

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.17.101, 42.17.105,) PROPOSED AMENDMENT
42.17.114, 42.17.122, 42.17.131, and)
42.17.218 pertaining to the)
computation of wage withholding for)
state income taxes)

TO: All Concerned Persons

1. On September 29, 2016, at 1 p.m., the Department of Revenue will hold a public hearing in the Third Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on September 12, 2016, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.17.101 DEFINITIONS The following terms pertain to this chapter:

(1) through (6) remain the same.

(7) "Net taxable earnings" means an employee's gross earnings minus the product of the number of the employee's claimed withholding allowances multiplied by the withholding exemption.

(7) through (10) remain the same, but are renumbered (8) through (11).

~~(11)~~(12) "Reporting forms" includes, but is not limited to:

(a) Form MW-1, the Montana Withholding Tax Payment ~~form~~ Voucher;

(b) Form MW-3, the Montana Annual ~~Wage~~ W-2 1099 Withholding Tax Reconciliation form;

(c) remains the same.

(d) Form RW-1, the Mineral Royalty Withholding Tax Payment Voucher form; ~~and~~

(e) Form RW-3, the Montana Annual Mineral Royalty Withholding Tax Reconciliation form;

(f) Form W-4, the federal Employee's Withholding Tax Allowance Certificate;
and

(g) Form 1099, the federal Information Return.

(12) and (13) remain the same, but are renumbered (13) and (14).

(15) "Withholding exemption" is the amount used in the computation of net taxable earnings. The withholding exemption for the 2017 annual table and computations is \$2,110. For other tables, the withholding exemption is divided by the divisor in ARM 42.17.105 corresponding to the payroll period.

AUTH: 15-30-2547, 15-30-2620, MCA

IMP: 15-30-2501, 15-30-2538, MCA

REASON: The department proposes amending ARM 42.17.101 to add definitions for the terms "net taxable earnings" and "withholding exemption" as they apply to the withholding tax formula used by computerized payroll systems and because the terms are proposed to be added into ARM 42.17.105 in this same rulemaking notice. The department's intent in defining the terms in this definitional rule and adding the process details to ARM 42.17.105 is to make the withholding of Montana tax from wages a more predictable process for the taxpayer.

Defining "net taxable earnings" and "withholding exemption" is intended to provide for indexing of the exemption amount used in the withholding tax formula to better reflect changes resulting from inflation. The withholding exemption amount of \$2,110 is intended to approximate personal exemption in the calculation net taxable earnings.

The department further proposes amending the list of withholding forms provided in newly numbered (12) to add a missing "W" to the Form MW-1, to correct the title of the Form MW-3, and to add Form W-4 and Form 1099.

42.17.105 COMPUTATION OF WITHHOLDING (1) Employers shall calculate the state income tax amount to withhold according to the "Montana Wage Withholding Tax Tables," provided by the department-

~~(2) The referenced tax tables in (1) may be obtained by and available:~~

~~(a) online at revenue.mt.gov; or~~

~~(a)(b) telephoning: by calling~~

~~Department of Revenue~~

~~Customer Service Center~~

~~(406) 444-6900 in (Helena),~~

~~(866) 859-2254 (toll free); outside of Helena; or~~

~~(b)(c) by writing to:~~

~~Montana Department of Revenue~~

~~P.O. Box 5835~~

~~Helena, Montana 59604-5835; or~~

~~(c) accessing:~~

~~the department's web site: revenue.mt.gov.~~

(2) Montana wage withholding tables are based on the following annual withholding formulas as adjusted annually for inflation. Wage withholding is equal to:

(a) 1.80% of the first \$7,105 of taxable earnings; plus

(b) 4.40% of the next \$8,120 of taxable earnings; plus

(c) 6.00% of the next \$106,575 of taxable earnings; plus

(d) 6.60% of taxable earnings over \$121,800.

(3) Withholding formulas for nonannual payroll periods are calculated by dividing the dollar amounts for annual payroll in (2) by the ratio of the number of working days in a year to the number of working days in the payroll period. The following table shows payroll periods and the corresponding divisors:

| <u>Payroll Period</u> | <u>Divisor</u> |
|-----------------------|----------------|
| <u>Monthly</u> | <u>12</u> |
| <u>Semi-Monthly</u> | <u>24</u> |
| <u>Biweekly</u> | <u>26</u> |
| <u>Weekly</u> | <u>52</u> |
| <u>Daily</u> | <u>260</u> |

(4) The department publishes the tables based on the formulas in (2) and (3) at revenue.mt.gov, showing the amount to withhold each pay period for taxable incomes within ranges of taxable earnings.

(5) By October 1 of each year, the department shall adjust the withholding formulas for inflation by multiplying the dollar amounts in (2) and the withholding exemption amount in ARM 42.17.101 by the inflation factor, as defined in 15-30-2101, MCA.

