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Who is Required to Withhold Illinois Income Tax

About this publication
Publication 130, Who is Required to Withhold Illinois Income Tax, is about income tax withholding requirements. The objectives of this publication are to identify

- who is an employer;
- who is an employee;
- when withholding must occur;
- other withholding requirements for payments of lottery or gambling winnings;
- what forms you must give to employees and lottery or gambling winners; and
- what records you should keep.

Related publications:
Publication 131, Withholding Income Tax Payment and Filing Requirements; Booklet IL-700-T, Illinois Withholding Income Tax Tables, to calculate withholding; and Publication 110, Form W-2 Electronic Transmittal Requirements.

Note: If you have household employees, please see Publication 121, Illinois Income Tax Withholding for Household Employees.

Taxpayer Bill of Rights
You have the right to call the Department of Revenue for help in resolving tax problems.

You have the right to privacy and confidentiality under most tax laws.

You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department’s findings.

You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.

If you have overpaid your taxes, you have the right to a credit (or, in some cases, a refund) of that overpayment.

For more information about these rights and other department procedures, you may write us at the following address:

Problems Resolution Office  
Illinois Department of Revenue  
PO Box 19014  
Springfield, IL  62794-9014

Get Illinois Department of Revenue forms and information at tax.illinois.gov
Who is Required to Withhold Illinois Income Tax

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General Information

Who is required to withhold Illinois Income Tax?

Generally, you must withhold Illinois Income Tax if you are required to withhold (or have a voluntary agreement to withhold) federal income tax from payments you make for

- employee compensation (i.e., wages and salaries including bonus, overtime, and commission pay) paid in Illinois usually reported to a payee on Form W-2,
- non-wage income such as pensions, annuities, employment income, and sick pay, that you have agreed to voluntarily withhold, usually reported to a recipient on a Form 1099,
- gambling or lottery winnings in Illinois paid to an Illinois resident usually reported to a payee on Form W-2-G, or
- the purchase of the rights to Illinois lottery winnings, reported to the purchaser on Form 1099-MISC.

However, there are some situations that do not require you to withhold Illinois Income Tax. See “When am I not required to withhold Illinois Income Tax?” for more information. We do not require a separate agreement for payments covered by a federal voluntary withholding agreement. If requested by a payee, you can enter into a voluntary agreement and withhold Illinois Income Tax on Illinois income such as individual retirement accounts (IRAs) or pensions. Note: If you agree to a voluntary withholding agreement then you are required to withhold Illinois income tax.
As a withholding agent, you are liable for the taxes that you are required to withhold and that you volunteer to withhold. Because we are required to collect taxes (and issue assessments when these taxes are not paid), Illinois law states that the amounts required to be withheld and paid to us (and any penalties and interest) are considered to be a tax on you.

Who is an employer?

You are an employer if you are any of the following:

- a person or organization who has an office or transacts business in Illinois for whom a worker performs a service as an employee and you are the person who is liable to withhold and pay federal income taxes to the Internal Revenue Service (IRS).
- a person or organization who has an office or transacts business in Illinois and who has control of the payment of wages for employee services, if the employer does not have control of the payment of wages.
- a payer who has an office or transacts business in Illinois and who makes payments from which federal income taxes are withheld (e.g., gambling or lottery winnings).

See IRS Publication 15 Circular E, Employer’s Tax Guide, for more information.

Who is an employee?

An employee is either

- a person who performs services subject to the legal control and direction of an employer, or
- an Illinois resident who receives payments on which federal income tax is withheld by the employer.

See IRS Publication 15 Circular E, Employer’s Tax Guide, for more information.

Must I register to withhold Illinois Income Tax?

If you withhold Illinois Income Tax for your Illinois employees, you must register with the Illinois Department of Revenue and tell us the date your Illinois payroll will begin. Exception: Household employers should refer to Publication 121, Illinois Income Tax Withholding for Household Employees.

