



State of Montana

Employer's Tax Guide

Income Tax Withholding

The purpose of this Employer's Tax Guide is to help you comply with the law, by providing basic information and answering the most commonly asked employer questions.

We rely on your ideas, information and cooperation to help us maintain an efficient and effective program. Please direct your questions, comments or suggestions to us by telephone (406) 444-6900, fax (406) 444-4091 or mail to Department of Revenue, 125 N. Roberts, P.O. Box 5835, Helena MT 59604.

You can also download forms and instructions from our web site at www.mt.gov/revenue.

State of Montana Employer's Tax Guide

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This Employer Tax Guide is designed to answer questions commonly asked by employers and to provide information about your rights and responsibilities.

Terms you should know

Employee - is an individual who performs a service for a person or organization. One of the tests applied to determine whether an individual is an employee is: Does the individual or organization for whom the service is performed have the legal right to control the way in which the service is carried out? It is only the right to control that is important; it is not necessary that the control is ever actually exercised.

Employer - is a person or organization who pays wages to an individual in exchange for the performance of a service by the individual. Individuals, corporations, partnerships, estates, trusts, associations, joint ventures, religious organizations, government agencies, and political subdivisions are among the entities which may be employers. This is not an exclusive list.

Wage - is a general term that encompasses, but is not limited to, salaries, wages, bonuses, fees, commissions, vacation allowances, retroactive pay increases, and any other payments made by an employer for services provided by his/her employee, unless exempted. The term wages also includes the cash value of any asset which is given to an employee as compensation for his/her service to the employer.

Registration Instructions

- Item 1** List federal identification number or social security number as used to report to the Internal Revenue Service.
- Item 2** Enter the date you started business. For withholding purposes, the date employees started work.
- Items 3-6** Please enter the legal name and address information associated with the federal identification number or social security number listed (as reported to the Internal Revenue Service). Include any DBA names.
- Item 7** List the person that you wish contacted for questions concerning your accounts with the Department of Revenue.
- Item 8** Select the type of business entity you are registering.
- Item 9** Enter the reason for your registration.
- Item 10** Complete the section only if you are the sole-proprietor of the business.
- Item 11** List all partners or corporate officers.
Attach additional pages if necessary.
- Item 12** Complete only if you purchased an existing business.
- Item 13** Complete this section for LFT or RVT registration only. Provide the information in Item 13 for each and every location your business is operating. Attach additional pages if necessary.

Mail completed form to:

Business Registration
Montana Department of Revenue
PO Box 5805
Helena, MT 59604

Phone: (406) 444-6900

Fax: (406) 444-0750

Attention New Montana Accommodations

The Montana Promotion Division of the Department of Commerce (Travel Montana) provides complete listings of Montana accommodations, both in print and electronic format, to the consumer. These listings are done as a service to your business and the consumer. There is no cost to be listed.

Do you want the Department of Revenue to release your Lodging Facility Tax information and account ID number to the Montana Promotion Division for the purpose of being listed in "Travel Montana"? Yes___ No___

Signature

Date

Withholding is money deducted and taken from an employee's wages by an employer for payment of the employee's income taxes.

Employer Responsibilities

Individuals who earn wages by performing services in Montana are liable for Montana income tax. As an employer it is your duty by law is to deduct the tax from the wages you pay. Every employer who resides in Montana and every non-resident employer who pays wages for services performed in Montana must withhold Montana income tax. This money belongs to the employee and is only held, in trust, by the employer until paid to the state. Withholding should not be used by the employer to operate the employer's business.

An employer who pays or has paid \$1,000 or more in wages annually is subject to withhold Montana income tax. The employer must file a withholding tax registration form (GenReg).

Amount to Withhold

The amount of tax you withhold from an employee's pay depends on three factors: (1) length of your payroll period, (2) gross pay and (3) number of withholding allowances claimed on W-4 forms. To request a copy of the withholding tax tables, call (406) 444-6900 or log on to www.mt.gov/revenue

An employee may request additional monies be withheld to meet his/her tax obligation. The amount withheld would be reported and paid as any other withholding.