(6) If the department determines that the inflation adjustment is immaterial, it may keep existing withholding tables in effect for another year.

AUTH: 15-30-2620, MCA

IMP: 15-30-2103, 15-30-2502, MCA

REASON: The department proposes amending ARM 42.17.105 to provide the wage withholding formula and calculation process the department uses within the rule to make the withholding of Montana tax from wages transparent, readily available, and a more predictable process for taxpayers as set forth in new (2) through (6).

An employer calculates wage withholding based on the employee's "Employee's Withholding Allowance Certificate" (Form W-4) as submitted to the employer upon hire. Many employees rarely, if ever, change their originally submitted Form W-4 information. This can result in continually increasing wage withholding amounts without a corresponding increase in tax liability.

An example is a taxpayer who submitted a Form W-4 claiming single status with zero exemptions in 2005. Based on an annual salary of \$10,000, Montana withholding for the year would amount to \$557. Moving forward to 2016, and assuming the employee received wages at the Federal Reserve's two percent inflation factor target, the employee's annual salary would have increased to approximately \$12,433. Using the same Form W-4 status, wage withholding on this amount would be \$726, or an increase of \$169, for the year. Because Montana income tax tables are adjusted annually for inflation, the income tax due by the individual for 2006 would remain similar to the amount due in 2005.

Leaving the withholding formulas unchanged for inflation creates an

increasing difference between the amount withheld intended as an estimate of the employee's Montana tax and the actual tax owed on those wages. Adjusting the formulas means individuals will have less difficulty determining whether their withholding allowances and amount are appropriate for their tax situation. It will also be more efficient for the department to provide guidance regarding wage withholding amounts.

The department further proposes combining the original (1) and (2) together to eliminate unnecessary language from the rule.

42.17.114 ANNUAL RECONCILIATION AND WAGE STATEMENTS (1) On or before February 28 of each year, every employer must file with the department a ~~form~~ Form MW-3, Montana Annual Wage W-2 1099 Withholding Tax Reconciliation. Form MW-3 must be accompanied by the original copies of each employee's earnings statements on federal ~~form~~ Form W-2.

(a) Employee's earning statements and the federal ~~form~~ Form W-2, must be prepared for each employee, regardless of whether or not withholding taxes were actually withheld from the employee's wages. The state wages and state income tax withheld must be shown in the boxes labeled for state information.

(b) An original copy of the federal ~~form~~ Form W-2 must be filed with the ~~form~~ Form MW-3, and two copies must be furnished to the employee not later than January 31 of each year.

(c) Montana does not provide substitute earning statement forms or allow earning statements which do not conform to federal ~~form~~ Form W-2 requirements.

(2) remains the same.

(3) Computer-generated federal ~~form~~ Form W-2 equivalents in printout form may be allowed by the department in lieu of W-2s or electronic media.

(4) remains the same.

(5) The federal ~~form~~ Form 1099R that has Montana state income tax withholding must be filed with the department in paper or electronic form by February 28 following the year that the tax was withheld.

AUTH: 15-30-2620, MCA

IMP: 15-30-2506, 15-30-2507, MCA

REASON: The department proposes amending ARM 42.17.114 as a matter of housekeeping to capitalize the word "form" throughout the rule because it is part of a proper name, and to update the reference to Form MW-3 in (1) to reflect a change that occurred when the word "wage" was replaced with "W-2 1099" in the form's title beginning in tax year 2015.

42.17.122 RETURNS OF INFORMATION AGENTS (1)

Federal ~~form~~ Form 1099s, U.S. Information Returns, are required to be filed for certain dividends, interest in excess of \$10, royalties, payments to retirement plans, rents, salaries, wages, prizes, awards, annuities, pensions, and real estate transactions as specified in 15-30-2616, MCA. Federal ~~form~~ Form 1099s may be filed on paper documents or electronically. The dates for filing the information returns with the department are the same as the due dates for filing the

corresponding federal return. The returns are to be filed with:

Montana Department of Revenue
P.O. Box 5835
Helena, Montana 59604-5835.

(2) Paper documents are to be prepared on the appropriate federal information return and a copy filed with the department. Returns filed on paper forms are to be accompanied by a copy of federal ~~form~~ Form 1096, Annual Summary, summarizing the information being reported to the department.

(3) Federal ~~form~~ Form 1099s filed electronically are to conform to the specifications outlined in Federal Publication 1220 for the applicable year.

AUTH: 15-30-2620, MCA
IMP: 15-30-2616, MCA

REASON: The department proposes amending ARM 42.17.122 as a matter of housekeeping to capitalize the word "form" throughout the rule, because it is part of a proper name.

