Employer Withholding Tax - Information Release*

EW 2001-01 – Proper Completion of Form IT-4

Introduction

The purpose of this information release is to explain how employers should determine if their employees have properly completed an Ohio Withholding Exemption Certificate (Form IT-4) and to advise employers what steps to take if an employee submits an improperly completed Form IT-4.

The full text of R.C. 5747.06 can be found at: http://codes.ohio.gov/orc/5747.06
The full text of Ohio Adm.Code 5703-7-06 can be found at: http://codes.ohio.gov/oac/5703-7-06

Observations/ Law

Division (A) of R.C. 5747.06 requires every employer to withhold from its employee’s compensation an amount that reasonably estimates the amount of state income tax and school district income tax that the employee owes for the taxable year. To help facilitate the withholding process, the Tax Commissioner prescribed form IT-4 and an administrative rule on the topic.

Rule 5703-7-06 requires employees and employers to utilize the IT-4 to determine the number of exemptions an employee can claim for Ohio income tax purposes. The Rule puts the onus on the employee to properly complete form IT-4; if the employee fails to do so, the employer is required to withhold “without exemptions.”

An exception to these general withholding requirements applies to residents of Indiana, Kentucky, Michigan, Pennsylvania and West Virginia who work in Ohio (the “reciprocity exception”). Based on reciprocity agreements Ohio has with its border states, taxpayers must pay, and employers must withhold, taxes on the employee’s wage income to their state of residency. However, it is important to note that most nonresidents who work in Ohio are subject to Ohio’s individual income tax on compensation for personal services performed in Ohio. See R.C. 5747.02(A) and 5747.20(B)(2). As such, while withholding is improper for residents of the above-listed border states, withholding is generally required for a taxpayer who is a resident of any state.

It is important to note that, while it is the employer’s responsibility to withhold tax from its employee’s wages,

* An information release does not create legal obligations by its own force. Only an administrative rule can “confer the force of law on a requirement.” See Progressive Plastics, Inc. v. Testa, 133 Ohio St.3d 490, 2012-Ohio-4759.
such failure does not relieve the employee from his/her underlying tax liability should the employer fail to do so. See R.C. 5747.06(C). However, even if the taxpayer ultimately pays the tax due in this situation, the employer can still be liable for interest and penalties for failing to perform the required withholding. See R.C. 5747.06(D).

**Guidance**

To conform with R.C. 5747.06 and Ohio Adm.Code 5703-7-06, employers may use either the wage bracket method or the percentage method of withholding found in the Employer’s Ohio Income Tax Withholding Tables. If the employee resides in a school district with a school district income tax in effect, the employer shall also withhold school district income tax based upon the proper school district income tax rate.

**How to Identify a Properly Completed IT-4.** The Department will generally consider a Form IT-4 to be **properly completed** if the employee claims:

- A personal exemption for himself/herself;
- An exemption for his/her spouse, if married; and/or
- An exemption for each dependent.

Employees may not claim exemptions for dependents in excess of the number of dependents claimed on the employee’s federal tax return. For example, if John Smith is married and has nine dependents for the tax year, then on a properly completed IT-4 he may claim a total of eleven personal and dependent exemptions. Health insurance records are often a good source to verify the number of dependents.

Please note that the IRS allows a taxpayer to adjust their withholding with exemptions in excess of actual dependents. An employee cannot use these additional exemptions when completing the Ohio Form IT-4.

**How to Identify an Improperly Completed IT-4.** The Department will generally consider a Form IT-4 to be **improperly completed** if the employee claims:

- More than nine dependent exemptions, and the employee cannot provide social security numbers for each dependent or
- To be totally "exempt" from the Ohio personal income tax

The most serious type of an improperly completed Form IT-4 involves Ohio resident employees who claim to be totally exempt from state income taxes. These employees often state on documentation that accompanies their Form IT-4s that their wages should be excluded from the definition of income. This issue was addressed in *Buckley v. Wilkins*, 105 Ohio St.3d 350 (2005) (holding that wages are income under Ohio law and that an argument to the contrary is frivolous).

Some employees claim total exemption on Form IT-4 because they are nonresidents of Ohio. Please note that the Ohio personal income tax is levied upon both residents and nonresidents who earn or receive income in Ohio. As such, a nonresident is subject to tax on compensation for “personal services performed in this state” and thus the employer has a duty to withhold Ohio income tax on those amounts.

Employers receiving an improperly completed Form IT-4 should:

- Forward a copy of the improperly completed Form IT-4 to the Ohio Department of Taxation, P.O. Box 2476, Columbus, Ohio 43216-0076, Attention: Business Tax Division; and
- Withhold Ohio personal income tax without exemption until the employee completes and submits a
properly completed Form IT-4.

The IT-4NR. While a nonresident is generally subject to Ohio’s income tax, and thus an employer is required to withholding said tax from the nonresident employee’s wages, as noted above the one exception to this general rule is the reciprocity exception. Those employees who are residents of a state bordering Ohio should complete Form IT-4NR instead of Form IT-4. Once completed, the employer should not withhold Ohio income tax from the employee’s wages, but instead should withhold income tax for the employee’s state of residence. Employers should also maintain a copy of Form IT-4NR for each employee who claims the reciprocity exception.

Questions?

Taxpayers may visit www.tax.ohio.gov. Questions may be submitted by clicking on the “Contact” link found at the top right of the page and then choosing the “Email Us” option. Taxpayers with additional questions regarding this subject may contact Business Taxpayer Services at 1-888-405-4039.