

TITLE 4: ECONOMIC RESOURCES
DIVISION 1: REVENUE AND TAXATION

§ 1821. Withholding of Wage and Salary Tax.

(a) *Withholding by the Employer.* The tax imposed by section 1201 of this Division shall be collected through deductions and withholdings upon the employee's wages, as and when paid or credited to the employee, by the employer of such employee, in accordance with tables or computational procedures prescribed by the Secretary. Every employer required to deduct and withhold the tax hereby imposed is liable for the payment and shall pay such tax to the Secretary. Any employer who violates any of the provisions of this section shall be subject to the penalties prescribed in this Division.

(b) *Employer to File Return Covering Tax on Compensation.*

(1) Employer Pay Over of Withholding.

(A) Pay Over of Withholding. The employer shall, on or before the last day of the month following the close of each quarter, to wit: on or before April 30, July 31, October 31, and January 31, pay over the tax withheld, and make a full, true and correct return showing all wages and salaries withheld and paid over during the preceding quarter. Such return shall be filed for pay over of the tax and shall include such other information as may be required or prescribed by the Secretary. Withholding returns filed by employers without remitting to the Secretary the required amount to be deducted and withheld shall be accepted by the Secretary; provided, that such return submitted shall not be considered filed until the actual remittance of the amount due is paid to the Secretary.

(B) Regulations. The Secretary at his discretion may prescribe special forms for, and different procedures and times for, the filing of such returns by employers paying such compensation and the pay over of taxes withheld, or may, upon such conditions and subject to such rules as he may prescribe from time to time, waive the filing of any such returns. The Secretary may require more frequent returns and pay-overs as he in his discretion feels are advisable, but in no case shall an employer be required to make returns more frequently than monthly. The Secretary, for good cause, may extend the time for making returns and pay-overs but not beyond the last day of the first month succeeding the regular due date.

(2) Final Statement.

(A) Payee Statement. Every employer required to deduct and withhold any tax on the salaries and wages of any employee shall furnish to each such employee on or before January 31 of the succeeding year (or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of compensation is made) a written statement, showing the wages or salaries paid by the employer to such employee during the year, and the amount of tax deducted and withheld or paid with respect to such compensation.

(B) Statement to Secretary. Such employer shall file on or before February 28, of the succeeding calendar year a duplicate copy of each such statement with the Secretary.

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(3) Any employer who violates any provision of this section is subject to penalties prescribed in this Chapter.

(c) *Taxes Withheld by Employer Held in Trust; Employer's Liability.* All taxes withheld by any employer under section 1201 of this Division shall be held in trust by the employer for the Commonwealth and for payment to the Secretary in the manner and at the time required by this Division. If any employer shall fail, neglect, or refuse to deduct and withhold from the compensation paid to an employee, or to pay over, the amount of the tax imposed, such employer shall be liable to pay to the Commonwealth the amount of the tax, which amount shall (whether or not tax withholdings constituting trust funds have been commingled with said employer's assets) form a lien on the employer's entire assets. Any employer may recover from an employee any amount which he should have withheld but did not withhold from such employee's wages and salaries, if he has been required to pay and has paid the amount to the Commonwealth out of his own funds pursuant to this section.

(d) *No Cause of Action Against Employer for Withholding.* No employee shall have any right of action against his employer with respect to any monies deducted from such employee's salaries and wages in compliance or intended compliance with this Chapter and paid to the Secretary.

(e) *Individual to File Return of Earned Income.* Any individual who is paid or credited wages or salaries from an employer who does not have a place of business in the Commonwealth and does not have an agent within the Commonwealth responsible for making the returns, withholdings, and payments of taxes on compensation required by this Division, or where any employer has failed to deduct and withhold taxes, shall file a return with and pay the tax due under this Division to the Secretary. Any individual who is paid or credited wages from the United States or an instrumentality thereof shall be under the same duty as an individual who is paid or credited wages and salaries from an employer who does not have a place of business in the Commonwealth.

(f) *Tax Paid by Recipient.* If the employer, in violation of the provisions of this Chapter, fails to deduct and withhold the tax under this Chapter, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

Source: PL 3-11, § 821; repealed and reenacted by PL 14-35, § 4 (1821).