42.17.131 EMPLOYEE'S WITHHOLDING ALLOWANCES (1) For purposes of determining the employee's withholding allowances, the amount claimed for Montana may be different than the amount claimed on the federal ~~Form W-4~~ Employee's Withholding Allowance Certificate (Form W-4), reported on the line stating "total number of allowances you are claiming," furnished by the employee to the employer for federal withholding tax purposes. The department may determine whether the amount claimed on the federal Form W-4 should be adjusted for state withholding purposes. The department does not provide ~~forms~~ a separate form for this purpose. The department has determined that the federal child tax credit that allows extra allowances for federal withholding is not allowed for Montana purposes when determining the number of allowances for Montana withholding.

(2) and (3) remain the same.

(4) Any change to the "total number of allowances you are claiming," on federal Form W-4 for federal purposes, including federal ~~re-~~ redeterminations of allowances, automatically changes the number of allowances for Montana purposes unless the allowances have been set at a ~~fixed~~ maximum number by the department under (5). If a ~~re-~~ redetermination allows extra allowances for the federal child tax credit for federal purposes, these extra allowances will not be allowed for state purposes.

(5) For any federal Form W-4 on which an employee has claimed more than ten withholding allowances, the following apply:

(a) An ~~The~~ employer is ~~required to~~ must provide ~~the department with~~ a copy of ~~any the~~ federal Form W-4 on which an employee has claimed more than ten withholding allowances ~~to~~ no later than the last day of the payroll period during which the employer received the form to the following address:

Department of Revenue

P.O. Box 5835 7149
Helena, Montana 59604-5835 7149.

(b) The department may revise the number of withholding allowances claimed to a maximum allowed for state tax purposes.

(c) The employer shall continue to withhold based on the most recently filed federal Form W-4 with fewer than 11 allowances claimed. If no Form W-4 with fewer than 11 allowances has been filed, the employer shall withhold for Montana purposes on the basis of zero withholding allowances.

~~(a)~~(d) If, upon review of any such certificates, the department determines that the certificate federal Form W-4 provided is defective, it the department may require ~~in writing~~ that the employer disregard the allowances claimed and advise the employer in writing of a the maximum number of withholding allowances permitted the employee for state tax withholding purposes.

~~(b)~~(e) The filing of a new ~~certificate~~ federal Form W-4 by an employee whose withholding allowances have been set at a fixed maximum number by the department shall be disregarded by the employer unless a number equal to or ~~less~~ fewer than the set maximum is claimed or written notice by the department is given authorizing a different maximum.

(6) remains the same.

~~(7) If an employee fails to provide the department with~~ the department does not have sufficient information to ~~make the determination in (6)~~ determine the maximum number of permitted allowances in (5), the department shall use its best estimate of the employee's eligible exemptions when determining the withholding allowances.

(8) Employers shall provide a copy of an employee's federal Form W-4 upon request by the department, at any time, for the purposes of state tax administration.

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, MCA

REASON: The department proposes amending ARM 42.17.131 to prepare the abbreviation "Form W-4" for future use throughout the remainder of the rule and to make a portion of the language in (1) clearer.

The department proposes restructuring (5) for added clarity as to the time frame within which employers must provide documentation (by the last day of the pay period) upon receipt of an employee's federal Form W-4 claiming more than ten allowances. The proposed changes also lay out the employers' withholding obligations while waiting for the department's determination. The department also proposes updating a mailing address in the rule.

The department proposes removing the language referring to obligations of employees in (7) because it does not relate to the direct requirement from claimants. This condition in the rule had the potential to create overlapping responsibilities, which was not the original intent of the department. This language is proposed to be replaced instead by language that places the obligation on the department to use its best estimate when determining a maximum number of allowances. This means that the department must use all the available information, including those provided

by employees through means other than the federal Form W-4. The department also proposes correcting an internal reference from (6) to (5) in this same section.

The department further proposes adding new (8) to include a requirement that employers must submit copies of federal Form W-4 certificates upon the department's request. Although this obligation is inferred by the power of the department to revise returns and examine records, this proposed addition of the language consolidates this obligation to provide information on allowance certificates in one single rule.

42.17.218 EMPLOYER REGISTRATION (1) Every employer required to withhold Montana income tax must register for a Montana tax identification number on ~~form~~ Form GenReg, Registration/Application for Permit, which is provided by the department. A new employer who has acquired the business of another employer must not use the predecessor's identification number. Application for a Montana tax identification number shall be sent to:

Department of Revenue
P.O. Box 5805
Helena, Montana 59604-5805.

(2) and (3) remain the same.

AUTH: 15-30-2620, MCA
IMP: 15-30-2509, MCA

REASON: The department proposes amending ARM 42.17.218(1) as a matter of housekeeping to capitalize the word "form" because it is part of a proper name.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than October 13, 2016.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at revenue.mt.gov/rules or upon request from the person in 4.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State August 22, 2016