

Title 12 — DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 2 – Income Tax

EMERGENCY AMENDMENT

12 CSR 10-2.015 Employers' Withholding of Tax. The department is amending sections (1)-(8), (10)-(27), (29) and (30).

PURPOSE: The amendment modifies the calculation for determining the amount of withholding and clarifies the instructions to employers.

EMERGENCY STATEMENT: This emergency amendment informs employers of the amount of withholding and clarifies instructions to employers as to withholding in response to changes effective for tax year 2019. These changes require immediate implementation to allow employers to most accurately withhold Missouri income tax from their employees. As a result, the Missouri Department of Revenue finds a compelling governmental interest which requires this emergency action. A proposed amendment that covers the same material, is also published in this issue of the Missouri Register. The scope is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Revenue believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment filed Tuesday, April 16, 2019 becomes effective Friday, April 26, 2019 and expires Feb. 5th, 2020.

(1) General Information. The Missouri general assembly in 1972 enacted Senate Bill 549, a new Missouri income tax law. This law adopts many provisions and terms of the *Internal Revenue Code*. Its withholding provisions are applicable to wages paid after December 31, 1972. The "Missouri Employer's Tax Guide" and this rule are designed to assist employers in withholding Missouri income tax from wages paid from sources in Missouri. An employer may generally follow the provisions of the Internal Revenue Service (IRS) **Publication 15** [*publication titled "Employer's Tax Guide"*] (**Circular E**), **Employer's Tax Guide** relating to withholding income tax. An employer already assigned a Missouri [*withholding*] tax identification number will not need to obtain a new one. If a business is discontinued, transferred, or sold, the employer must file [*an Employer's Withholding*] a Final Report, Form [*MO-941F*] **5633**, to close the employer's withholding account. If the business of another employer is acquired, do not use the number assigned to that business; a new number must be obtained.

(2) Employers. An employer is any person, firm, corporation, association, fiduciary of any kind, or other type of organization for whom an individual

performs service as an employee, unless the person or organization for whom the individual performs service does not have control of the payment of compensation for the service [,] (section 143.191, RSMo). The term employer means the person, including all government agencies, who controls the payment of the compensation. An employer required to withhold Missouri income tax is personally liable for the tax. Any amount of tax actually deducted and withheld by an employer is a special fund in trust for the director of revenue (section 143.241, RSMo). An employee does not have a right of action against the employer in respect to any money deducted and withheld from his [] or her wages if it is paid over to the director of revenue in good faith compliance with the Missouri Income Tax Law.

(3) Registration of Employers. Every employer must register with the Missouri Department of Revenue by completing the Missouri Tax Registration Application, Form DOR-2643. A permanent registration number will be assigned. A new application is required, and a new Missouri tax identification number will be assigned, when any change in ownership or ownership type occurs. An employer who receives a new identification number as a result of a change in ownership type [,] must file [*an Employer's Withholding*] a Final Report, Form [*MO-941F*] **5633**, to close the old account. These numbers are not transferable and should be referred to in all reports and correspondence concerning withholding.

(4) Employer With More Than One (1) Payroll Unit—Complex Employer. If a consolidated report and remittance of the tax withheld cannot be made by the employer because of the complexity of the organization, branch offices, or divisions may be designated as withholding agents. These agents can perform the actual withholding and remitting. However, regardless of any internal arrangements which may be established by the complex employer, the legal responsibility and liability under the law still rests with the home office. If the complex employer has designated withholding agents, and the agents wish to claim the compensation deduction, only one (1) agent will be entitled to the full deduction and the remaining agents will be entitled to one-half of one percent (1/2%) deduction of income taxes withheld if the returns are filed timely.

(5) Seasonal. If [*your business*] **an employer** is only open for several months out of the year, [*you*] **the employer** may register as a seasonal employer.

(6) Employees. The term employee for Missouri withholding purposes has the same meaning as it has for federal withholding [(see "*Employer's Tax Guide,*" *Circular E, published by the IRS*)] **as set forth in Publication 15, (Circular E), Employer's Tax Guide**. This definition is the same for Missouri residents and nonresidents.

