

Part 4

Withholding of Tax

59-10-401 Definitions.

For purposes of this part:

- (1) "Employee" means and includes every individual performing services for an employer, either within or without, or both within or without the state of Utah, or any individual performing services within the state of Utah, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee, and includes offices of corporations, individuals, including elected officials, performing services for the United States Government or any agency or instrumentality thereof, or the state of Utah or any county, city, municipality, or political subdivision thereof.
- (2) "Employer" means a person or organization transacting business in or deriving any income from sources within the state of Utah for whom an individual performs or performed any services, of whatever nature, and who has control of the payment of wages for such services, or is the officer, agent, or employee of the person or organization having control of the payment of wages. It includes any officer or department of state or federal government, or any political subdivision or agency of the federal or state government, or any city organized under a charter, or any political body not a subdivision or agency of the state.
- (3) "Wages" means wages as defined in Section 3401 of the Internal Revenue Code.

Renumbered and Amended by Chapter 2, 1987 General Session

59-10-402 Requirement of withholding -- Exceptions.

- (1) As used in this section:
 - (a) "Day" means any period of time during a calendar day that an individual is present in the state, unless the presence is solely for transportation through the state.
 - (b) "Related entity" means:
 - (i) a stockholder who is an individual, or a member of the stockholder's family as described in Section 318, Internal Revenue Code, if the stockholder and the members of the stockholder's family own, in the aggregate, at least 50% of the value of the nonresident individual's outstanding stock;
 - (ii) a stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, or corporations own, in the aggregate, at least 50% of the value of the nonresident individual's outstanding stock; or
 - (iii) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least 50% of the value of the corporation's outstanding stock.
 - (c) "Related person" means a person that, with respect to the nonresident individual during all or any portion of the taxable year, is:
 - (i) a related entity;
 - (ii) a component member as defined in Subsection 1563(b), Internal Revenue Code;
 - (iii) a person to or from whom there is attribution of stock ownership in accordance with Subsection 1563(e), Internal Revenue Code; or

- (iv) a person that, notwithstanding the form of organization, bears the same relationship to the nonresident individual as a person described in Subsection (1)(c)(i), (ii), or (iii).
- (2) For purposes of determining whether the ownership requirements of a related entity are satisfied, a person shall:
 - (a) use the attribution rules of the Internal Revenue Code; and
 - (b) include direct, indirect, beneficial, or constructive ownership.
- (3) Each employer making payment of wages shall deduct and withhold from wages an amount to be determined by a commission rule that will, as closely as possible, pay the income tax imposed by this chapter.
- (4)
 - (a) Any employer described in Subsection (3) that is to do business within the state for a period not to exceed 60 days in the aggregate during any calendar year may be relieved from the requirement provided for under this part for such period by furnishing to the commission in advance a certificate so certifying.
 - (b) If an employer described in Subsection (4)(a) thereafter does business within the state for a period in excess of 60 days, that employer shall be liable for all the tax that the employer would have been required to deduct and withhold.
 - (c) Upon a showing of good cause by the employer, the commission may extend for a period of not to exceed 30 days the time during which the employer is not required to deduct and withhold the tax.
- (5)
 - (a)
 - (i) An employer described in Subsection (3) may not deduct or withhold any amount from wages paid to a nonresident individual if the nonresident individual's wages are excluded from state source income in accordance with Section 59-10-117.5 without regard to Subsection 59-10-117.5(2)(a).
 - (ii) For purposes of Subsection (5)(a)(i), an employer shall calculate the number of days described in Subsection 59-10-117.5(2)(b) by including the days the nonresident employee is present in the state to perform employment duties on behalf of the employer or any related person.
 - (b) If a nonresident individual is present in this state to perform employment duties for the employer, a related person, or a combination of the employer and a related person for more than 20 days during a calendar year, the employer shall be liable for all the tax that the employer would have been required to deduct and withhold.
- (6) The exceptions described in Subsections (4)(a) and (5)(a) are from the withholding requirement described in Subsection (3), not from an individual's obligation to pay income taxes as provided in Part 1, Determination and Reporting of Tax Liability and Information.
- (7)
 - (a) The amount withheld under this section shall be allowed to the recipient of the income as a credit against the tax imposed by this chapter.
 - (b) Except as provided in Subsection (7)(c), the amount withheld during any calendar year shall be allowed as a credit for the taxable year that begins in the calendar year in which the amount is withheld.
 - (c) If more than one taxable year begins in a calendar year, the withheld amount shall be allowed as a credit for the last taxable year that begins in the calendar year in which the amount is withheld.

