

WITHHOLDING TAX GUIDE

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I. STATE INCOME TAX WITHHOLDING

A. EMPLOYERS' WITHHOLDING RESPONSIBILITIES

Individuals who earn wages by performing services in Montana are liable for Montana income tax. As an employer, it is your duty by law to deduct the tax from the wages you pay. If you reside in Montana or are a nonresident employer who pays wages for services performed in Montana, you are required to withhold Montana income tax. This money belongs to your employees and is only held in trust by you, until paid to the state. You should not use withholding monies to operate your business.

B. EXEMPT WAGES

There are certain kinds of services and compensation that are excluded by law from withholding. Refer to the following Employment Tax Chart for a list of exemptions. If your employees qualify under the following exemptions, you will not need to withhold from their wages as explained below.

- **Spouse of U.S. Armed Forces Service Member** – On November 11, 2009 the Military Spouses Residency Relief Act was signed into law. The Act exempts wages paid to the spouse of a U.S. armed forces service member from state income tax if the spouse is a nonresident of the state in which the wages are earned and is present in the state solely to be with the service member who is stationed in the state. The Act was effective starting with the 2009 tax year. In order to be exempt from withholding, the spouse of the service member must give a complete Form MSR Employee Certificate of Status under the Military Spouses Residency Relief Act (MSRRA) to the employer on or before January 31 of each year.
- **North Dakota Residents Reciprocity** – Montana and North Dakota have a reciprocal agreement that calls for a resident of one of the states to pay income tax to the state of residency, even though the compensation the tax is based on is earned in the nonresidency state. You are not required to withhold Montana income tax from compensation paid to employees who have established themselves as North Dakota residents. Employees who wish to take advantage of this agreement need to obtain [Form MT-R](#) (Reciprocity Exemption from Withholding), call us toll free at (866) 859-2254 (in Helena, 444-6900), or write us at Montana Department of Revenue, P.O. Box 5835, Helena, Montana 59604-5835. The employee must complete the form and file it with you, and you will then need to send a copy to us at this same address. We may notify you to disregard an employee's false or unsubstantiated MT-R and require you to resume withholding.
- **Interstate Transportation** – If you are a motor or rail carrier, your employees are subject to the jurisdiction of the Interstate Commerce Commission and to income tax withholding only in their state of residency. Montana resident transportation workers shall pay income tax to Montana on all of their wages.
- **Native Americans** – Wages paid to an enrolled member of a Native American tribe are subject to withholding except when the employee is an enrolled tribal member of the governing tribe of the reservation on which the enrolled tribal member works and resides. The wages earned by the employee are derived from reservation sources, and the employee submits a statement to the employer attesting that the employee resides on his or her reservation, together with a certificate of enrollment. When wages are derived from both reservation and non-reservation sources, only the wages derived from reservation sources are exempt from withholding, provided the employee meets all the criteria. When an employee does not reside on his or her reservation for an entire pay period, only wages earned while the employee was residing on the reservation are exempt from taxation, provided the employee meets all the criteria.
- **Withholding from Pensions, Annuities, Deferred Compensations and IRAs** – Your employees' contributions to qualifying annuity contracts as defined by the Internal Revenue Code (IRC), such as "tax sheltered" annuity plans for teachers, deferred compensation for public employees, or other similar plans, are exempt from withholding requirements to the extent that the contributions are not included in their adjusted gross income for federal income tax purposes. Contributions made to individual retirement accounts under Sec. 3401(a)(12), IRC, while considered compensation to the employee, are not subject to Montana withholding if you reasonably expect that your employee will

be able to deduct such amounts as retirement savings account contributions. A payer is required to withhold on pension payments if the recipient requests withholding. Withholding from pensions shall be requested on the federal form W-4P and must specify a flat dollar amount of income tax to be withheld (ARM 42.17.103).

- **Withholding From Nonresidents and Nonresident Aliens** – Compensation you pay to a nonresident or nonresident alien is subject to Montana income tax withholding in all cases unless the compensation is specifically exempted under Montana law. (See earlier section on exempt wages.) If you employ nonresidents short term or indefinitely, their compensation is subject to withholding. Foreign Agricultural workers with H-2A visas are exempt from state income tax withholding.