(7) Wages. The term wages for Missouri withholding purposes has the same meaning as it has for federal withholding [(see “*Employer’s Tax Guide,*” *Circular E, published by the IRS*)] **as set forth in Publication 15, (Circular E), Employer’s Tax Guide.** Wages include all pay given to an employee for services performed. The pay may be in cash or in other forms. It includes salaries, vacation allowances, bonuses, and commissions, regardless of how measured or paid.

(8) Interstate Transportation Employees.

(A) Rail, Motor and **Motor** Private [*Motor*] Carriers. 49 U.S.C. section 11504, limits state taxation on wages of employees of rail, motor, and **motor** private [*motor*] carriers. Missouri withholding is required on rail, motor, and **motor** private [*motor*] carrier employees whose state of residence is Missouri. Employees of rail carriers and motor carriers who perform regularly assigned duties in more than one (1) state are subject to state income tax only in their state of residency.

(A) Example: Nonresident earns \$20,000 in wages, \$12,000 from Missouri sources. Missouri withholding would be 60% ($\$12,000 \div \$20,000$ equals 60%) of the withholding required on \$20,000. Therefore, if \$100 per month should be withheld for an individual earning \$20,000, then for this nonresident, \$60 should be withheld each month ($100 \times 60\% = \$60$).

(10) Resident of Missouri Employed in Another State. A Missouri resident paying income tax to another state because of employment in that state may file a Withholding Affidavit For Missouri Residents, Form MO W-4C. If the employee does not complete Form MO W-4C, the employer may withhold Missouri taxes on all services performed, regardless of where performed. All income received for services performed in another state not having a state income tax is subject to Missouri withholding. If services are performed partly within and partly without the state, only wages paid for that portion of the services performed within Missouri are subject to Missouri withholding tax, provided that the services performed in the other state are subject to the other state’s withholding provisions. If a service is partly within and partly without Missouri and only a portion of an employee’s wages is subject to Missouri withholding tax, then the amount of Missouri tax required to be withheld is calculated using a percentage of the amount listed in the withholding tables. The calculation begins by determining the amount that would be withheld if all the wages were subject to Missouri withholding. This amount is then multiplied by a percent, which is determined by dividing the wages subject to Missouri withholding tax by the total federal wages.

(A) Example: A resident employee earns \$1,500 per month [,] **and** is single [*and claims one allowance*]. The employee performs 40% of his [/] **or** her services in Kansas. The remaining 60% of the employee's services are performed in Missouri. If the total withholding on all earnings is \$40 per month, the actual withholding for Missouri would be \$24 ($\$40 \times 60\% = \24).

(11) Missouri Employer with Nonresident Employees. If a nonresident employee performs all services outside Missouri, his [/] **or** her wages are not subject to Missouri withholding. A nonresident employee performing services in more than one (1) state is subject to withholding as outlined in section (9).

(12) Supplemental Wage Payments. If supplemental wages are paid, such as bonuses, commissions, overtime pay, back pay, including retroactive wage increases or reimbursements for nondeductible moving expenses in the same payment with regular wages, [*withhold*] Missouri income tax **shall be withheld** as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid in a different payment from regular wages, the method of withholding income tax depends in part on whether income tax is withheld from the employee's regular wages.

(A) If income tax has been withheld from the employee's regular wages, choose either one (1) of the following methods for withholding income tax on the supplemental wages:

1. Method One. Withhold at a flat percentage rate **that is the lower of a) [*six percent (6%)*] five and four tenths percent (5.4%) or b) the highest individual income tax rate determined under section 143.011, RSMo, for the current tax year** of the supplemental wages[, *using zero withholding allowances*]; or

2. Method Two. Add the supplemental wages to the employee's regular wages paid to the employee within the same calendar year for the payroll period and determine the income tax to be withheld as if the aggregate amount were one (1) payment. Subtract the tax already withheld from the regular wage payment and withhold the remaining tax from the supplemental wage payment.