Exempt Wages

There are certain kinds of services and compensation specifically excluded by law for withholding purposes. Refer to the Employment Tax Chart on pages 7 - 8 for a list of exemptions.

If you pay wages to persons who qualify under the following exemptions, you must withhold on their wages as explained below.

North Dakota Residents - Montana and North Dakota have a reciprocal agreement which calls for a resident of one of the states to pay income tax to his state of residency even though the compensation upon which the tax is based is earned in the other state. An employer is not required to withhold Montana income tax from compensation paid to an employee who has established himself/herself as a North Dakota resident.

An employee who wishes to take advantage of this treatment must obtain Form NR-2 (Employee's Certificate of North Dakota Residence) by writing the Department of Revenue, P.O. Box 5835, Helena, Montana 59604-5835 or calling (406) 444-6900. The employee must complete the form and file it with the employer, who then must send a copy of the completed NR-2 to the Montana Department of Revenue.

The department may require the employer to disregard an employee's false or unsubstantiated NR-2 and may require resumption of withholding and/or collection of uncollected withholding from the employee's current wages.

Interstate Transportation - Employees of motor and rail carriers subject to the jurisdiction of the Interstate Commerce Commission, are subject to income tax withholding only in their state of residency. Montana resident transportation workers pay income tax to Montana on all their earnings.

Native Americans - Compensation paid by an employer to enrolled members of an Indian tribe who live and work within the boundaries of their enrolled tribe's reservation is not subject to Montana income tax withholding, provided that such enrolled members' income is derived from reservation sources. The employer is required to have on file a statement from the exempt employee stating that the employee resides on his or her reservation, together with a certificate of enrollment.

Compensation paid by an employer to enrolled members of an Indian tribe who do not live and work within the boundaries of their enrolled tribe's reservation is subject to Montana income tax withholding. Compensation paid by an employer to enrolled members of an Indian tribe who live and work within the boundaries of their enrolled tribe's reservation is subject to Montana income tax withholding if it is not derived from reservation sources.

Pensions, Annuities, Deferred Compensation and IRAs

Employee contributions to qualifying annuity contracts as defined by the Internal Revenue Code (IRC), such as "tax sheltered" annuity plans for teachers, deferred compensation for public employees, or other similar plans, are exempt from withholding requirements to the extent that the contributions are not included in the employee's adjusted gross income for federal income tax purposes. Contributions made to individual retirement accounts under Sec. 3401(a)(12), IRC, while considered compensation to the employee, are not subject to Montana withholding if the employer reasonably expects that the employee will be able to deduct such amounts as retirement savings account contributions.

Withholding on distributions from pensions, annuities and other deferred-type compensation is voluntary. If an employee requests withholding on these plans, the employer must comply. Call (406) 444-6900 for more information.

Non-residents and Non-resident Aliens

Compensation paid to a non-resident or non-resident alien is subject to Montana income tax withholding in all cases unless the compensation is specifically exempted under Montana law.

Short-term or indefinite employment of non-residents in Montana is subject to withholding. Compensation which may be excluded from federal withholding or federal adjusted gross income under a U.S. tax treaty is subject to Montana income tax withholding. The determination of whether or not a non-resident alien qualifies for tax treaty exclusion is not made until the Montana individual income tax return is filed by the non-resident alien at year end.

Determining Withholding Allowances

The number of allowances claimed is set by the employee for both federal and state purposes when the Federal W-4 form (withholding allowance certificate) is completed. (Montana does not provide a separate W-4 form). An employee can have a separate W-4 for state purposes. For state purposes, the following special rules apply:

