



ADMINISTRATIVE RULES OF MONTANA

42.4.3403 REQUIRED INCOME TAX WITHHOLDING ON COMPENSATION PAID TO A LOAN-OUT COMPANY

- (1) In accordance with 15-31-1003(3)(c), MCA, and to be considered for inclusion in a production company's compensation base for a state-certified production, all production company personal services payments to any loan-out company must withhold Montana income taxes at the rate of 6.9%. The production company or its agent, affiliate, or hired production company may perform the act of withholding. The income tax withholding applies to payments made to a loan-out company that is related to personal services performed during a calendar year and must be paid by January 31 of the following year.
- (2) The income tax withholding must be calculated for an employee of the loan-out company using the allocable amount of time the employee performed personal services in Montana.
- (3) When the loan-out company payment involves more than one employee, the payment must be divided equally between all employees based on the total number of days of personal services rendered unless otherwise specified in the contract between the production company and the loan-out company.
- (4) An allocation for the loan-out company payment attributable to the personal services rendered in Montana must be determined by making the following deductions, where applicable, from the total payment made to the loan-out company:
 - (a) personal services performed in another state;
 - (b) personal services performed in Montana for a production that is not a state-certified production;
 - (c) fringe benefits paid directly by the production company, its agent, its affiliate, or its hired production company; and
 - (d) payments not related to personal services such as but not limited to:
 - (i) rental of tangible personal property;
 - (ii) residuals or profit-sharing payments; or
 - (iii) royalty and image rights.
- (5) A production company, hired production company, or their agent must electronically file the loan-out withholding report with the department using the department's online portal and according to department procedures. When a hired production company contracts with a loan-out company, all the withholding payments must be aggregated under the account of the production company.
- (6) A loan-out company withholding report is due with payment of the withholding tax by January 31 of the calendar year following the year an employee of the loan-out company provided services to

the hiring production company. If the withholding tax is not paid by January 31 of the calendar year following the year the hiring production company made a payment to the loan-out company which is included in a compensation base of a state-certified production, then the department shall apply penalties and interest, as provided in 15-1-216, MCA.

- (7) Upon filing the loan-out company income tax withholding report and withholding tax payment with the department, the production company must issue a withholding certificate, for each employee to whom withholding tax is allocable on the report.
 - (a) Employees of a loan-out company must receive their withholding certificates no later than February 28 of the year following the calendar year the personal services were performed. The withholding certificate must include the name and address of the employee, the certification number of the production, the year for which the withholding applies, and the amount of withholding that may be claimed as a tax credit against Montana individual income tax.
 - (b) For audit purposes, an employee must keep the withholding certificate for a minimum of three years following the date of filing a Montana individual income tax return.
- (8) An employee may claim the reported income tax withheld as a refundable tax credit by filing a Montana individual income tax return. The refund amount claimed cannot be more than the amount of withholding paid and attributed to the employee on the loan-out company withholding report, even if the certificate shows a greater amount. In the event of an error on an employee's withholding certificate, the employee and their employer must resolve the error and the employee must receive a corrected certificate.
- (9) A loan-out company may reduce its wage withholding payment pursuant to 15-30-2502, MCA, and related rules, on wages paid to its employees that rendered services to a state-certified production by a maximum of the amount resulting from the calculations described in this rule. If the loan-out income tax withholding is not paid to the department, the reduction of wage withholding based on prospective qualified compensation does not relieve the loan-out company from its obligations under 15-30-2502, MCA, nor the employee from their obligation under 15-30-2512, MCA, and related penalties and interest.

Authorizing statute(s): 15-31-1012, MCA

Implementing statute(s): 15-1-201, 15-31-1012, MCA

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