Amended by Chapter 252, 2022 General Session

59-10-403 Circumstances under which an employer is not required to deduct and withhold a tax.

- (1) Notwithstanding any other provision of this chapter, an employer is not required to deduct and withhold any tax under this chapter upon a payment of wages to an employee:
 - (a) if there is in effect with respect to the payment a withholding exemption certificate furnished to the employer by the employee, certifying that the employee:
 - (i) incurred no liability for a tax imposed under this chapter for the employee's immediately preceding taxable year; and
 - (ii) expects that the employee will not incur liability for a tax imposed under this chapter for the employee's current taxable year; or
 - (b) if the employer:
 - (i) is an out-of-state business as defined in Section 53-2a-1202; and
 - (ii) pays the wages as compensation for services performed in response to a declared state disaster or emergency as defined in Section 53-2a-1202.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall provide for the coordination of this section with Section 59-10-402.

Amended by Chapter 376, 2014 General Session

59-10-404 Extension of withholding to payments other than wages.

- (1) For purposes of this part, any supplemental unemployment compensation benefit paid to an individual, and any payment of an annuity to an individual, if at the time the payment is made a request that such annuity be subject to withholding under this part is in effect, shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.
- (2) For purposes of Subsection (1), "supplemental unemployment compensation benefits" means amounts that are paid to an employee pursuant to a plan to which the employer is a party, because of an employee's involuntary separation from employment, whether or not such separation is temporary, resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includable in the employee's gross income.
- (3) For purposes of this part, any unemployment compensation benefit paid to an individual pursuant to Title 35A, Chapter 4, Employment Security Act, may be subject to withholding as provided in Section 35A-4-407.
- (4) For purposes of this section, "annuity" means any amount paid to an individual as a pension or annuity, but only to the extent that the amount is includable in the gross income of such individual.
- (5) A request that an annuity be subject to withholding under this part shall be made by the payee in writing to the person making the annuity payments. The request may be terminated by furnishing to the person making the payments a written statement of termination which shall be treated as a withholding exemption certificate for purposes of Section 59-10-403.

Amended by Chapter 375, 1997 General Session

59-10-405 Voluntary withholding agreements.

- (1) The commission may by rule provide for withholding:
 - (a) from remuneration for services performed by an employee for the employee's employer that, without regard to this section, does not constitute wages; or

- (b) from any other type of payment with respect to which the commission finds that withholding would be appropriate under this part if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to the withholding.
- (2) The agreement provided for in Subsection (1)(b) shall be made in a form and manner as the commission may by rule prescribe.
- (3) For purposes of this part, remuneration or other payments with respect to which an agreement provided for in Subsection (1), other than election made pursuant to Section 35A-4-407, is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

Amended by Chapter 21, 1999 General Session

59-10-405.5 Definitions -- Withholding tax license requirements -- Penalty -- Application process and requirements -- Fee not required -- Bonds -- Exception.

(1) As used in this section:

(a) "Applicant" means a person that:

- (i) is required by this section to obtain a license; and
- (ii) submits an application:
 - (A) to the commission; and
 - (B) for a license under this section.

(b) "Application" means an application for a license under this section.

(c) "Fiduciary of the applicant" means a person that:

- (i) is required to collect, truthfully account for, and pay over an amount under this part for an applicant; and
- (ii)
 - (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);
 - (B) is a director of the applicant described in Subsection (1)(c)(i);
 - (C) is an employee of the applicant described in Subsection (1)(c)(i);
 - (D) is a partner of the applicant described in Subsection (1)(c)(i);
 - (E) is a trustee of the applicant described in Subsection (1)(c)(i); or
 - (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(d) "Fiduciary of the licensee" means a person that:

- (i) is required to collect, truthfully account for, and pay over an amount under this part for a licensee; and
- (ii)
 - (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);
 - (B) is a director of the licensee described in Subsection (1)(d)(i);
 - (C) is an employee of the licensee described in Subsection (1)(d)(i);
 - (D) is a partner of the licensee described in Subsection (1)(d)(i);
 - (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
 - (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the

commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- (e) "License" means a license under this section.
- (f) "Licensee" means a person that is licensed under this section by the commission.
- (2) The following persons are guilty of a criminal violation as provided in Section 59-1-401:
 - (a) a person that:
 - (i) is required to withhold, report, or remit any amounts under this part; and
 - (ii) engages in business within the state before obtaining a license under this section; or
 - (b) a person that:
 - (i) pays wages under this part; and
 - (ii) engages in business within the state before obtaining a license under this section.
- (3) The license described in Subsection (2):
 - (a) shall be granted and issued:
 - (i) by the commission in accordance with this section;
 - (ii) without a license fee; and
 - (iii) if:
 - (A) an applicant:
 - (I) states the applicant's name and address in the application; and
 - (II) provides other information in the application that the commission may require; and
 - (B) the person meets the requirements of this section to be granted a license as determined by the commission;
 - (b) may not be assigned to another person; and
 - (c) is valid:
 - (i) only for the person named on the license; and
 - (ii) until:
 - (A) the person described in Subsection (3)(c)(i):
 - (I) ceases to do business; or
 - (II) changes that person's business address; or
 - (B) the commission revokes the license.
- (4) The commission shall review an application and determine whether:
 - (a) the applicant meets the requirements of this section to be issued a license; and
 - (b) a bond is required to be posted with the commission in accordance with Subsections (5) and (6) before the applicant may be issued a license.
- (5)
 - (a) Except as provided in Subsection (5)(c), an applicant shall post a bond with the commission before the commission may issue the applicant a license if:
 - (i) a license under this section was revoked for a delinquency under this part for:
 - (A) the applicant;
 - (B) a fiduciary of the applicant; or
 - (C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or
 - (ii) there is a delinquency in withholding, reporting, or remitting any amount under this part for:
 - (A) an applicant;
 - (B) a fiduciary of the applicant; or
 - (C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part.
 - (b) If the commission determines it is necessary to ensure compliance with this part, the commission may require a licensee to:

- (i) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsection (6); or
 - (ii) for a licensee that has posted a bond under this section with the commission, increase the amount of the bond posted with the commission.
- (c) The commission may waive the bond requirement described in Subsection (5)(a), if the applicant is in compliance with a payment agreement that:
- (i) relates to the delinquency; and
 - (ii) is approved by the commission.
- (6)
- (a) A bond required by Subsection (5) shall be:
- (i) executed by:
 - (A) for an applicant, the applicant as principal, with a corporate surety; or
 - (B) for a licensee, the licensee as principal, with a corporate surety; and
 - (ii) payable to the commission conditioned upon the faithful performance of all of the requirements of this part including:
 - (A) the withholding or remitting of any amount under this part;
 - (B) the payment of any:
 - (I) penalty as provided in Section 59-1-401; or
 - (II) interest as provided in Section 59-1-402; or
 - (C) any other obligation of the applicant or the licensee under this part.
- (b) Except as provided in Subsection (6)(d), the commission shall calculate the amount of a bond required by Subsection (5) on the basis of:
- (i) commission estimates of:
 - (A) for an applicant, any amounts the applicant withholds, reports, or remits under this part; or
 - (B) for a licensee, any amounts the licensee withholds, reports, or remits under this part; and
 - (ii) any amount of a delinquency described in Subsection (6)(c).
- (c) Except as provided in Subsection (6)(d), for purposes of Subsection (6)(b)(ii):
- (i) for an applicant, the amount of the delinquency is the sum of:
 - (A) the amount of any delinquency that served as a basis for revoking the license under this section of:
 - (I) the applicant;
 - (II) a fiduciary of the applicant; or
 - (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or
 - (B) the amount that any of the following owe under this part:
 - (I) the applicant;
 - (II) a fiduciary of the applicant; and
 - (III) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part; or
 - (ii) for a licensee, the amount of the delinquency is the sum of:
 - (A) the amount of any delinquency that served as a basis for revoking the license under this section of:
 - (I) the licensee;
 - (II) a fiduciary of the licensee; or
 - (III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part; or
 - (B) the amount that any of the following owe under this part:
 - (I) the licensee;