- The Federal W-4 is used in determining the number of allowances. Employees may elect to have a different number of allowances for federal and state purposes.
- Exemption from withholding for federal purposes does not exempt an employee from Montana income tax withholding. The State of Montana does not recognize an “exempt” status on a W-4 form.
- If the applicable line on the W-4 is left blank or has anything other than a number entered on it, the employee is deemed to be claiming “zero” withholding allowances. Withholding tax should be calculated and deducted accordingly.
- Any change to the W-4 form for the Federal Child Tax Credit purposes does not change the W-4 for state purposes.
- An employer is required to provide a copy of any (W-4) to the Department of Revenue, Helena, Montana, on which an employee has claimed exempt or 10 or more withholding allowances. Each certificate is to be provided at the same time and in the same manner as the certificate is required to be provided to the Internal Revenue Service under 26 CFR S37.34021. If the department determines that the certificate is defective, it may require in writing that the employer disregard the allowances claimed. The department will advise the employer of the maximum number of withholding allowances permitted the employee. The filing of a new W-4 form by an employee showing allowances greater than those set by the department must be disregarded.

Withholding from Supplemental Wages

If supplemental wages such as commissions, bonuses, or overtime pay are paid at the same time as the employee’s regular wage, the amount of tax withheld should be based on the total of the regular and supplemental wages.

If supplemental wages are paid at a different time (for example, a “Christmas Bonus”), the tax withheld may, at your option, be based on:

- the total of the supplemental wage and the regular wage for the current payroll period; or
- the total of the supplemental wage and the regular wage for the last preceding payroll period which falls within the same calendar year; or
- a flat 6% of the supplemental wage.

Montana Employment Tax Chart

Special Classes of Employment and Special Types of Payments		State Income Tax Withholding
Classes of Employment		
1	A dependant member of the sole proprietors' family for whom the sole proprietor may claim an exemption under the Internal Revenue Code	Not Subject
2	Spouse/Dependent Child - of sole proprietor	Not Subject
3	Members of a partnership or member managed LLC	Not Subject
4	Corporate Officers	Subject
5	Agricultural Labor	Not Subject
6	Domestic Service in a private home, local college club, or local chapter of a college fraternity or sorority	Not Subject - if total cash wages are less than \$1,000 in any quarter
7	Service performed by a duly ordained, commissioned, or licensed minister of a church in a ministerial duty or by a member of a religious order in the exercise of duties required by the order	Not Subject
8	Other Church Employees	Subject
9	Services of an individual under the age of 18 delivering or distributing newspapers to a point for subsequent delivery or distributions	Not Subject
10	The sale of newspapers or magazines to ultimate consumers where the newspapers or magazines are sold wholesale to the seller at a fixed price and seller keeps the excess	Not Subject
11	Freelance correspondents, provided the person is compensated solely by the story/picture	Not Subject
12	Real Estate Brokers	Not Subject
13	Securities salespeople/and Insurance salespeople	Subject
14	Direct Sellers engaged in the sale of consumer products, primarily in the customer's home	Not Subject
15	Cosmetologists and barbers who are independent contractors	Not Subject
16	Services as an elected public official	Subject
17	Services performed at a school, college, or university by a currently enrolled student or the spouse of such a student	Subject
18	Employment with any railroad engaged in interstate commerce	Subject - Only if Montana residents
19	Service performed by an individual who is enrolled at a nonprofit or public educational institution which uses academic instruction combined with actual work experience	Subject
20	Deceased Worker - The deceased worker's final check is not subject to Withholding but is subject to Unemployment Insurance, and individual income tax. Normally, the last check is made out to the decedent rather than to the estate and the wages are included on the W-2. On occasion however, the final check is issued to the estate and put on a 1099.	Not Subject

