

## 23 VAC 10-140. INCOME TAX WITHHOLDING

~~23 VAC 10-140-20. Requirement of withholding.~~

~~Every employer making payment of wages is required to deduct and withhold with respect to the wages of each employee for each payroll period the following amount (and on the assumption that an equal amount will be collected for each similar payroll period with respect to a similar amount of wages for each payroll period during an entire calendar year): An amount approximately equal to the Virginia income tax liability of such employee after allowing for the personal exemptions and standard deduction to which such employee could be entitled on the basis of his status during such payroll period and after allowing for any credit available to the employee as provided by §58.1-332 of the Code of Virginia, but without allowing for any other deductions. In determining the amount to be deducted and withheld under these regulations, the employer is permitted to compute wages to the nearest dollar.~~

~~An employer shall not be required to deduct any amount upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate, in such form and containing such other information as the Commissioner may prescribe (currently Form VA-4a), furnished by the employee to the employer, certifying that the employee: (i) incurred no liability for Virginia income tax for his preceding taxable year; and (ii) anticipates that he will incur no liability for Virginia income tax for his current taxable year.~~

## 23 VAC 10-140. INCOME TAX WITHHOLDING

~~23 VAC 10-140-30. Withholding tables.~~

~~The amount of tax to be withheld for each individual shall be based upon tables prepared and distributed by the Commissioner.~~

~~Example: Employer A pays his employees every month. Employee Z, who is single and claimed one personal exemption on Form VA-4 filed with Employer A, earns an annual gross salary of \$12,000, payable \$1,000 per month. From each of Employee Z's monthly paychecks Employer A withholds Virginia income tax of \$34.90, based on the monthly withholding table contained in the Employer Income Tax Withholding Instructions issued by the Department of Taxation.~~

## 23 VAC 10-140. INCOME TAX WITHHOLDING

~~23 VAC 10-140-80. Failure of employer to withhold tax; payment by recipient of wages.~~

~~If an employer fails to deduct and withhold the tax under this chapter, and thereafter the income tax against which the withholding tax may be credited is paid, the employer will not be liable for the withholding tax. However, despite such payment of the withholding tax, the employer will still be liable for any penalties or additions to the tax otherwise applicable to the employer's failure to deduct and withhold.~~

23 VAC 10-140. INCOME TAX WITHHOLDING

~~23 VAC 10-140-90. Failure of employer to pay over tax withheld.~~

~~If any employer deducts and withholds taxes from the compensation of an employee but fails to pay over the money so deducted and withheld to Virginia, such employee shall not be held liable for the payment of such taxes but shall be entitled to a credit for the moneys so deducted and withheld as if the same had been paid over by the employer as required by law. The burden of proving that such an employer deducted and lawfully withheld Virginia income tax shall rest upon the employee.~~

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~~23 VAC 10-140-120. [Reserved]~~

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~~23 VAC 10-140-140. Jeopardy assessments.~~

~~If the Commissioner has reason to believe that the collection of moneys, required to be withheld by the employer, is in jeopardy, he may require the employer to make such return and pay to the Commissioner such amounts required to be withheld at any time the Commissioner may designate therefor after the time when such amounts should have been deducted from wages and withheld.~~

23 VAC 10-140. INCOME TAX WITHHOLDING

~~23 VAC 10-140-150. Liability of employer for failure to withhold.~~

~~An employer shall be personally and individually liable for sums required to be withheld and paid to the Commissioner which the employer fails to withhold or pay. Any sum or sums withheld in accordance with the provisions of these regulations shall be deemed to be held in trust for the Commonwealth.~~

## 23 VAC 10-140. INCOME TAX WITHHOLDING

~~23 VAC 10-140-160. Penalty for failure to withhold.~~

~~A. Any employer required under the provisions of this chapter to deduct and withhold from wages and make returns and payments of amounts withheld to the Commissioner, who fails to withhold such amounts, or to make such returns, or who fails to remit amounts collected to the Commissioner, or otherwise fails to remit to the Commissioner as required by these regulations, shall be subject to a penalty equal to 5% of the amount that should have been properly withheld and paid over to the Commissioner for each month or fraction thereof, until paid, not to exceed 25%. In no case shall the penalty be less than \$10, even if no tax is due for the period for which the filing of such return was required.~~

~~Interest at a rate determined in accordance with §58.1-15 of the Code of Virginia, shall accrue on the tax until paid, or until an assessment is made, after which interest shall accrue as provided in §58.1-15 of the Code of Virginia. Such penalty and interest shall be assessed by the Commissioner and shall be collected by him in the same manner as the collection of taxes may be enforced under Title 58.1, Code of Virginia.~~