To register your business you have the following options:

- register electronically with the online Illinois Business Registration Application on MyTax Illinois (registration confirmation generally available in 1-2 days) at tax.illinois.gov,
- complete and mail Form REG-1, Illinois Business Registration Application (registration confirmation generally available in 6-8 weeks) and any necessary schedules, or
- visit one of our regional offices (see Page 9).

You will receive a temporary tax account number unless you already have received your federal employer identification number (FEIN).

What happens after I register?

If you are a new registrant you are assigned to the monthly payer and quarterly return schedule. See Publication 131, Withholding Income Tax Payment and Filing Requirements. We encourage you to use our electronic programs. Visit our website at tax.illinois.gov for more information regarding our electronic options.

What should I do if I move or change my business name?

If your business name or address has changed from your last return without changing owners, check the appropriate box on Form IL-941, Step 1, and enter your new business name and address in Step 1. File your completed return (IL-941) by its due date. You also can make changes and updates to your account on MyTax Illinois.

What should I do if I sell or transfer ownership of my business?

If you sell or transfer your business, you must file a final return (IL-941) at the end of the final filing period. You may also be required to file Form CBS-1, Notice of Sale, Purchase, or Transfer of Business Assets.

What if I no longer have employees or my business has closed?

If your business has permanently stopped withholding because it has closed or you no longer pay wages, complete Step 2, Line B, on Form IL-941, check the box to indicate that this is a final return, and enter the date you stopped paying wages.

If you are a seasonal business and have ceased paying wages temporarily (e.g., you will be rehiring employees during the next year), continue to file your returns. Even if you do not pay any wages or withhold any tax, you still must file a return (IL-941) for each reporting period.

For additional withholding tax information, refer to these related publications: Publication 131, Withholding Income Tax Payment and Filing Requirements; Booklet IL-700-T, Illinois Withholding Income Tax Tables, to calculate withholding; and Publication 110, Form W-2 Electronic Transmittal Requirements.
Withholding Illinois Income Tax for My Employees

When must I withhold Illinois Income Tax from my employee’s compensation?

You must withhold Illinois Income Tax when you withhold federal income tax from compensation you paid in Illinois. Compensation is paid in Illinois when the employee’s services are “localized” in Illinois. This statement applies to all individuals except qualifying residents of Iowa, Kentucky, Michigan, and Wisconsin.

When is compensation paid in Illinois?

If any of the following localization tests are met, compensation is paid in Illinois.

- The employee’s service is localized in Illinois because all of the service is performed in Illinois.
- Some of the employee’s services are performed outside Illinois, but the services outside Illinois are incidental to the services performed inside Illinois. Incidental services are those that support the employee’s primary service, are temporary or transitory, or are isolated transactions.
- The employee’s service is not localized in any state under either of the rules above, but — some of the service is performed in Illinois and — either the base of operations (i.e., the place from which the employee works) is in Illinois, or, if there is no base of operations, the place from which the service is directed or controlled is in Illinois.
- The employee’s service is not localized in any state under any of the rules above, but — some of the service is performed in Illinois, — the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, and — the employee is an Illinois resident.
- For compensation for services performed by a nonresident as a member of a professional athletic team, the amount that is paid in Illinois is the total compensation for services performed for the team during the year, multiplied by a fraction equal to the number of duty days spent within Illinois by the total number of duty days spent performing services for the team. See Section 304(a)(2)(B)(iv) of the Illinois Income Tax Act for more guidance.

Limited exceptions to localization tests above

There are three limited exceptions when you are not required to withhold Illinois Income Tax if a localization test described above is met. These exceptions are described as follows.

- The employee works for an employer under the jurisdiction of the Surface Transportation Board (STB) and performs regularly assigned duties in more than one state. Although a localization test may be met, do not withhold Illinois Income Tax unless the employee is an Illinois resident.
- The employee works on an aircraft for an air carrier and performs regularly assigned duties in more than one state. Although a localization test may be met, do not withhold Illinois Income Tax unless the employee is an Illinois resident, or, if the employee is not an Illinois resident, the employee earns more than 50 percent of the compensation in Illinois (Illinois flight miles versus all flight miles). Illinois flight miles do not include miles flown over Illinois without taking off or landing.
- The employee works on a vessel and performs regularly assigned duties in more than one state. Although a localization test may be met, do not withhold Illinois Income Tax unless the employee is an Illinois resident.