Classes of Employment		State Income Tax Withholding
21	Companionship Services -An employee in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act. 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is a legal guardian.	Subject
22	Officials at school amateur athletic events	Subject
23	MOA officials who are assigned to the event are not employees; however other officials are employees of the school	Not Subject
24	Services performed in the employ of a hospital if such service is performed by a patient of the hospital	Not Subject
25	Services performed in Montana in the employ of any other state or the United States government	Subject
26	Services by a citizen or resident of the United States for a foreign government or an international organization	Not Subject
27	Active service as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101 (33)	Not Subject
28	National Guard and reserve training as provided in 5 U.S.C. 5517(d)	Subject
29	Person performing services in return for aid or sustenance only	Subject
30	Casual labor not in the usual course of the employer's trade or business performed by an employee in any calendar quarter unless the cash remuneration is \$50 or more and the service is performed by an individual who is regularly employed to perform the service.	Not Subject
Type of Payments		State Income Tax Withholding
31	Employer payment for, or a contribution toward the cost of any employee benefit group plan or program including but not limited to life insurance, hospitalization insurance for the employee or dependents	Not Subject
32	Payments in any medium other than cash	Subject
33	Payments in the form of lodging or meals and the services are performed by the employee at the request of and for the convenience of the employer	Not Subject
34	Tips for services rendered at a place licensed to provide food, beverage, or lodging in accordance with section 3402(k) of the Internal Revenue Code of 1954	Not Subject
35	All Other Tips	Subject
36	Allocated Tips	Not Subject
37	Dependent care assistance provided by an employer to, or on behalf of, an employee for which a credit is allowed under 15-30-186 or 15-31-131, MCA subject to the limitations provide in section 129(b) of the IRC	Not Subject

Montana Withholding Payments

Montana Withholding Remittance Schedule

A remittance schedule tells you the frequency that payments for withholding are due to the state based on the lookback period. The schedule may be on an accelerated, monthly or annual basis. There is no longer a quarterly remittance requirement.

Lookback Period

The lookback period is the 12 month period from July 1 of the preceding year to June 30 of the present year. The lookback period is used to determine an employer's reporting and payment schedule for the coming calendar year.

Based upon this lookback period an appropriate number of coupons will be mailed to all currently registered employers. If you need additional coupons call (406) 444-6900.

- **I am an employer and have no filing history. I am not sure what my employee withholding will total. What payment schedule will I use?**

A new employer or an employer without a complete lookback period must follow the monthly remittance schedule until the department is able to determine the proper remittance schedule. However, you may request additional coupons and pay as frequently as you like.

- **Will I always remit as an annual payer because I file under this classification now?**

No. The department will let you know on or before November 1 of each year what your remittance schedule will be for the next calendar year. The notification is based upon your withholding payments during the lookback period -- July 1 to June 30.

- **How is my withholding schedule determined?**

The following chart is an overview of the requirements. To determine your schedule for the coming calendar year, add the amount of state income tax withheld and paid during the period July 1 through June 30 of the current year. Refer to the schedule which applies to your business.

Example: To determine your lookback period, add the amount paid July 1 through June 30 of the previous year and refer to the chart. If the amount of state income tax you withheld is \$12,000 or more, the accelerated schedule applies; if the amount withheld is \$1,200 - \$11,999, the monthly schedule applies; if the amount withheld is less than \$1,200, the annual schedule applies, unless you are a new employer or don't have a complete lookback period.

Schedule Thresholds	Pay Date and Form
<p>Accelerated \$12,000 or more</p>	<p>Federal Schedule; Payment coupon (Form MW-1)</p>
<p>Monthly \$1,200-11,999</p>	<p>Monthly - 15th of month following (Form MW-1)</p>
<p>Annual \$1199 or less</p>	<p>Feb 28 (Form MW-1)</p>

Beginning with 2005 tax year, there will no longer be a quarterly tax schedule.

Employers have the option to submit payments on a more frequent basis than required by this schedule. Employers required to remit on an annual basis will receive additional payment coupons should they decide to pay on a more frequent basis.

The Department of Revenue is required by law to:

- review your payment history for the lookback period;
- notify you no later than the November 1 each year what your schedule will be for the coming calendar year;
- supply you with proper forms.

Important Remittance Information

It is important to use the preprinted coupons. The coupons have optical characters which are used for electronic scanning.

Each form is personalized to a specific employer. Do not photocopy another employer’s remittance coupon for your use, as payments will be applied incorrectly. The scanner reads the scan line across the bottom of the coupon and not what may be written elsewhere.

Please note that even if no wages were paid during the period, a coupon must still be filed by the employer showing “zero” withholding. The filing of the coupon showing “zero” wages fulfills the necessary filing requirements and will reduce the number of “delinquent” letters sent to employers.