(B) If income tax has not been withheld from the regular wages (for example, where an employee's withholding exemption exceeds his [/] **or** her wages), use Method Two described in paragraph (12)(A)2. of this rule. Add the supplemental wages to the regular wages paid within the same calendar year for the payroll period and withhold income tax on the total amount as though the supplemental wages and regular wages were one (1) payment for a regular payroll period.

(13) Tips Treated as Supplemental Wages. Employers must withhold Missouri income tax based upon total tips reported by the employee, **unless the amount of tips received by the employer and remitted to the employee is greater in which case the greater amount shall be withheld. If an employee shares tips, the employer shall withhold only from the employee who actually receives the shared tips. Employers shall [W] withhold income tax on tips** using the same options indicated for withholding on supplemental wage payments.

(14) Vacation Pay. Vacation pay received by an employee is subject to withholding as though it were a regular wage payment made for the payroll periods during the vacation. If vacation pay is paid in addition to regular wages for the vacation period, the vacation pay is treated as a supplemental wage payment. An employee who is not a resident of Missouri but works in Missouri is subject to withholding on his [I] or her vacation pay.

(15) Lump-Sum and Periodic Distribution. Missouri follows the federal guidelines for lump-sum and periodic distributions. **[If a] A lump-sum distribution is withheld at a flat rate that is the lower of a) five and four tenths percent (5.4%) or b) the highest individual income tax rate determined under section 143.011, RSMo, for the current tax year [, withhold at the rate of six percent (6%)].** If a periodic distribution, follow the computer formula or tax tables.

(16) Determining Proper Amount to Withhold. To determine income tax withholding, take *[the following factors]* into account:

- (A) Wages paid during the payroll period, including tips and vacation pay;
and
- (B) [Marital] **Filing** status, [- T] **as** there are separate withholding calculations for single, [*and*] married [*employees*], **and head of household employees [; and**
- (C) *Withholding allowances as indicated on the MO W-4.*

(17) Exemption for Nontaxable Individuals. Exemption from withholding for an individual is valid only if the employee submits to the employer a completed Form MO W-4 (Employee's Withholding Allowance Certificate), certifying that the employee has no income tax liability from the previous year and expects none for the current year. The employee must file a Form MO W-4 annually if [*s/he*] **the employee** wishes to continue to be exempt.

(18) Employee Withholding [Allowance] Certificate. Each employee is required to file a completed Form MO W-4 **that reflects the filing status on his or her income tax return** [*to determine the number of exemptions to which the*

employee is entitled]. The Form MO W-4 must be used by the employer to determine the amount of Missouri income tax which must be withheld from each paycheck. If an employee has more than one (1) employer, [s/] he **or she** may want to *[reduce the number of allowances on any MO W-4 that does not pertain to his/her principal employer]* **withhold an additional amount on Line 2 of Form MO W-4 for his or her principal employer to ensure that the total amount withheld approximates the actual income tax liability.** Failure to *[reduce the MO W-4 allowances could cause an employee to have too little tax withheld and make the employee]* **withhold enough from each payroll period** could cause an employee **to be** subject to underpayment penalties. If an employee expects to have income other than his [/] **or her wages**, [s/he may request to have additional amounts withheld in addition to the amounts indicated by the allowances claimed on the employee's MO W-4] **or income from multiple jobs, he or she may request additional amounts be withheld in addition to the standard withholding calculations that are based on the standard deduction for the filing status indicated on the Form MO W-4.** *[The additional amount should be included on line 6 of the MO W-4.]* **The additional amount should be included on Form MO W-4, Line 2. Employees who expect to receive a refund (as a result of itemized deductions, modifications, or tax credits) on their tax returns may direct the employer to only withhold the amount indicated on Form MO W-4, Line 3, in which case the employer will not use the standard calculations for withholding. If the employee does not indicate an amount to be withheld or if the amount indicated is more than is available for the payroll period, the employer will use the standard calculations.** Employers are required to submit a copy of each completed Form MO W-4 or an equivalent form for each new employee to the Missouri Department of Revenue within twenty (20) **calendar days of hire** *[of completion of each form]*. **“Date of hire” is defined as the date the employee reports to work or the date the employee signs the federal W-4 form, whichever is earlier.** The department will in turn forward the Form MO W-4 to the Division of Child Support Enforcement.