Compensation that may be excluded from federal withholding or federal adjusted gross income under a U.S. tax treaty is subject to Montana income tax withholding. The determination of whether or not a nonresident alien qualifies for tax treaty exclusion is not made until the Montana individual income tax return is filed by the nonresident alien at year end.

MONTANA EMPLOYMENT TAX CHART

Classes of Employment		
1	A dependent of the sole proprietor for whom the sole proprietor may claim an exemption under the Internal Revenue Code	Subject
2	Spouse/dependent child of sole proprietor	Subject
3	Members of a partnership or member-managed LLC	Not Subject
4	Corporate officers	Subject
5	Agricultural labor	Not Subject
6	Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority	Not Subject
7	Service performed by a duly ordained, commissioned, or licensed minister of a church in a ministerial duty or by a member of a religious order in the exercise of duties required by the order	Not Subject
8	Other church employees	Subject
9	Services of an individual under the age of 18 delivering or distributing newspapers to a point for subsequent delivery or distributions	Not Subject
10	The sale of newspapers or magazines to ultimate consumers where the newspapers or magazines are sold wholesale to the seller at a fixed price and seller keeps the excess	Not Subject
11	Freelance correspondents, provided the person is compensated solely by the story/picture	Not Subject
12	Real estate brokers who are independent contractors	Not Subject
13	Securities and insurance salespeople (non-statutory)	Subject
14	Direct sellers engaged in the sale of consumer products, primarily in the customer's home	Not Subject
15	Cosmetologists and barbers who are independent contractors	Not Subject
16	Services as an elected public official	Subject
17	Services performed at a school, college or university by a currently enrolled student or the spouse of such a student	Subject
18	Employment with any railroad engaged in interstate commerce	Subject - Only if Montana Resident
19	Service performed by an individual who is enrolled at a nonprofit or public educational institution	Subject
20	Deceased worker – The deceased worker's final check is not subject to withholding, but is subject to individual income tax. Normally, the last check is made out to the decedent rather than to the estate and the wages are included on the W-2. On occasion, the final check is issued to the estate and entered on a 1099.	Not Subject
21	Companionship services – An employee in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act. 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is a legal guardian.	Subject
22	Officials at school amateur athletic events	Subject
23	MOA officials who are assigned to school amateur athletic events	Not Subject
24	Services performed in the employ of a hospital if such service is performed by a patient of the hospital	Not Subject
25	Services performed in Montana in the employ of any other state or the United States government	Subject

26	Services by a citizen or resident of the United States for a foreign government or an international organization	Not Subject
27	Active duty as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101 (33)	Not Subject
28	National Guard training as provided in 5 U.S.C. 5517(d)	Subject
29	Person performing services in return for aid or sustenance only	Subject
30	Employer payment for, or a contribution toward, the cost of any employee benefit group plan or program including but not limited to life or hospitalization insurance for the employee or dependents	Not Subject

Type of Payments		
1	Payments in any medium other than cash	Subject
2	Payments in the form of lodging or meals, and the services are performed by the employee at the request of and for the convenience of the employer	Not Subject
3	Tips for services rendered at a place licensed to provide food, beverage or lodging in accordance with section 3402(k) of the Internal Revenue Code of 1954	Not Subject
4	Allocated tips	Not Subject
5	All other tips	Subject
6	Dependent care assistance provided by an employer to, or on behalf of, an employee for which a credit is allowed under 15-30-2373 or 15-31-131, MCA	Not Subject

II. PAYROLL WITHHOLDING GUIDELINES

A. DETERMINE HOW MUCH TO WITHHOLD

The amount of tax you withhold from an employee's pay depends upon three factors: (1) the length of your payroll period, (2) the employee's gross pay, and (3) the number of withholding allowances claimed on the withholding allowance certificate (W-4). Wage withholding tax tables can be found at revenue.mt.gov.

