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ARIZONA WITHHOLDING TAX RULING

WTR 16-3

(This ruling supersedes Arizona Withholding Tax Ruling WTR 93-2)

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

ISSUE:

Can Arizona income taxes be withheld from compensation paid to a baby-sitter, governess, or nanny for services performed in a private home?

RULING:

Arizona does not allow withholding to be deducted or retained from wages paid for domestic service in a private home. For purposes of the Arizona income tax withholding exclusion, compensation paid for services performed by a baby-sitter, governess or nanny, in or about a private home, is considered to be wages for domestic service in a private home. Therefore, Arizona withholding is not required on such compensation and cannot be elected.

DISCUSSION:

For federal purposes, compensation paid for services performed as a baby-sitter or governess are considered to be services of a household nature when performed in or about a private home. Compensation paid for such services is excluded from mandatory federal income tax withholding as remuneration for domestic service. Voluntary federal income tax withholding on such compensation is, however, permitted when the parties agree to have income tax withheld.

Arizona Revised Statutes (A.R.S.) § 43-403(A)(2) provides, for purposes of Arizona income tax withholding, that no amount shall be deducted or retained from wages paid for domestic service in a private home. Arizona Administrative Code (A.A.C.) R15-2B-102(A)(2) delineates some services of a household nature, including a baby sitter, governess or nanny, which are considered to be domestic service when performed in or about a private

home and are, therefore, not subject to withholding.

APPLICABLE LAW:

A.R.S. § 43-401 requires every employer at the time of the payment of wages, salary, bonus or other emolument to any employee whose compensation is for services performed within this state shall deduct and retain from the compensation an amount that is determined using tables prescribed by the department.

A.R.S. § 43-403(A)(2) excludes wages paid for domestic service in a private home from the Arizona withholding provisions.

A.A.C. rule R15-2B-102(A)(2) delineates some services of a household nature, **including a baby sitter, governess or nanny**, which, for purposes of the Arizona withholding exclusion, are considered to be domestic service when performed in or about a private home.

I.R.C. § 3401(a)(3) excludes from the definition of "wages," for purposes of federal income tax withholding, remuneration paid for domestic service in a private home.

Treasury Regulation (Treas. Reg.) § 31.3401(a)(3)-1 delineates some services of a household nature which, for purposes of the federal income tax withholding exclusion, are considered to be domestic service when performed in or about a private home.

Grant Nülle, Deputy Director

Signed: July 25, 2016

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which provides interpretation, details or supplementary information concerning the application of the law. Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.