

C.R.S.A. § 39-22-604



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Title 39. Taxation

Specific Taxes

Income Tax

[Article 22](#). Income Tax ([Refs & Annos](#))[Part 6](#). Procedure and Administration ([Refs & Annos](#))

→§ 39-22-604. Withholding tax--requirement to withhold--tax lien--exemption from lien

(1) All of the other provisions of this article shall apply to and be effective as to the provisions of this section to the extent to which they are not inconsistent with this section, and all of the remedies available to the department of revenue for the administration, assessment, enforcement, and collection of tax under other sections of this article and article 21 of this title shall be available to the department and shall apply to the amounts required to be deducted and withheld under the provisions of this section, and all of the penalties, both civil and criminal, shall apply to this section.

(2) Definitions: As used in this section, unless the context otherwise requires:

(a) "Employee" means and includes every individual who is a resident or domiciled in the state of Colorado performing services for an employer, either within or without or both within and without the state of Colorado, or any individual performing services within the state of Colorado, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee, and includes officers of corporations and individuals, including elected officials, performing services for the United States government or any agency or instrumentality thereof or the state of Colorado or any county, city or municipality, or political subdivision thereof; except that the term shall not include an individual who is not a resident or domiciled in the state of Colorado and who performs services in connection with any phase of motion picture or television production or television commercials for less than one hundred twenty days during any calendar year.

(b) "Employer" means a person transacting business in or deriving any income from sources within the state of Colorado for whom an individual performs or performed any services, of whatever nature, who has control of the payment of wages for such services or is the officer, agent, or employee of the person having control of the payment of wages.

(b.5) "Magnetic media taxpayer" means a taxpayer who is required to file information returns described in section 6041A, 6051, or 6053 [\[FN1\]](#) of the internal revenue code by magnetic media or in other machine-readable form under section 6011(e) [\[FN2\]](#) of the internal revenue code.

(c) "Wages" shall have the same meaning as is given in [section 3401\(a\) of the internal revenue code](#).

(3)(a) Every employer making payment of wages shall deduct and withhold from wages an amount measured by a percentage or percentages of the total amount required to be deducted and withheld by an employer from wages of an employee for federal income tax purposes, or measured by withholding tax tables promulgated by the executive director,

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or by such other methods as the executive director may prescribe if such percentage, percentages, tables, or other methods result in the withholding from the employee's wages during each pay period an amount which shall approximate as nearly as possible the income tax due to the state of Colorado by such employee.

(b) The executive director may, upon written application having been made to him, approve a method of withholding in lieu of the method provided in paragraph (a) of this subsection (3) to authorize a withholding based upon a percentage fixed by the executive director of the adjusted gross income, which percentage shall approximate as nearly as possible the amount of income tax due to the state of Colorado and as nearly as possible the amount so deducted and withheld in paragraph (a) of this subsection (3).

(c) Every employer, irrespective of whether or not said employer deducts and withholds the amounts as provided in this section, shall be liable for the amounts required to be deducted and withheld unless, in the case of any failure to deduct and withhold such amounts, it is shown that such failure was due to reasonable cause and not due to willful neglect. If the employer, in violation of the provisions of this section, fails to deduct and withhold the amounts as provided in this section and thereafter the tax against which such deducted and withheld amounts would have been credited is paid, the amounts so required by this section to be deducted and withheld shall not be collected from the employer; but in no such case, unless due to reasonable cause, shall the employer be relieved from liability for any penalties or additions to the amounts required under this section to be deducted and withheld otherwise applicable to any such failure to deduct and withhold.

(4)(a) The executive director may require any taxpayer who has an annual estimated withheld tax liability of more than fifty thousand dollars to remit withheld tax by electronic funds transfer. The executive director shall promulgate rules and regulations prescribing withholding tax periods and the corresponding tax return filing and tax payment due dates. The executive director shall consult with the state treasurer regarding the formulation of such rules and regulations in order to minimize the amount of lost interest to the state general fund.

(b) The rules and regulations promulgated pursuant to this section shall not prescribe filing or withholding requirements which are more frequent or more stringent than corresponding federal requirements.

(5) All amounts deducted and withheld shall be considered as tax collected under the provisions of this section and no employee shall have any right of action against his employer in respect to any moneys so deducted and withheld from his wages and paid over to the department in compliance or in intended compliance with this section.