B. DETERMINE WITHHOLDING ALLOWANCES

The number of allowances claimed is set by your employees for both federal and state purposes when they complete the federal Form W-4. Montana does not provide a separate W-4. Your employees can use a separate W-4 for state purposes. If so, the following rules apply:

- Exemption from withholding for federal purposes does not exempt your employees from Montana income tax withholding. Montana does not recognize an exempt status on a W-4.
- If line 5 on the W-4 is left blank or has anything other than a number entered on it, your employee is deemed to be claiming zero allowances and withholding tax should be calculated and deducted accordingly.
- Montana does not recognize the Federal Child Tax Credit for state purposes.
- You are required to provide a copy of any W-4 to the Montana Department of Revenue on which an employee has claimed more than 10 withholding allowances. If we determine that such a certificate is unacceptable, we may notify you to disregard the allowances your employee has claimed. We will then advise you of the maximum number of withholding allowances the employee can claim. If the same employee then submits another W-4 showing allowances greater than those set by the department, you are required to again disregard it.

C. WITHHOLD FROM SUPPLEMENTAL WAGES

If you pay supplemental wages such as commissions, bonuses or overtime pay with your employees' regular wages, the amount of tax withheld should be based on the total of the regular and supplemental wages. If you pay supplemental wages separately (for example, a holiday bonus), the tax withheld may, at your option, be based on:

- the total of the supplemental wage and the regular wage for the current payroll period, or
- the total of the supplemental wage and the regular wage for the last preceding payroll period that falls within the same calendar year, or
- a flat 6% of the supplemental wage

III. MONTANA WITHHOLDING PAYMENTS

A. REMITTANCE SCHEDULE AND LOOK-BACK PERIOD

The remittance schedule is the frequency that withholding payments are due to the Montana Department of Revenue.

Newly registered employers will follow a monthly remittance schedule. For established/existing employers, the department will complete a look-back review to determine the business' reporting and payment schedule for the next calendar year. The look-back period for the next tax year's filing frequency is the 12-month period from July 1 of the preceding year to June 30 of the current year. If you did not have employees for the entire duration of the look-back period, follow the monthly remittance schedule unless otherwise notified by the department.

The department determines your remittance schedule by adding the amount paid July 1 of the previous tax year through June 30 of the current tax year.

- If the amount of state income tax you withheld is \$12,000 or more, the accelerated schedule applies
- If the amount withheld is \$1,200 – \$11,999, the monthly schedule applies
- If the amount withheld is less than \$1,200, the annual schedule applies unless you are a new employer or don't have a complete look-back period
- A Not Required schedule will only apply when you are notified by the Montana Department of Revenue

Remittance Schedule and Thresholds

Thresholds	Remittance Schedule
\$12,000 or more	Accelerated - pay per federal schedule. MW-3 and W-2s due January 31.
\$1,200-11,999	Monthly – pay on the 15th of the following month. MW-3 and W-2s due January 31.
\$1,199 or less	Annual – pay on January 31 of the following year. MW-3 and W-2s due January 31.
Not Required	Payments are not required. MW-3 and W-2s due January 31.

We are required by law to:

- Review your withholding and payment history to determine your remittance schedule.
- Notify you by November 1 of each year if your remittance schedule will change for the next calendar year.

B. PAYMENT GUIDELINES

- If no wages were paid during the period, you are required to submit a zero dollar payment through an ePayment option provided in the next section or by mailing a payment voucher marked \$0.00.
- You may remit payments more frequently than defined by the remittance schedule for your account. Do not pay less frequently or you may be penalized.

C. PAYMENT OPTIONS

For your convenience, we have a variety of payment options:

Online	Online	Mail Check
Taxpayer Access Point https://tap.dor.mt.gov	ACH Credit http://revenue.mt.gov/home/online-services	Send MW-1 payment voucher and check as instructed on the form.
Free e-check processing or pay a small fee with credit/debit card payment. To pay, log in and select your Account ID. Then select Make a Payment or Pay.	Transfer funds from your financial institution to the Department of Revenue. See our website for more information.	To ensure proper credit to your account, you must include the Account ID and payment period on the form.