~~Example: Employer W is a monthly filer and has a liability of \$300 for the monthly period ending January 31, and \$0 for the monthly period ending February 28. He files no returns until April 6. At that time he is liable for penalty and interest (assume an annual interest rate of 12%) as follows:~~

~~Monthly period ending January 31 \_\_\_\_\_~~

~~—(return due February 20; return filed \_\_\_\_\_~~



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~~April 6) \$300 liability~~ \_\_\_\_\_

~~-~~

~~Penalty--deemed to be 2 months late,~~ \_\_\_\_\_

~~at 5% per month~~ \_\_\_\_\_ ~~10% x \$300 = \$30.00~~ \_\_\_\_\_

~~Interest--over a 45-day period between~~ \_\_\_\_\_

~~February 20 and April 6~~ \_\_\_\_\_ ~~1.5% x \$300 = \$ 4.50~~ \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ ~~\$34.50~~ \_\_\_\_\_

~~Monthly period ending February 28~~ \_\_\_\_\_

~~(return due March 20; return filed~~ \_\_\_\_\_

~~April 6) \$0 liability~~ \_\_\_\_\_

\_\_\_\_\_

~~Penalty--deemed to be 1 month late~~ \_\_\_\_\_

~~at 5% per month, but 5% x \$0 = \$0,~~ \_\_\_\_\_

~~so \$10 minimum penalty applies~~ \_\_\_\_\_ ~~\$10.00~~ \_\_\_\_\_

~~Interest--applied against \$0 liability~~ \_\_\_\_\_ ~~0.00~~ \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ ~~\$10.00~~ \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

~~Total as of April 6:~~ \_\_\_\_\_ ~~\$44.50~~ \_\_\_\_\_

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~~B. Upon failure of any employer to pay over any amounts withheld or required to be withheld by the employer under this chapter, the Commissioner may make assessments and enforce the collection of such amounts, including penalties, by any legal process provided for the enforcement of the collection of taxes under Title 58.1 of the Code of Virginia.~~

## 23 VAC 10-140. INCOME TAX WITHHOLDING

~~23 VAC 10-140-170. Continuation of employer liability until notice.~~

~~Once an employer has become liable to file a return of withholding, he must continue to file a return even though no tax has been withheld, until such time as he notifies the Commissioner, in writing, that he no longer has employees or that he is no longer required to file such returns. If an employer requests in writing that he be permitted to change from one filing status to another on the ground that his withholding liability has changed in dollar amount to the requirements of a different filing status, such change shall be permitted only at the beginning of a calendar year which is after the calendar year during which the request was made.~~

## 23 VAC 10-140. INCOME TAX WITHHOLDING

~~23 VAC 10-140-180. Extensions.~~

~~The Commissioner may grant an employer a reasonable extension of time for filing any return under this chapter whenever in the Commissioner's judgment good cause exists. Whenever under the terms of such an extension the payment of any amount or amounts of money to the Commissioner by the employer is postponed for a longer period than 10 days from the time the same would be otherwise due and payable, the employer shall be charged with interest on such amount or amounts at a rate determined in accordance with §58.1-15 of the Code of Virginia, from the time such amount or amounts were originally due and payable to the date of payment under the terms of the extension.~~

## 23 VAC 10-140. INCOME TAX WITHHOLDING

~~23 VAC 10-140-210. Withheld amounts credited to individual taxpayer; withholding statement to be filed with return.~~

~~The amount deducted and withheld under this chapter during any calendar year from the wages of any individual shall be allowed to the recipient of the income as a credit against the individual income tax imposed for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit against the tax for the last taxable year so beginning. As a prerequisite to obtaining such credit the individual taxpayer must file with his income tax return one copy of the withholding statement provided for by §58.1-478 of the Code of Virginia.~~

## 23 VAC 10-140. INCOME TAX WITHHOLDING

~~23 VAC 10-140-220. Withheld taxes not deductible in computing taxable income.~~

~~The tax deducted and withheld under this chapter shall not be allowed as a deduction either to the employer or to the recipient of the income in computing Virginia taxable income.~~

~~23 VAC 10-140-250. Liability of employer for payment of tax required to be withheld.~~

~~The employer shall be liable for the payment to the Commissioner of the amounts required to be deducted and withheld under this chapter, whether or not the employer collects such amounts from the employee. An employer who has withheld and paid such amounts to the Commissioner is relieved of liability to any person for the amount of any such payment, and any excess of withholding over liability for a taxable year can be refunded to an employee only upon the employee's filing an income tax return for such taxable year.~~

23 VAC 10-140. INCOME TAX WITHHOLDING

~~23 VAC 10-140-260. [Reserved]~~

~~23 VAC 10-140-270. [Reserved]~~