Examples of compensation paid in Illinois

1. Your company, headquartered in Georgia, employs an Indiana resident to make sales for your company. You control your employee’s services, all of which are performed in Illinois, from your Georgia office. Compensation is paid in Illinois because all of your employee’s services are performed in Illinois.

2. Your company, headquartered in Maryland, employs an Illinois resident. There is no base of operations. The employee’s service is localized in Illinois because the employee works from your Georgia office. Compensation is paid in Illinois because all of your employee’s services are performed in Illinois.

3. Your company, headquartered in Ohio, employs an Illinois resident. There is no base of operations. The employee is controlled from your Ohio headquarters, and services are performed in Illinois, Iowa, and Indiana. Therefore, the services are not localized in only one state. Compensation is paid in Illinois because your employee is an Illinois resident, some of the service is performed in Illinois, and no service is performed in Ohio.

4. Your airline company employs a Missouri resident to fly to various destinations in the United States. Your employee reports to and flies out of a terminal in Illinois. According to your records, 58 percent of your employee’s compensation (flight time in Illinois versus flight time to other destinations) is earned in Illinois. Therefore, you withhold Illinois Income Tax because more than 50 percent of your employee’s compensation was earned in Illinois. Illinois flight miles do not include miles flown over Illinois without taking off or landing.

Note: “Significant” does not equal a percentage. In this example, although only five percent of the total customer are in Illinois, the service performed in Illinois is separate from, and therefore, not incidental to, the service performed in Missouri.
When am I not required to withhold Illinois Income Tax?

Unless you enter into a voluntary withholding income tax agreement, you are not required to withhold Illinois Income Tax from the following:

- compensation paid to residents of Iowa, Kentucky, Michigan, and Wisconsin (due to reciprocal agreements with each of these states);
- compensation paid to a non-military employee whose spouse is in the military, both of whom are residents of the same state (other than Illinois), and are only in this state because the spouse is stationed here by the military;
- qualifying payments made for personal service contracts or prizes awarded from contests conducted in Illinois (Sections 1405.2 and 1405.3 of the Illinois Income Tax Act (IITA));
- compensation that will not be included in the recipient’s base income (e.g., annuity payments received from qualified employee benefit plans);
- payments subject to withholding under IRC, Sections 3405 or 3406;
- compensation paid by an employer under the jurisdiction of the Surface Transportation Board (STB), rail and motor carriers, to a nonresident employee who performs regularly assigned duties in more than one state;
- nonresident employees who work on aircraft for an air carrier, perform regularly assigned duties in more than one state, and do not earn more than 50 percent of the compensation in Illinois (Illinois flight miles versus all flight miles). Illinois flight miles do not include miles flown over Illinois without taking off or landing;
- compensation paid to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade, or an individual employed on a fishing vessel or any fish processing vessel. However, this income is still taxable to Illinois residents;
- compensation paid to an employee whose compensation is exempt from federal withholding requirements (e.g., “wages” paid to certain types of ministers); or
- compensation paid to household employees. We define a household employee the same way as the Internal Revenue Service (IRS) defines it. (For more information, visit www.irs.gov and refer to IRS Publication 926.) Note: If you withhold federal income tax from your household employees pursuant to a voluntary federal agreement, Illinois withholding is required. Also, you may enter a voluntary Illinois withholding agreement. If you do withhold Illinois income tax, you may report and pay these taxes annually on Form IL-1040, Illinois Individual Income Tax Return, Line 22. No registration is required. For more detailed information, see Publication 121, Illinois Income Tax Withholding for Household Employees.