IV. ANNUAL FILING REQUIREMENTS

On or before January 31 of each year, you are required to file the following with the Montana Department of Revenue:

- Montana Annual Wage Withholding Tax Reconciliation form (MW-3) supporting the withholding reported on the Forms W-2 and 1099.
- Wage and Tax statement (W-2) for each employee Montana wages were paid to, with or without withholding.
- Forms 1099 with Montana state withholding.

If you discover an error on the MW-3 after year end, you are required to file an amended MW-3, remit any tax due and file corrected W-2s and/or 1099s for each affected employee.

A. FILING FORMS MW-3, W-2 AND 1099

A complete MW-3 must be filed with the department by January 31. The department does not accept the federal Form W-3. Each employer is also required to provide the department with a W-2 for each employee, as prescribed by the IRS. Whenever Montana wages are paid, you must prepare a W-2 for each employee, regardless of whether any tax was withheld. Form 1099s with the Montana state withholding amount are also required to be submitted to the department with the MW-3.

Online

Single Entry

1. Log into [TAP](#); select your Withholding Account ID.
2. For MW-3s, select the *File Now* link. Your return information will be populated from records the department has on file, including payments. You may update your information as needed.
3. For 1099s (with withholding only) and W-2s, select *File Single Withholding Forms* and follow the steps provided on the screen.

File Upload

The TAP File Upload feature can be used with Montana Department of Revenue approved payroll software products. Payroll service providers or third party preparers can submit files on behalf of clients by following these steps:

1. Request a File Upload Account (FLE) with [TAP](#). Under the Business section, select the *New* File Upload link. Your account will be set up within minutes.
2. Log into [TAP](#), select the FLE account and follow the steps provided on the screen.

Mail

Montana Department of Revenue
PO Box 5835
Helena, MT 59604-5835

Send paper MW-3s, 1099s (with MT withholding) and W-2s to the address above. **Important:** In order to successfully process the forms, your complete SSNs and FEINs must be provided on each W-2 and 1099 and all information must be clearly printed.

V. PENALTIES

It is important that you file and pay on time. If you do not, your account can be assessed the following penalties and/or interest:

A. PENALTIES FOR LATE PAY

If you do not pay your tax when due, as established by your remittance schedule, the late payment penalty is 1.5% per month on the unpaid tax, not to exceed 15% of the tax due.

The interest on tax not paid by the due date, as established by your remittance schedule, is assessed at the rate of 12% per year, and accrued at 1% per month on the unpaid tax.

B. PENALTIES FOR LATE FILE

If you do not furnish W-2s by January 31, there is a \$50 minimum penalty or \$5 per W-2 penalty, whichever is greater.

C. FAILURE TO WITHHOLD OR PAY AND OTHER PENALTIES

You are responsible to deduct and withhold as required under 15-30-2502, MCA. If you do not do so, you can be charged penalty and interest even if the actual tax liability has been paid by your employee. If you do not pay amounts withheld within the time provided, it is deemed to be an illegal conversion of trust monies. The owners of the business become personally liable for the tax due even if the business is a corporation. The taxes are not dischargeable in the case of a bankruptcy, either by the business or individual that is liable for the tax. If it is established that you knowingly or purposely intended to evade tax or any lawful requirements of the Montana Department of Revenue, we may assess additional penalties of not less than \$1,000 and not more than \$10,000 (15-1-216(3), MCA).

VI. MANAGE YOUR MONTANA ACCOUNT

A. REGISTER YOUR WITHHOLDING ACCOUNT

1. Before you begin, you will need the following information to complete your registration.
 - Federal Employer Identification Number as used to report to the Internal Revenue Service. If you do not have an FEIN, visit irs.gov to learn how to get one.
 - Date your employees started working in Montana.
 - Legal business name – as associated with the identification number and as reported to the IRS.
 - Assumed business name, trade name or DBA - this is the name used before the public.
 - Legal business address – must be a physical street address and is the legal business headquarters.
 - Current mailing address – this may be a post office box or other address. This is the address where the department will send all correspondence.
 - Contact name and phone number - this is the individual that will act as the entity's representative.
2. Register your business online via fax or mail. See information in the gray box at the end of this section.