If you have questions about your schedule or need information on how to complete the forms, call our Customer Service Center at (406) 444-6900.

MW-3 Annual Reconciliation

Form MW-3 is the annual payment reconciliation and W-2 transmittal for all filers. The information requested on the MW-3 is used in the annual reconciliation process.

Detailed instructions accompany the forms. If you have questions, please call our Customer Service Center at (406) 444-6900.

If you are on the annual remittance schedule, one payment is due annually on February 28.

If you discover an error after year end, you must remit any tax due with an explanation of the error, along with corrected W-2's reflecting the adjustment.

Wage and Earning Statement

Each employer needs to issue to the state and to the individual employee, a wage and earnings statement. This wage and earnings statement is commonly called a W-2. The W-2 is a federal form and the instructions for completing the forms are in the W-2 instruction booklet. Federal publications 15 and 15A also provide additional information. The state portion of the W-2 is usually across the bottom.

- **Do I need to prepare employee wage statements even if no tax was withheld?**
Whenever wages are paid, you must prepare a W-2 for each of your employees regardless of whether any tax was withheld. For Montana employees, a six-part form must be used. The box numbers on the W-2 form may change from year to year.

Agricultural employers who have not withheld from their employees should complete and issue the W-2 form to their employees. These W-2 forms should not be submitted to the Department of Revenue.

- **May I use a different form in lieu of the W-2?**
If you want to use commercially printed multiple forms in place of the W-2 or if you want to use magnetic tapes or diskettes for reporting by computer, please contact the department to obtain approval. Montana does not participate in Federal/State Combined Reporting of magnetically filed W-2's but does with Form 1099 reporting (see below).

Ceasing to be an Employer

The following must be filed with the department within 30 days of ceasing to be an employer:

- The payment coupon with remittance for the final payroll period in which wages were paid.
- The MW-3 with the W-2 form, reporting individual employee's wages and taxes withheld during the year to the date of termination of wages payments; and
- Annual filers must file the final MW-3/AR with the W-2 form, reporting individual employee's wages and taxes withheld during the year to the date of termination of business.

Form 1099

If you are required to file a Form 1099 of any type or any other informational return with the Internal Revenue Service, you are required to send a copy to the Department of Revenue. Form 1099's with state withholding must be filed with the department on or before February 28 and cannot be magnetically filed. Form 1099's not reporting withholding can be sent on paper or filed magnetically and are not due until April 15.

Please include a copy of the 1096 transmittal form when submitting 1099 information. Specifications for magnetic media are the same as for federal which can be found in IRS publication 1220.

Use federal form 4804-4802 as the transmittal for magnetic returns. The department participates in the Combined Federal/State Reporting Program for 1099's without withholding. To register, send the department a signed copy of federal form 6847. The due date for these 1099's is April 15. All 1099's should be mailed to the Montana Department of Revenue, PO Box 5835, Helena MT 59604. Call the Customer Service Center at (406) 444-6900 for further details.

Records to Keep

To be prepared for an audit, you must keep a record of:

- beginning and ending date of each pay period;
- total wages paid during each pay period;
- method of payment;
- each employee's name, social security number and wages for each pay period.

There is a complete explanation of the records you must keep in Section 42.17.203 of the Administrative Rules of Montana. For a copy of these rules or if you have questions, please call the Customer Service Center at (406) 444-6900.

Your records must be available for inspection by the department or its authorized representative. A field representative may audit your records. The purpose of an audit is to see that your returns are being filed correctly and that you are complying with the law. The field representatives will also answer your questions and help you understand the state income tax withholding program.

If you need to correct or amend a report you have already mailed, please send a corrected copy of that report, an explanation of the correction and the name of a contact person to Montana Department of Revenue, PO Box 5835, Helena, MT 59604-5835.