Additional examples for when withholding is not required

1. Your company, headquartered in Missouri, hires an Illinois resident to install computer networks for your Missouri-based clients. Occasionally, your employee travels to your clients’ branch offices in Illinois to complete network installation. Compensation is not paid in Illinois because your employee’s services are localized in Missouri and the services performed in Illinois are incidental to the services performed in Missouri. Therefore, you do not withhold Illinois Income Tax. (See the note below.)

2. Your company’s main office is in Indiana. You employ an Illinois resident to honor copy machine routine maintenance contracts. Your employee works out of the main office and has clients in both Illinois and Indiana. You are not required to withhold Illinois Income Tax because your employee’s base of operations is in Indiana and some of the service is performed in Indiana. (See the note below.)

Note: Although in these two examples you are not required to withhold Illinois Income Tax, your employees’ income will be taxed by Illinois because they are Illinois residents. Therefore, your employees will file returns in both states. We will give your employees a credit for taxes paid to the other state. If the amount of tax paid to the other state does not cover the Illinois tax liability, your employees may need to make estimated income tax payments to Illinois.

Am I required to withhold income tax for another state if my employee is not an Illinois resident?

If your employee is “paid in Illinois” and is a resident of Iowa, Kentucky, Michigan, or Wisconsin, you may, but are not required by Illinois law, to withhold income tax for the other state.

If your employee is a resident of a state with whom Illinois does not have a reciprocal agreement, you must withhold Illinois Income Tax on all income that is paid in Illinois. You may be required to withhold tax for another state in which the employee works or resides. You should contact those states to determine if you are required to register as a withholding agent.

What forms must my employee complete?

Form IL-W-4

Your employee must complete Form IL-W-4, Employee’s Illinois Withholding Allowance Certificate. This is your record of the number of allowances that your employee is entitled to claim and would only be disregarded for the following circumstances:

- An employee claims total exemption from Illinois Income Tax withholding, but has not filed a federal Form W-4, U.S. Employee’s Withholding Allowance Certificate, claiming total exemption.
- The IRS has instructed you to disregard the employee’s federal Form W-4.
• You submitted the employee’s Form IL-W-4 to us for review, and we instructed you to disregard the form. Form IL-W-4 is submitted for review if 15 or more exemptions are claimed on the Form IL-W-4 without claiming at least the same number of exemptions on the federal Form W-4, and the federal Form W-4 is not being reviewed by the IRS.

If a completed Form IL-W-4 is not filed, or you are required to disregard Form IL-W-4, you must withhold Illinois Income Tax without allowing any exemptions.

Note Most retirement income is exempt from Illinois Income Tax and no withholding is required, even if federal income tax is withheld. However, senior citizens may wish to enter into voluntary withholding agreements to avoid having to pay estimated taxes on their taxable income. Senior citizens who enter into such voluntary withholding agreements must also complete Form IL-W-4.

If an employee claimed exemption from withholding on federal Form W-4, you still may be required to withhold Illinois Income Tax.

Before December 1 of each year, have your employee review his or her Form IL-W-4. If your employee’s Illinois withholding allowances change, the employee must complete a new Form IL-W-4.

Example:

Sam is single, does not have any dependents, and cannot be claimed on another person’s tax return. He works for you part-time. Sam expects to earn $4,000 this year.

Last year Sam earned $3,000, did not have a federal tax liability, and received a total refund of the federal income tax that was withheld from his pay. Sam does not expect to owe any federal income tax this year. Therefore, he claims exemption from withholding on his federal Form W-4 for this year.

Although Sam may not owe federal income tax, he will owe Illinois Income Tax because he is entitled to only one withholding allowance. The exemption for this allowance is less than his total pay. Therefore, you must withhold Illinois Income Tax from Sam’s pay.