- (II) a fiduciary of the licensee; and
 - (III) a person for which the licensee or the fiduciary of the licensee is required to collect, truthfully account for, and pay over an amount under this part.
- (d) Notwithstanding Subsection (6)(b) or (c), a bond required by Subsection (5) may not:
- (i) be less than \$25,000; or
 - (ii) exceed \$500,000.
- (7)
- (a) The commission shall revoke a license under this section if:
- (i) a licensee violates any provision of this part; and
 - (ii) before the commission revokes the license the commission provides the licensee:
 - (A) reasonable notice; and
 - (B) a hearing.
- (b) If the commission revokes a licensee's license in accordance with Subsection (7)(a), the commission may not issue another license to that licensee until that licensee complies with the requirements of this part, including:
- (i) paying any:
 - (A) amounts due under this part;
 - (B) penalty as provided in Section 59-1-401; or
 - (C) interest as provided in Section 59-1-402; and
 - (ii) posting a bond in accordance with Subsections (5) and (6).
- (8) An employer that has erroneously applied the exception described in Subsection 59-10-402(5)
- (a) solely as a result of miscalculating the number of days a nonresident individual is present in this state to perform employment duties may not be assessed a penalty under this section if:
 - (a) the employer relied on a regularly maintained time and attendance system that:
 - (i) requires the employee to record, on a contemporaneous basis, the work location each day the employee is present in a state other than:
 - (A) the employee's state of residence; or
 - (B) the place where services are considered performed for purposes of Section 35A-4-204; and
 - (ii) is used by the employer to allocate the employee's wages between all taxing jurisdictions in which the employee performs employment duties;
 - (b) the employer does not maintain a time and attendance system described in Subsection (8)(a) and relied on employee travel records that the employer requires the employee to maintain and record on a regular and contemporaneous basis; or
 - (c) the employer does not maintain a time and attendance system described in Subsection (8)(a) or require the maintenance of employee records described in Subsection (8)(b) and relied on travel expense reimbursement records that the employer requires the employee to submit on a regular and contemporaneous basis.

Amended by Chapter 252, 2022 General Session

59-10-406 Collection and payment of tax -- Forms filed electronically.

- (1)
- (a) Each employer shall, on or before the last day of April, July, October, and January, pay to the commission the amount required to be deducted and withheld from wages paid to any employee during the preceding calendar quarter under this part.
 - (b) The commission may change the time or period for making reports and payments if:
 - (i) in its opinion, the tax is in jeopardy; or

- (ii) a different time or period will facilitate the collection and payment of the tax by the employer.
- (2)
- (a) Each employer shall file a return, in a form the commission prescribes, with each payment of the amount deducted and withheld under this part showing:
 - (i) the total amount of wages paid to his employees;
 - (ii) the amount of federal income tax deducted and withheld;
 - (iii) the amount of tax under this part deducted and withheld; and
 - (iv) any other information the commission may require.
 - (b) The employer shall file the return described in Subsection (2)(a) in an electronic format approved by the commission.
- (3)
- (a) Each employer shall file an annual return, in a form the commission prescribes, summarizing:
 - (i) the total compensation paid;
 - (ii) the federal income tax deducted and withheld; and
 - (iii) the state tax deducted and withheld for each employee during the calendar year.
 - (b) The return required by Subsection (3)(a) shall be filed with the commission:
 - (i) in an electronic format approved by the commission; and
 - (ii) on or before January 31 of the year following that for which the report is made.
- (4)
- (a) Each employer shall also, in accordance with rules prescribed by the commission, provide each employee from whom state income tax has been withheld with a statement of the amounts of total compensation paid and the amounts deducted and withheld for that employee during the preceding calendar year in accordance with this part.
 - (b) The statement shall be made available to each employee described in Subsection (4)(a) on or before January 31 of the year following that for which the report is made.
- (5)
- (a) The employer is liable to the commission for the payment of the tax required to be deducted and withheld under this part.
 - (b) If an employer pays the tax required to be deducted and withheld under this part:
 - (i) an employee of the employer is not liable for the amount of any payment described in Subsection (5)(a); and
 - (ii) the employer is not liable to any person or to any employee for the amount of any such payment described in Subsection (5)(a).
 - (c) For the purpose of making penal provisions of this title applicable, any amount deducted or required to be deducted and remitted to the commission under this part is considered to be the tax of the employer and with respect to such amounts the employer is considered to be the taxpayer.
- (6)
- (a) Each employer that deducts and withholds any amount under this part shall hold the amount in trust for the state for the payment of the amount to the commission in the manner and at the time provided for in this part.
 - (b) So long as any delinquency continues, the state shall have a lien to secure the payment of any amounts withheld, and not remitted as provided under this section, upon all of the assets of the employer and all property owned or used by the employer in the conduct of the employer's business, including stock-in-trade, business fixtures, and equipment.
 - (c) The lien described in Subsection (6)(b) shall be prior to any lien of any kind, including existing liens for taxes.