(19) Withholding Tables. Withholding tables prepared by the Missouri Department of Revenue take into account allowable deductions; therefore withholding is based on gross wages before any deductions, such as Federal Insurance Contribution Act (FICA), state unemployment insurance, pension funds, or insurance, etc. In determining the amount of tax to be withheld, the employer should use the table for the correct payroll period—daily, weekly, bi-weekly, semimonthly, and monthly periods. Any other period would be a miscellaneous pay period. Tables show wage brackets in the two (2) left-hand columns. *[The withholding allowances are shown at the top of each of the remaining columns and correspond to the number of allowances claimed by an*

employee on the Form MO W-4. **The filing status is shown at the top of each of the remaining columns.**

(20) Percentage *[Formula]* Withholding **Formula**. A percentage withholding formula has been published by the director of revenue and it may be used on electronic data processing equipment for withholding Missouri income tax. Any other method must be submitted to and approved by the director of revenue. *[The formula is mathematically stated as gross income minus standard deduction, minus personal and dependent exemptions, minus federal income tax withheld equals taxable income. Taxable income multiplied by the rate equals Missouri withholding.]* **Missouri withholding is calculated by subtracting the annual standard deduction from the employee's annual gross income and multiplying the result by the applicable tax rate.** The formula is illustrated in the "*[Missouri]* Employer's Tax Guide **(Form 4282)**."

(21) Filing Frequency Requirements. Missouri withholding returns must be filed by the due date as long as an account is maintained with the Missouri Department of Revenue [,] even if there was no payroll for the reporting period. Returns must be filed each reporting period, even though there may not have been any tax withheld. There are four (4) filing frequencies: quarter-monthly, monthly, quarterly, and annually (section 143.221 and 143.225, RSMo). A newly registered employer is initially assigned a filing frequency on the basis of *[his/her]* **the employer's** estimation of future withholdings. If the assigned filing frequency differs from the filing requirements established by statute, it is the employer's responsibility to immediately notify the Department of Revenue. The time for filing shall be as follows:

(22) Reporting Requirement. Every employer withholding Missouri income tax from employee's wages is required by statute to report and remit the tax to the state of Missouri on the *[Missouri Form MO-941]* **Employer's Return of Income Taxes Withheld (Form MO-941)**. See regulation 12 CSR 10-2.016 for information on *[filing a Form MO-941P]* **the requirements for employers** to remit *[required]* payments on Quarter-Monthly accounts.

(A) A separate reporting form must be filed for each reporting period. A personalized booklet of reporting forms detailing the employer's name, address, employer identification number, filing frequency, and due date is provided to each active account. *[The voucher booklet supplied to an employer required to pay on a quarter-monthly basis also includes payment vouchers Form MO-941P, for the four (4) quarter-monthly periods.]* If an employer misplaces, damages, or does not receive the necessary reporting forms, replacement forms should be requested, allowing sufficient time to file a timely return. If a blank form is used, the employer's name, address, and identification number must appear as filed on

previous returns and the period for which the remittance is made must be indicated. Failure to receive reporting forms does not relieve the employer of responsibility to report and remit tax withheld. If an employer temporarily ceases to pay wages, a return must be filed for each period indicating that no tax was withheld. Failure to do so will result in the issuance of non-filer notices.

(B) [*On or before February 28, or with the final return filed at an earlier date, each employer must file a Form MO W-3 (Transmittal of Wage and Tax Statements) and copies of all withholding tax statements, Form W-2/1099R, copy 1, for the year.*] Do not include the fourth quarter or twelfth month return with the Form W-2(s)/1099R(s) and Form MO W-3. The last annual remittance must be sent separately with Form MO-941. **Employers with two hundred fifty (250) or more employees are required to submit these items electronically by the last day of January. Paper filers are required to submit copies of all withholding statements by the last day of February. Paper filings must also be accompanied by a list, preferably an adding machine tape or a computer printout, of the total amount of the income tax withheld as shown on all “Copy 1s” of Form W-2 and Form 1099-R.** Large numbers of forms may be forwarded to the Department of Revenue in packages of convenient size. Each package must be identified with the name and account number of the employer and the packages must be consecutively numbered. Any employee’s copies of the Withholding Statement (Form W-2[] or Form 1099-R) which cannot be delivered to the employee after reasonable effort is exerted, must be kept by the employer for at least four (4) years. The Department of Revenue will accept computer produced magnetic tape records instead of the paper Form W-2[] or Form 1099-R. The employer must meet tape data specifications which are established by the Department of Revenue. The department follows specifications outlined in Social Security Administration Publication 42-007. Employers must also include the Supplemental record (Code S or Code 1 S).