B. ACCESS AND MANAGE YOUR WITHHOLDING ACCOUNT

Once the department has approved your registration, you will receive your Montana Department of Revenue Account ID. Remember to provide this ID with all correspondence, payments and returns sent to the department. Use this ID to sign up for the free Taxpayer Access Point (TAP). In TAP, you can view and print returns, make and view payments, view your balance, view letters, manage login access and add or edit name and address information.

C. CHANGE A BUSINESS NAME

To change your *legal business name*, send a written request to the department. In your letter, provide your Montana Department of Revenue Account ID, FEIN, current legal business name, new legal business name, contact name and phone number. You may fax or mail your letter. See information in the gray box at the end of this section.

To change the *assumed business name, trade name or DBA*, you may submit the request online via fax or mail, using the information in the gray box at the end of this section.

D. CHANGE A BUSINESS ADDRESS

Change your mailing or location address online via fax or mail. See information in the gray box at the end of this section.

E. CLOSE YOUR WITHHOLDING ACCOUNT

If your business is sold, closes, changes entity type or you discontinue paying Montana wages and you don't anticipate paying Montana wages within the next 12 months, close your withholding account in writing and include Account ID, FEIN, business name, contact name, phone number, reason for closure and date of the last payroll. Send your correspondence to the fax number or address listed in the gray box at the end of this section.

Within 30 days of ceasing to be an employer or paying payroll, you are required to send the following:

- Payment for the final payroll period in which wages were paid.
- The MW-3 and W-2s reporting your employees' wages and taxes withheld during the year to the date of termination of wage payments.

F. FILE A POWER OF ATTORNEY

A Power of Attorney form is necessary in instances when a tax preparer or any other nonowner that is not otherwise listed as a contact on the account needs access to or needs to discuss with the department any information regarding your withholding account. File a Power of Attorney online via fax or mail. See information in the gray box at the end of this section.

G. GRANT THIRD PARTY ONLINE ACCESS

Third party online access can be granted on Taxpayer Access Point ([TAP](#)) to an accountant, bookkeeper, tax preparer or other professional that is conducting business on behalf of their client (tax account holder). The tax account holder can grant different levels of access to their account. This access remains in effect until the tax account holder removes or changes permission. If someone is requesting access to your account, such as an accountant, you will receive an email stating who requested access. If you choose not to grant access, no action is required.

H. MAINTAIN RECORDS

To be prepared for an audit, you must keep a record of:

- Begin and end date of each pay period
- Total wages paid during each pay period
- Method of payment
- Your employees' names, social security numbers and wages for each pay period.
- Your employees' W-4s for all payroll periods.

For a complete explanation of the records you must keep, refer to 42.17.203 of the Administrative Rules of Montana at www.mtrules.org.

Your records must be available for inspections by the Montana Department of Revenue or our authorized representative. A field representative may audit your records. The purpose of an audit is to see that your returns are being filed correctly and that you are complying with the law. The field representatives are available to answer your questions and help you understand the state income tax withholding program.

Online	Fax	Mail
Taxpayer Access Point https://tap.dor.mt.gov Register, access and manage your account online. Submit and view returns, payments and account balance. Submit a Power of Attorney.	406-444-7724 Complete the general registration (Form GenReg), change entity information, close your account or submit a Power of Attorney.	Montana Department of Revenue PO Box 5805 Helena, MT 59604-5805

VII. MONTANA DEPARTMENT OF REVENUE CONTACT INFORMATION

If you have questions, need help completing forms or need more information, please contact the Montana Department of Revenue. We are happy to serve you!

Email	Phone	Mail
Taxpayer Access Point https://tap.dor.mt.gov	Toll-Free: 1 (866) 859-2254 In Helena: (406) 444-6900 Telephone Device for the Deaf - TDD: (406) 444-2830	Montana Department of Revenue PO Box 5835 Helena, MT 59604-5835