

**8092.0400 REQUIREMENT OF WITHHOLDING.**

Subpart 1. **Alternative methods.** Minnesota Statutes, section 290.92, subdivision 2a, provides alternative methods, at the election of the employer, for use in computing the income tax to be collected at source on wages. Under the wage bracket method (see Minnesota Statutes, section 290.92, subdivision 2a, clause (3)) the employer is required to deduct and withhold a tax in accordance with the tables prepared by the commissioner. The commissioner may authorize under the provisions of Minnesota Statutes, section 290.92, subdivision 2a, clause (7), the employer to withhold the tax on the basis of the employee's average estimated wages with necessary adjustments for any quarter. Before using this method the employer must receive authorization from the commissioner. Applications to use such method must be accompanied by evidence establishing the need for such method.

Subp. 2. **Method of collection.** The employer is required to collect the tax by deducting and withholding the amount thereof from the employee's wages as and when paid, either actually or constructively. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by the employee at any time although not then actually reduced to possession. To constitute payment in such a case, the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to the employee so that they may be drawn upon at any time, and their payment brought within the employee's own control and disposition.

Subp. 3. **Wages other than money.** An employer is required to deduct and withhold the tax notwithstanding the wages are paid in something other than money (for example, wages paid in stocks or bonds) and to pay over the tax in money. If the wages are paid in property other than money, the employer should make necessary arrangements to ensure that the amount of the tax required to be withheld is available for payment in money.

Subp. 4. **Withholding by other than employer.** As a matter of business administration, certain of the mechanical details of the withholding process may be handled by representatives of the employer. Thus, in the case of an employer having branch offices, the branch manager or other representative may actually, as a matter of internal administration, withhold the tax or prepare the statements required. Nevertheless, the legal responsibility for withholding, paying, and returning the tax and furnishing such statements rests with the employer.

Subp. 5. **Withholding; trust fund.** The amount of any tax withheld and collected by the employer is a special fund in trust for the state of Minnesota.

**Statutory Authority:** *MS s 14.388; 270C.06; 290.52*

**History:** *17 SR 1279; 29 SR 330; L 2005 c 151 art 1 s 114*

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