(C) If an employer [*goes out-of-business*] **closes** or ceases to pay wages, a Final Report, [*MO-941F*] **Form 5633** must be filed. This form, which is included in the voucher booklet, is provided to all active accounts.

(23) Time and Place for Filing Returns and Remitting Tax.

(A) All returns and remittances must be filed with the Department of Revenue at the specific address indicated on the form. The dates on which the returns and payments are due are as follows:

1. Quarter-Monthly (see 12 CSR 10-2.016). The quarter-monthly periods are: the first seven (7) days of a calendar month; the eighth to the fifteenth day of a calendar month; the sixteenth to the twenty-second day of a calendar month; and the twenty-third day through the last day of a calendar month. Payments must be [*mailed*] **made** within three (3) banking days after the end of the quarter-

monthly period or received by the Department of Revenue or its designated depository within four (4) banking days after the end of the quarter-monthly period. **Quarter-monthly filers are required to pay by use of an electronic funds payment system established by the department. If quarter-monthly filers are unable to use the electronic funds payment system, alternative electronic payment methods are outlined in the “Employer Tax Guide” Form 4282.** [A monthly return (MO-941)] **An Employer’s Return of Income Taxes Withheld (Form MO-941)** reconciling the quarter-monthly payments and detailing any underpayment of tax is due by the fifteenth day of the following month except for the third month of a quarter in which case the [MO-941] **Employer’s Return of Income Taxes Withheld (Form MO-941)** is due the last day of the succeeding month;

2. Monthly. Return and payment must be made by the fifteenth day of the following month except for the third month of a quarter in which case the return is due the last day of the succeeding month;

3. Quarterly. Return and payment must be made on or before the last day of the month following the close of the calendar quarter; and

4. Annually. Return and payment must be made on or before January 31 of the succeeding year.

(B) When the due date falls on a Saturday, Sunday, or legal holiday, the return and payment will be considered timely if made on the next business day (section 143.851, RSMo).

(24) Correcting Mistakes in Reporting or Withholding.

(A) Overpayment. If withholding tax has been over-reported, the employer must file an **Amended Employer’s [Withholding Tax Overpayment Amended Report,] Return of Income Taxes Withheld,** Form [MO-941X along with]**Form MO-941, along with** supporting documentation[;], such as a copy of [your]the payroll ledger, records, or W-2s. A claim for credit or refund of an overpayment of withheld tax must be filed by the taxpayer within three (3) years from the time the return was filed or two (2) years from the time the tax was paid, whichever period expires later. If no return was filed by the taxpayer, a claim for credit or refund must be filed within two (2) years from the time the tax was paid. No claim for credit or refund will be allowed after the expiration of the period of limitation prescribed in section 143.801, RSMo.

(B) Underpayment. If withholding tax has been under-reported, the employer must file an **Amended Employer’s [Withholding Tax Underpayment**

Amended Return] **Return of Income Taxes Withheld** [,] (Form MO-941[U]) to report the additional withholding.

(25) Erroneous Withholding. If Missouri tax has been withheld from an employee's paycheck and the employee is not subject to Missouri tax, it is the employer's responsibility to complete an **Amended** Employer's [*Withholding Tax Overpayment Amended Report*] **Return of Income Taxes Withheld** [,] (Form MO-941)[X], along with supporting documentation[;], such as a copy of [*your*] **the** payroll ledger, records, or W-2s.