Form IL-W-5

Form IL-W-5, Certificate of Residence in Illinois, is completed by an Illinois resident (not your employee) with whom you have a written contract who

• is paid for performing personal services (e.g., artistic or musical performances, or professional consulting services) and the income earned is taxable under Section 1405.2 of the IITA, or

• receives payment for prizes and awards from a contest conducted entirely in Illinois (e.g., game shows, amateur talent contests, dog or horse shows) and the income earned is taxable under Section 1405.3 of the IITA.

You are not required to provide annual information reports of the amounts you pay in either of these situations. You must, however, keep this information in your records and provide it to us if we request.

Note Instead of completing Form IL-W-5, the recipient may file a certificate of in-state residence on any invoice, billing statement, or contest application submitted to the withholding agent.

Form IL-W-5-NR

To be exempt from Illinois Income Tax withholding requirements you must complete Form IL-W-5-NR, Employee’s Statement of Nonresidence in Illinois, if

• you are a resident of a state (Iowa, Kentucky, Michigan, and Wisconsin) with whom Illinois has a reciprocal agreement, or

• your spouse is in the military, and you and your spouse are both residents of the same state (other than Illinois), and you are in Illinois only because your spouse is stationed here by the military.

If your employee does not complete this form, you must withhold Illinois Income Tax. If your employee moves out of the state of residence designated on the original Form IL-W-5-NR, the employee must notify you of the change within 10 days and file a new Form IL-W-5-NR, if applicable.

What forms must I give my employee?

Before February 1 of each year, you must give your employee three copies of federal Form W-2, Wage and Tax Statement, or, if applicable, any version of Form 1099 (e.g., Form 1099-MISC, Form 1099-INT, Form 1099-R).

When completing the W-2, enter only the amount of wages paid in Illinois or paid to an Illinois resident employed in Iowa, Kentucky, Michigan, or Wisconsin in Box 16. If none of the employee’s wages were paid in Illinois or for an Illinois resident’s employment in a non-reciprocal state, report zero in Box 16 even if you withheld Illinois income tax from those wages. Illinois residents who pay income tax to other states need this information in order to compute the credit allowed for those taxes.

If your employee permanently discontinues employment before the close of the calendar year or you terminate a federal voluntary withholding agreement, you must give the employee (or other person receiving payments subject to withholding) a completed federal Form W-2 within 30 days of the last payment for which withholding was required. You must keep undeliverable W-2 forms and all 1099 forms for at least three years after the date you are required to give the form to the employee.

Note Any payroll provider or employer who is mandated to electronically file with the Social Security Administration must also register and electronically transmit copies to us of their employees’ W-2 and W-2c forms using the Social Security Administration’s (SSA) EFW2 and EFW2c format.

See Publication 110 for more information.
Withholding Illinois Income Tax for Lottery or Gambling Winnings

When must I withhold Illinois Income Tax from lottery winnings?
You must withhold Illinois Income Tax each time you make a single payment of Illinois lottery winnings of more than $1,000. It does not matter that several individuals may jointly hold the winning ticket and each person's “share” is less than $1,000. You must withhold Illinois Income Tax for both residents and nonresidents.

When must I withhold Illinois Income Tax from gambling winnings?
You must withhold Illinois Income Tax from gambling winnings you pay Illinois residents any time the winnings are subject to federal income tax withholding requirements and are not subject to another state’s withholding requirements. You are not required to withhold Illinois Income Tax from nonresidents or if you are required to withhold another state’s tax from an Illinois resident.

In general, winnings that currently are subject to federal income tax withholding include proceeds of $5,000 or more in a single payment from
- wagering transactions (if these winnings are at least 300 times greater than the amount of the wager); or
- proceeds that are 300 times greater than an amount wagered in a sweepstakes, wagering pool, lottery (other than a state-conducted lottery), or wagering transaction in a pari-mutuel pool with respect to horse races, dog races, or jai alai.

Bingo and slot machine winnings are subject to federal withholding requirements for amounts of $1,200 or more. Winnings from keno of $1,500 or more also are subject to federal withholding requirements. Resident winners are taxed by Illinois. Nonresidents are not taxed unless they are professional gamblers.