Penalties

Penalties for Failing to File or Filing Late

You should file or remit as quickly as possible. If you fail to do so, your account may be assessed the following penalties and/or interest:

- failure to file a timely return or other report by the due date = late filing penalty of \$50 or the tax due, whichever is less;
- purposely failing to file a required return, statement or other report = additional late filing penalty of \$200 or the tax due, whichever is less;
- failure to pay a tax when due = late payment penalty of 1.5% per month on the unpaid tax, not to exceed 18% of the tax due;
- purposely failing to pay a tax when due = additional penalty of 25% of the tax due or \$200, whichever is less;
- interest on tax not paid when due = assessed at the rate of 12% per year, accrued at 1% per month on the unpaid tax.

If you believe you have reasonable cause for being late, you may request a waiver of penalties. The department will then notify you of the determination whether to grant the waiver. As a general rule, not having the necessary forms to remit with your payment is not an acceptable reason to request a waiver.

Other Penalties

The failure of an employer to furnish wage and tax statements (MW-3 with W-2's) to the department by the due date is a \$50 minimum penalty or \$5 per W-2 penalty, whichever is greater.

Failure to Withhold or Pay

The employer is responsible to deduct and withhold as required under 15-30-202, MCA. Failure to do so may result in penalty and interest even if the actual tax liability has been paid by the employee.

Failure to pay amounts withheld within the time provided for payment, and use of such amounts in furthering the employer's business pursuits, is deemed to be an illegal conversion of trust monies. The owners of the business become personally liable for the tax due, even if the business is a corporation. The taxes are non dischargeable in the case of a bankruptcy either by the business or individual that is liable for the tax.

If it is established that an employer has knowingly or purposely intended to evade tax or any lawful requirements of the department, additional penalties not less than \$1,000 and not more than \$5,000 may be assessed [MCA 15-30-321(2)].

Internet Filing and ACH Payment

ACH Debit Program for Withholding Tax

Business Tax Express allows businesses to establish an account and password. Once an account is established, the business simply logs in each time they wish to make a payment or file a tax return, enters the necessary data and prints a receipt. The payment will automatically be withdrawn from the business' bank account.

The online service also allows a company to transmit payments and filings on behalf of multiple businesses, and allows 'warehousing' of the payment for a later date and 2 years of payment history. This service will make it easier, faster and more convenient for our customers. Demonstrations are available by clicking on TRY THE DEMO! in the lower right corner of the Business Tax Express website located at <https://app.discoveringmontana.com/bustax/>.

Other account types available on Business Tax Express for electronic filing and payment are lodging facility tax and rental vehicle tax. Electronic payment of oil and gas production tax, cigarette tax and corporation license tax is also available on Business Tax Express.

A significant number of Montana businesses will be served by the new online filing capabilities of Business Tax Express. It is estimated that more than 50,000 Montana businesses will be able to take advantage of the new service.

ACH Credit Program for Withholding Tax

If you choose to file with the department using our ACH credit program, you will need to instruct your bank to send the department an electronic file. The file will tell the department your business ID numbers, the period you are paying and the amount of the payment. If your bank is already sending the department ACH files, you can be approved with our department within 24 hours. If your bank is not yet participating in the program, the department can give you the instructions for setting up an ACH credit payment file.



**Montana Electronic Tax Reporting
Program for Withholding Tax
ACH Credit Payments**
Registration and Authorization Form

MONTANA
ETR
Rev. 12-04

Transmitter name		
Employer name		
Employer address		
Account ID	FEIN	
Transmitter Contact Information (person sending ACH transactions to us)		
Contact person	Phone number	Fax number
E-mail address	Signature	

- In order for your ACH payment to be properly credited to withholding tax, the account number field must be 13 characters. The Account ID consists of the Montana Tax Number, the Profile Number and the Account Type. There are no spaces or hyphens in this 13 character ID.
- The State of Montana's bank account number must begin with the letters DOR. If the letters DOR are not included in the account number, the payment will not be applied to your account.
- To make ACH payments for withholding tax, complete the information above and submit to the Department of Revenue by mail or fax to:

Montana Department of Revenue
Electronic Tax Reporting Unit
Attention: Sandy Lehman
P.O. Box 5805
Helena, MT 59604-5805

Fax: (406) 444-4270 or (406) 444-4556
Phone: (406) 444-4494
Email: slehman@mt.gov