(26) Employer Compensation. For every remittance made to the director of revenue, on or before the respective due date for the payment involved, each employer (except the United States, the state of Missouri, and all agencies and political subdivisions of the state of Missouri or the United States government) may deduct and retain as compensation the following percentages of the total amount of the tax withheld and paid annually: two percent (2%) of the first five thousand dollars (\$5,000) or less; one percent (1%) of the amount in excess of five thousand dollars up to ten thousand dollars (\$5,000–\$10,000); one-half **of one** percent (1/2%) of the amount collected in excess of ten thousand dollars (\$10,000). The employer is not entitled to any compensation if any payment is not made on or before the due date. Compensation for complex employers is covered in section (4).

(27) Failure to Pay Taxes Withheld—Special Deposits. Any employer who fails to remit income tax withheld, or to file tax returns as required, may be required to deposit the taxes in a special trust account for Missouri (see section 32.052, RSMo). Penalties are provided for failure to make payment. If the director of revenue finds that the collection of taxes required to be deducted and withheld by an employer may be jeopardized by delay, [s/] **he or she** may require the employer to remit the tax or make a return at any time. A lien outstanding with regard to any tax administered by the director shall be a sufficient basis for this action (see section 143.221.4, RSMo). In addition, any officer, director, statutory trustee, or employee of any corporation who has direct control, supervision, or responsibility for filing returns and making payments of the tax, who fails to file and make payment, may be personally assessed the tax, including interest, additions to tax and penalties pursuant to section 143.241.2, RSMo.

(29) Records to Be Kept by Employers.

(A) The following records must be retained for all employees:

1. Name, address, Social Security number, and period of employment;

2. Amounts and dates of all wage payments subject to the Missouri withholding tax;

3. Employees' state income tax withholding [*allowance*] certificate;

4. Employer's state income tax withholding registration number;

5. Record of quarter-monthly, monthly, quarterly, and annual returns filed including dates and amounts of payments; **and**

6. Records that would assist the Missouri Department of Revenue in auditing the employer's records [*; and*].

(B) [7]. All records should be kept for at least three (3) years after the date the taxes to which they relate become due, or the date the taxes are paid, whichever is later.

(C) [(B)] In addition to the records listed in paragraphs (29)(A)1.– [7]6., all records of the allocation of working days in the state of Missouri must be retained for all nonresident employees.

(30) Penalties, Interest, and Additions to Tax.

(F) A person who willfully fails to collect, account for, or pay withholding taxes is subject to a penalty equal to the amount not paid to the state, pursuant to section 143.751.4, RSMo. In addition, any officer, director, statutory trustee, or employee of any corporation who has direct control, supervision, or responsibility for filing returns and making payments of the tax, who fails to file and make payment, may be personally assessed the tax, including interest, additions to tax and penalties pursuant to section 143.241.1, RSMo.

(G) Penalties for criminal offenses are also provided [*throughout*] in sections 143.911 to [-] 143.951, RSMo.

AUTHORITY: section 143.961, RSMo 2000. This rule was previously filed as "Missouri Employer's Tax Guide" Feb. 20, 1973, effective March 2, 1973. Original rule filed Jan. 29, 1974, effective Feb. 8, 1974. Emergency amendment filed Jan. 13, 1983, effective Jan. 23, 1983, expired May 23, 1983. Amended: Filed Jan. 13, 1983, effective April 11, 1983. Amended: Filed March 9, 1984, effective July 1, 1984. Amended: Filed June 2, 1993, effective Nov. 8, 1993. Amended: Filed July 28, 1995, effective Jan. 30, 1996. Amended: Filed Feb. 6, 1998, effective Aug. 30, 1998. Emergency amendment filed Nov. 30, 1999, effective Dec. 10, 1999, expired June 6, 2000. Amended: Filed Nov. 30, 1999, effective June 30, 2000. Amended: Filed April 1, 2002, effective Oct. 30, 2002. **Emergency amendment filed Tuesday, April 16, 2019, effective Friday, April 26, 2019, expires Feb 5, 2020. A proposed amendment covering this same material is published in this issue of the Missouri Register.***

**Original authority: 143.961, RSMo 1972.*