(6)(a) Every employer shall, in accordance with such rules as shall be prescribed by the department of revenue, provide each employee with a statement of the amounts of moneys deducted and withheld from such employee's wages in accordance with the provisions of this section. Every employer shall also make an annual statement for each employee to the department of revenue, on such forms as are provided or approved by the department, a copy of which shall be provided each employee, summarizing the total compensation paid and the tax withheld for such employee during the preceding calendar year or any portion thereof, and the said annual statement shall be filed on or before the date established pursuant to section 6071 [FN3] of the internal revenue code for filing similar federal statements. Failure to file the statements within the time prescribed therefor, unless shown to have been due to reasonable cause, or the willful filing or furnishing of false or fraudulent statements shall subject the employer to a penalty, at the discretion of the executive director, of not less than five dollars nor more than fifty dollars, which shall be in addition to any criminal penalty otherwise provided for failure to file a return or for filing a false or fraudulent return.

(b) The executive director may require any magnetic media taxpayer to file the annual statements described in paragraph (a) of this subsection (6) by magnetic media or in other machine-readable form.

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(7)(a) Every employer who deducts and withholds any amounts under the provisions of this section shall hold the same in trust for the state of Colorado for the payment thereof to the department in the manner and at the time provided for in this section, and the state of Colorado and the department shall have a lien to secure the payment of any amounts withheld and not remitted as provided in this section upon all of the assets of the employer and all property, including stock in trade, business fixtures, and equipment, owned or used by the employer in the conduct of his business, so long as any delinquency continues, which lien shall be prior to any lien of any kind whatsoever, including existing liens for taxes.

(b) The owner, conditional vendor, or mortgagee of any property, real or personal, or any stock in trade, business fixtures, or equipment owned or used by an employer subject to the lien provided by this subsection (7), may exempt such property from the lien granted in this section to the state of Colorado and the department by requiring the employer to procure a certificate from the department certifying that such employer has posted with the department security for the payment of the amounts withheld under the provisions of this section. When such certificate is procured by the employer and transmitted to the owner, conditional vendor, or mortgagee of any of the assets of the employer, such assets shall thereafter be exempt from attachment under the lien granted to the state of Colorado and the department by this subsection (7).

(c) Any employer shall provide a copy of any lease with an owner to the department of revenue within ten days of seizure of the property and assets described in paragraph (a) of this subsection (7). The department shall verify that such lease is bona fide and notify the owner that such lease has been received by the department. The department shall use its best efforts to notify the owner of the real or personal property which might be subject to the lien created in paragraph (a) of this subsection (7). The real or personal property of an owner who has made a bona fide lease to an employer shall be exempt from the lien created in paragraph (a) of this subsection (7) if such property can reasonably be identified from the lease description or if the lessee is given an option to purchase in such lease and has not exercised such option to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease. Such exemption shall also apply if the lease is recorded with the county clerk and recorder of the county where the property is located or based or a memorandum of the lease is filed with the department of revenue on such forms as may be prescribed by said department after the execution of the lease at a cost for such filing of two dollars and fifty cents per document. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from the lien created in paragraph (a) of this subsection (7); except that said lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this section.

(c.5) Any coin-operated vending machine or video or other game machine shall be exempt from the lien created in paragraph (a) of this subsection (7) if:

(I) The machine is placed on the premises of an employer under the terms of a lease or other agreement under which the employer is given no right to become the owner of the machine;

(II) The machine is plainly marked in a location accessible to agents of the department of revenue with information sufficient to permit identification of the owner of said machine; and

(III) The owner of the machine has filed with the executive director a schedule listing the machine by serial number and including thereon the owner's full name and the address of his business and such other information as the executive director may require. To protect the anonymity of owners of property, the executive director may permit property

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covered by this paragraph (c.5) to be marked using numbers or other coded identification.

(d) Any employer who is in possession of property under the terms of a lease, which property is exempt from lien as provided in paragraph (c) of this subsection (7), may be required by the executive director to remit tax funds collected at more frequent intervals than would otherwise be required, but no more frequently than the employer's payroll period, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.

(8) The entire amount of income from wages upon which tax was deducted and withheld shall be included in the gross income of the income tax return required to be made by the employee, the recipient of the wages, without exclusion of such amounts deducted and withheld under this section, and any tax so deducted and withheld shall be credited against the total income tax, as computed in the employee's return, made in accordance with the provisions of this section.

(9) The department, after an audit of the annual income tax return of the employee, as otherwise provided for in this section, or in cases of returns which take longer than normal to process for reasons specified in [section 39-22-622\(4\)](#), shall refund the amount deducted or withheld in excess of the tax liability of the employee, together with interest thereon at the rate imposed under [section 39-21-110.5](#) from the fifteenth day of the seventh month following the close of the employee's taxable year for which the income tax return is filed.

(10) In the event the excess tax deducted and withheld is one dollar or less, no refund shall be made, unless a specific claim for refund is filed by the taxpayer at the time the return is filed. The excess, subject to being refunded, shall in no event and under no condition be allowed as a credit against any tax accruing on a return filed for a year subsequent to the year during which the wages were received, and can only be credited against a tax accruing upon a return of wages from which such excess was deducted and withheld.