- (7) To the extent consistent with this section, the commission may use all the provisions of this chapter relating to records, penalties, interest, deficiencies, redetermination of deficiencies, overpayments, refunds, assessments, and venue to enforce this section.
- (8)
- (a) Subject to Subsections (8)(b) and (c), the commission shall require an employer that issues the following forms for a taxable year to file the forms with the commission in an electronic format approved by the commission:
 - (i) a federal Form W-2;
 - (ii) a federal Form 1099 filed for purposes of withholding under Section 59-10-404; or
 - (iii) a federal form substantially similar to a form described in Subsection (8)(a)(i) or (ii) if designated by the commission in accordance with Subsection (8)(d).
 - (b) An employer that is required to file a form with the commission in accordance with Subsection (8)(a) shall file the form on or before January 31.
 - (c) An employer that is required to file a form with the commission in accordance with Subsection (8)(a) shall provide:
 - (i) accurate information on the form; and
 - (ii) all of the information required by the Internal Revenue Service to be contained on the form.
 - (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (8)(a), the commission may designate a federal form as being substantially similar to a form described in Subsection (8)(a)(i) or (ii) if:
 - (i) for purposes of federal individual income taxes a different federal form contains substantially similar information to a form described in Subsection (8)(a)(i) or (ii); or
 - (ii) the Internal Revenue Service replaces a form described in Subsection (8)(a)(i) or (ii) with a different federal form.
- (9)
- (a) Subject to Subsection (9)(b), a pass-through entity shall file with the commission in an electronic format approved by the commission a form designated by the commission, providing information for each final pass-through entity taxpayer of a pass-through entity that elected to pay a tax in accordance with Subsection 59-10-1403.2(2).
 - (b) The pass-through entity shall file the form described in Subsection (9)(a) on or before the last day of the pass-through entity's taxable year.

Amended by Chapter 470, 2023 General Session

59-10-407 Withholding tax prepayments.

- (1) This section does not apply to an employer filing a withholding tax return for a period under this part other than a quarterly period.
- (2)
- (a) Any employer whose withholding tax liability under Section 59-10-402 is estimated to average an amount designated by the commission by rule shall make a monthly prepayment of the amount required to be paid by Section 59-10-406 for each monthly period of each quarterly period.
 - (b) An employer that makes a monthly prepayment described in this Subsection (2) shall make the monthly prepayment as provided in this section until the commission notifies the employer in writing.
 - (c)
 - (i) An employer shall file a form with a monthly prepayment.
 - (ii) The commission shall prescribe and furnish the form described in Subsection (2)(c)(i).

- (iii) An employer shall make a monthly prepayment and file the form described in Subsection (2)(c)(i) on or before the last day of the month after the end of each monthly period of each quarterly period.
- (3) In determining whether an employer's estimated withholding tax liability will average an amount that requires a monthly prepayment, the commission may consider:
 - (a) a return filed pursuant to Section 59-10-406; or
 - (b) information in the commission's possession or that may come into the commission's possession.
- (4) The penalties and interest for failure to make a monthly prepayment and file the form described in Subsection (2)(c)(i) by the due date described in Subsection (2)(c)(iii) are the same as the penalties and interest under Sections 59-1-401 and 59-1-402 relating to payment of a tax, fee, or charge or filing a return.

Amended by Chapter 33, 2009 General Session

59-10-408 Withholding rules -- Agreements with federal government.

The commission may prescribe and enforce reasonable rules necessary to carry out the provisions of Sections 59-10-401 through 59-10-407, and to make such agreements with the United States Government as it deems necessary or advisable to provide for deduction and withholding of tax from wages of federal employees in the state of Utah.

Renumbered and Amended by Chapter 2, 1987 General Session