See 26 USCA 3402(q) of the Internal Revenue Code and the IRS’ instructions for federal Forms 5754 and W-2G for more information.

What forms must a winner complete?
Each time you pay lottery or gambling winnings of more than $1,000 in a single payment, the winner must complete Form IL-5754, Statement by Person Receiving Gambling Winnings. This form helps you identify which winners are Illinois residents. Keep this form in your records to show who received winnings and to whom the winnings are taxable. You will use this information when you prepare federal Form W-2G.

What forms must I give each recipient?
By February 1 of each year, you must give each recipient two copies of federal Form W-2G. Do not send this form to us. You must keep any undeliverable Form W-2G for at least three years after the date you are required to give the form to the recipient.

Withholding Illinois Income Tax for Purchases of the Rights to Lottery Winnings

Do I have an obligation to withhold Illinois Income Tax from purchased lottery winnings?
You must withhold Illinois Income Tax from the purchase price of rights to future Illinois lottery winnings that you purchased from another entity.

When must I withhold Illinois Income Tax from purchased lottery winnings?
You must withhold Illinois Income Tax at the time you purchase the lottery rights. You must register and report the withholding for each purchase on Form IL-941. For more information, refer to Informational Bulletin FY 2014-08.

For additional withholding tax information, refer to these related publications: Publication 131, Withholding Income Tax Payment and Filing Requirements; Booklet IL-700-T, Illinois Withholding Income Tax Tables; and Publication 110, Form W-2 Electronic Transmittal Requirements.
### Income Tax Forms for Employees and Lottery or Gambling Winners

<table>
<thead>
<tr>
<th>If</th>
<th>complete</th>
<th>and for Illinois purposes, withhold</th>
</tr>
</thead>
<tbody>
<tr>
<td>you withhold federal income tax for an employee or are otherwise required to withhold Illinois Income Tax</td>
<td>Form IL-W-4</td>
<td>based on the number of allowances claimed.</td>
</tr>
<tr>
<td>you enter into a voluntary withholding agreement with your employee</td>
<td>Form IL-W-4</td>
<td>based on the number of allowances claimed.</td>
</tr>
<tr>
<td>you pay an Illinois resident for personal services, and the income is reportable under Section 1405.2 of the Illinois Income Tax Act</td>
<td>Form IL-W-5</td>
<td>zero.</td>
</tr>
<tr>
<td>you pay an Illinois resident prizes or awards from a contest entirely in Illinois and the income earned is reportable under Section 1405.3 of the Illinois Income Tax Act</td>
<td>Form IL-W-5</td>
<td>zero.</td>
</tr>
<tr>
<td>your employee is a resident of Iowa, Kentucky, Michigan, or Wisconsin or is a nonresident spouse of a military servicemember and is only in Illinois because the servicemember is stationed here</td>
<td>Form IL-W-5-NR</td>
<td>zero.</td>
</tr>
<tr>
<td>you pay lottery winnings of more than $1,000 to an Illinois resident or nonresident</td>
<td>Form IL-5754</td>
<td>the full rate of tax (no exemptions).</td>
</tr>
<tr>
<td>you pay gambling winnings of more than $1,000 but less than $5,000 to an Illinois resident</td>
<td>Form IL-5754</td>
<td>zero.</td>
</tr>
<tr>
<td>you pay gambling winnings of more than $5,000 to an Illinois resident</td>
<td>Form IL-5754</td>
<td>the full rate of tax (no exemptions).</td>
</tr>
<tr>
<td>you pay gambling winnings of more than $1,000 to a nonresident</td>
<td>Form IL-5754</td>
<td>zero.</td>
</tr>
</tbody>
</table>

**Note:** You must keep a copy of these forms in your records. By February 1 of each year, you must give your employee three copies of federal Form W-2, Wage and Tax Statement. If you withheld from gambling winnings, you must give each recipient two copies of federal Form W-2G.

**Note:** For the current tax rate, refer to the **Tax Rate Database** on our website.