(11) Separate refunds may be made by the department to a husband or wife who have filed a joint return, at the written request of either, the amount payable to each spouse being proportioned upon the gross earnings of each as shall be established to the satisfaction of the department. If an employee entitled to a refund dies, payment of such refund shall be made in such manner as provided for by law for distribution of moneys payable by the state of Colorado to a decedent.

(12)(a)(I) Moneys remitted by employers under this section shall be deposited with the state treasurer and by him or her credited to a fund hereby established, denominated the "income tax withholding fund". Refunds as provided for by this section shall be made from this fund in the same manner as refunds are made under [section 39-21-108](#). Except for moneys to be transferred to the state treasurer pursuant to [section 39-21-108\(5\)](#), all unexpended balances on hand in said fund on June 30, 1971, and each June 30 thereafter, or at any time as shall be determined by the controller, with the approval of the state treasurer, shall be credited to the general fund of the state. The unexpended balance shall include all moneys that for any reason cannot be refunded. All warrants that cannot be delivered to the taxpayer and that are not presented for payment within six months from the date of issuance thereof shall be void, and the moneys represented thereby shall be included in the unexpended balance in said fund at the expiration of said year. Except as provided in subparagraph (II) of this paragraph (a), persons entitled to the refund of moneys represented by warrants that cannot be delivered to the taxpayer and that are not presented for payment within six months from the date of issuance thereof may file claims for refund at any time within four years from the date the income tax return that establishes the right to the refund was required to be filed. Claims for refund not filed within the prescribed four-year period shall not be allowed or paid by the department of revenue.

(II) On and after October 1, 2002, if the department of revenue has cancelled a warrant pursuant to [section 39-21-108](#) that has not been presented and has forwarded to the state treasurer information and an amount of money equal to the

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amount of the warrant as required by [section 39-21-108\(5\)](#), the taxpayer must file the claim for the amount of the refund with the state treasurer pursuant to the "Unclaimed Property Act", article 13 of title 38, C.R.S. The department and the state treasurer shall cooperate to ensure that any taxpayer who contacts the department of revenue to claim the amount of a refund represented by a cancelled warrant is provided with the information or assistance necessary to obtain the refund from the state treasurer.

(b) All of the additional interest derived from moneys deposited in the income tax withholding fund created in paragraph (a) of this subsection (12) as a result of the enactment of House Bill 91S2-1027 at the second extraordinary session of the fifty-eighth general assembly shall be credited to the general fund.

(13) The department is empowered to make rules and regulations for the enforcement of the provisions of this section, including rules and regulations for determining the amount, up to but not exceeding the amount limited in this section, to be deducted and withheld by employers from wages of nonresident employees, only a part of whose wages are paid for services performed within the state of Colorado.

(14) Nothing in this section shall be construed to prevent any employee, with consent of his employer, from voluntarily subjecting himself to the provisions of this section, and in all such cases, same will be handled by the department of revenue in the same manner as those subjected by the provisions of this section.

(15) Repealed by Laws 1978, S.B.70, § 103.

(16)(a) On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding certificate. A comparable withholding certificate filed pursuant to the internal revenue code shall be deemed to satisfy the filing requirement under this subsection (16). Where necessary to cause the proper amount to be withheld, the executive director may adjust the employee's withholding to the amount properly allowable under the internal revenue code.

(b)(I) To enforce the provisions of this section, the executive director may file with the employer a withholding certificate on behalf of the employee. Prior to the filing of such certificate, the executive director shall first notify the employee that the certificate previously filed by the employee is being examined and that the employee may submit satisfactory evidence pursuant to the internal revenue code within ten days of receipt of said notice as to the correct number of withholding exemptions and allowances. Should the executive director, after reviewing any evidence so submitted, find the certificate filed by the employee to be defective, the employer shall accept the certificate filed by the director in lieu of any certificate previously filed by the employee, and such certificate filed by the executive director shall thereafter form the basis for withholding wages as required by this section. The executive director may also require from the employer a copy of any withholding certificate signed by the employee.

(II) Any employer who fails to provide a copy of any withholding certificate signed by the employee required by the executive director shall be subject to a civil penalty of not more than five hundred dollars. Such civil penalty may be assessed and collected by the executive director.

(c) Any employee may request a hearing to protest such certificate filed on his behalf by the executive director. Such hearing shall be conducted pursuant to [section 39-21-103](#), and any final determination shall be appealable in the district court in accordance with [section 39-21-105](#).

(17) Any person making any payment of winnings which are subject to withholding for federal income tax purposes shall deduct and withhold from such payment for Colorado income tax purposes a percentage of such winnings established

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by rule and regulation of the department of revenue. The amount withheld shall be remitted to the department of revenue in the manner required pursuant to rules and regulations authorized in subsection (4) of this section.