



LEGISLATURE OF THE STATE OF IDAHO



Sixty-fifth Legislature

First Regular Session - 2019

IN THE _____

BILL NO. _____

BY _____

AN ACT

RELATING TO INCOME TAX; AMENDING SECTION 63-3035, IDAHO CODE, TO PROVIDE UPDATED TERMINOLOGY REGARDING EMPLOYEE WITHHOLDING ALLOWANCES AND ALLOWANCE CERTIFICATES AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-3035, Idaho Code, be, and the same is hereby amended to read as follows:

63-3035. STATE WITHHOLDING TAX ON PERCENTAGE BASIS -- WITHHOLDING, COLLECTION AND PAYMENT OF TAX. (a) Every employer who is required under the provisions of the Internal Revenue Code to withhold, collect and pay income tax on wages or salaries paid by such employer to any employee (other than employees specified in Internal Revenue Code section 3401(a)(2)) shall, at the time of such payment of wages, salary, bonus or other emolument to such employee, deduct and retain therefrom an amount substantially equivalent to the tax reasonably calculated by the state tax commission to be due from the employee under this chapter. The state tax commission shall prepare tables showing amounts to be withheld, and shall supply same to each employer subject to this section. In the event that an employer can demonstrate administrative inconvenience in complying with the exact requirements set forth in these tables, he may, with the consent of the state tax commission and upon application to it, use a different method which will produce substantially the same amount of taxes withheld. Every employer making payments of wages or salaries earned in Idaho, regardless of the place where such payment is made:

(1) Shall be liable to the state of Idaho for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from his wages and paid over in compliance or intended compliance with this section;

(2) Must pay to the state tax commission monthly on or before the twentieth day of the succeeding month, or at such other times as the state tax commission may allow, an amount of tax which, under the provisions of this chapter, he is required to deduct and withhold;

(3) Shall register with the state tax commission, in the manner prescribed by it, to establish an employer's withholding account number. The account number will be used to report all amounts withheld, for the annual reconciliation required in this section, and for such other purposes relating to withholding as the state tax commission may require; and

(4) Must, notwithstanding the provisions of paragraphs (1) and (2) of this subsection, if the amount of withholding of such employer for the preceding twelve (12) month period equals or exceeds two hundred forty

1 thousand dollars (\$240,000) per annum or an average of twenty thousand
2 dollars (\$20,000) per month per annum, pay to the state tax commission
3 on the basis of two (2) withholding periods. ~~The first of which period~~
4 shall begin on the first day of the month and end on the fifteenth day
5 of the same month, and payment shall be made not later than the twen-
6 tieth day of the same month. The second period shall begin on the six-
7 teenth day of the same month and end on the last day of the same month,
8 and payment shall be made not later than the fifth day of the following
9 month. An employer meeting the withholding threshold requirements of
10 this subsection, but only having one (1) pay period per month, may, upon
11 request to and approval by the state tax commission, pay in accordance
12 with paragraph (2) of this subsection.

13 (5) If a payment required pursuant to paragraph (2) or (4) of this sub-
14 section is not made or is made delinquent or if made is not equal to
15 the withholding required under this section, the state tax commission
16 may treat the failure as a failure to file a return and may take admin-
17 istrative and judicial actions as authorized by this chapter in the case
18 of a failure to file a return. Interest, at the rate provided by section
19 63-3045, Idaho Code, shall apply to any such underpayment.

20 (6) Commencing in 2006, the state tax commission shall determine
21 whether the threshold amounts established by paragraph (4) of this sub-
22 section must be adjusted to reflect fluctuations in the cost of living.
23 The state tax commission shall base its determination on the cumu-
24 lative effect of the annual cost-of-living percentage modifications
25 determined by the United States secretary of health and human services
26 pursuant to 42 U.S.C. 415(i). When the cumulative percentage applied
27 to the monthly threshold amount equals or exceeds five thousand dollars
28 (\$5,000), the commission shall promulgate a rule adjusting the monthly
29 threshold amount by five thousand dollars (\$5,000) and making the nec-
30 essary proportional adjustment to the annual threshold amount. The
31 rule shall be effective for the next succeeding calendar year and each
32 year thereafter until again adjusted by the commission. The tax commis-
33 sion shall determine subsequent adjustments in the same manner, in each
34 case using the year of the last adjustment as the base year.

35 (b) (1) In addition to the payments required pursuant to subsection
36 (a) (2) and (4) of this section, every employer shall file a return upon
37 such form as shall be prescribed by the state tax commission, but not
38 more frequently than annually, or as required pursuant to any agreement
39 between the state tax commission and the department of labor under sec-
40 tion 63-3035B, Idaho Code, unless a shorter filing period and due date
41 is prescribed by the state tax commission. The return shall be due on
42 the last day of the first month following the end of the period to which
43 the return relates. The return shall:

44 (i) Show, for the period to which it relates, the total amount
45 of wages, salary, bonus or other emolument paid to his employees,
46 the amount deducted therefrom in accordance with the provisions of
47 the Internal Revenue Code, the amount deducted therefrom in accor-
48 dance with the provisions of this section, the amount of any pre-
49 vious payments made pursuant to this section, the amount of any
50 deficiency due from the employer or refund payable by the state

1 tax commission and such pertinent and necessary information as the
2 state tax commission may require.

3 (ii) Include a copy of the declaration of withholding provided to
4 employees pursuant to paragraph (2) of this subsection.

5 (2) Every employer making a declaration of withholding as provided
6 herein shall furnish to the employees annually, but not later than
7 thirty (30) days after the end of the calendar year, a record of the
8 amount of tax withheld from such employee on forms to be prescribed,
9 prepared and furnished by the state tax commission.

10 (3) Every employer who is required, under Internal Revenue Code section
11 6011, to file returns on magnetic media, machine readable form or elec-
12 tronic means, as defined in the Idaho uniform electronic transactions
13 act, may be required by rules of the state tax commission to file corre-
14 sponding state returns on similar magnetic media, machine readable form
15 or electronic means. Such rules may provide a different due date for
16 such returns, which shall be no later than the date employers are re-
17 quired to file such returns with the internal revenue service or the so-
18 cial security administration and shall provide a five (5) business day
19 period for an employer to correct errors in the electronic file received
20 by the due date.

21 (c) All moneys deducted and withheld by every employer shall immedi-
22 ately upon such deduction be state money and every employer who deducts and
23 retains any amount of money under the provisions of this chapter shall hold
24 the same in trust for the state of Idaho and for the payment thereof to the
25 state tax commission in the manner and at the times in this chapter provided.
26 Any employer who does not possess real property situated within the state of
27 Idaho, which, in the opinion of the state tax commission, is of sufficient
28 value to cover his probable tax liability, may be required to post a surety
29 bond in such sum as the state tax commission shall deem adequate to protect
30 the state.

31 (d) The provisions of this chapter relating to additions to tax in case
32 of delinquency, and penalties, shall apply to employers subject to the pro-
33 visions of this section and for these purposes any amount deducted, or re-
34 quired to be deducted and remitted to the state tax commission under this
35 section, shall be considered to be the tax of the employer and with respect
36 to such amount he shall be considered the taxpayer.

37 (e) Amounts deducted from wages of an employee during any calendar year
38 in accordance with the provisions of this section shall be considered to be
39 in part payment of the tax imposed on such employee for his tax year, which
40 begins within such calendar year, and the return made by the employer under
41 this subsection shall be accepted by the state tax commission as evidence in
42 favor of the employee of the amount so deducted from his wages. Where the to-
43 tal amount so deducted exceeds the amount of tax on the employee, based on his
44 Idaho taxable income, or where his income is not taxable under this chapter,
45 the state tax commission shall, after examining the annual return filed by
46 the employee in accordance with this chapter, but not later than sixty (60)
47 days after the filing of each return, refund the amount of the excess de-
48 ducted.

49 (f) This section shall in no way relieve any taxpayer from his obliga-
50 tion of filing a return at the time required under this chapter, and, should

1 the amount withheld under the provisions of this section be insufficient to
2 pay the total tax of such taxpayer, such unpaid tax shall be paid at the time
3 prescribed by section 63-3034, Idaho Code.

4 (g) An employee receiving wages shall on any day be entitled to not
5 more than, but may claim fewer than, the number of withholding ~~exemptions~~
6 allowances to which he is entitled under the Internal Revenue Code for fed-
7 eral income tax withholding purposes.

8 (h) An employer shall use the ~~exemption allowance~~ certificate filed by
9 the employee with the employer under the withholding ~~exemption allowance~~
10 provisions of the Internal Revenue Code in determining the amount of tax
11 to be withheld from the employee's wages or salary under this chapter. The
12 state tax commission may redetermine the number of withholding ~~exemptions~~
13 allowances to which an employee is entitled under subsection (g) of this
14 section, and the state tax commission may require such ~~exemption allowance~~
15 certificate to be filed on a form prescribed by the commission in any
16 circumstance where the commission finds that the ~~exemption allowance~~ cer-
17 tificate filed for Internal Revenue Code purposes does not properly reflect
18 the number of withholding ~~exemptions~~ allowances to which the employee
19 is entitled under this chapter. In no event shall any employee give an
20 ~~exemption allowance~~ certificate which claims a higher number of withholding
21 ~~exemptions~~ allowances than the number to which the employee is entitled by
22 subsection (g) of this section.

23 SECTION 2. An emergency existing therefor, which emergency is hereby
24 declared to exist, this act shall be in full force and effect on and after its
25 passage and approval, and retroactively to January 1, 2019.