



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

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BRUCE E. BABBITT  
ATTORNEY GENERAL

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76-228

July 22, 1976

Mr. Robert Merrill  
Administrator  
Income & Withholding Tax Division  
Department of Revenue  
Capitol Wing  
Phoenix, Arizona 85007

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**ARIZONA ATTORNEY GENERAL**

Dear Mr. Merrill:

In your letter of July 8, 1976 to this office, you asked whether amounts withheld for Arizona income taxes could constitute the payment of the first installment of the tax liability if the taxpayer elects to pay the tax liability on the installment basis under A.R.S. § 43-146(b). The pertinent portion of subsection (b) provides:

"In the case of a taxpayer, other than a corporation, on or before the date prescribed for the payment of the tax the taxpayer may elect to pay the tax in two installments, and, in such event, one-half of the tax disclosed by the return shall be due and payable as a first installment of the tax on or before the fifteenth day of the fourth month following the close of the income year, and the balance of the tax shall be due and payable as a second installment on or before the fifteenth day of the tenth month following the close of the taxable year."

In construing any statutory provision the intent of the Legislature should be given effect. State v. Moore, 19 Ariz. App. 402, 507 P.2d 1014 (1973). In ascertaining the legislative intent in this instance, it is necessary to review the history of A.R.S. § 43-146(b). The privilege of paying the income tax in installments was first enacted in the original income tax act of 1933. (Laws 1933, 1st S.S., Ch.8, Section 18). That provision provided for the payment of the full amount of the tax shown on the face of the report



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of income in two installments. Since no withholding provisions were enacted in the original income tax act, the legislative purpose was to allow the taxpayer to pay his total tax liability in two installments. The 1952 amendment to this section changed the due dates of the return and of the second installment. (Laws 1952, Chapter 135, Section 2).

In the 1954 revision of the income tax act, the Legislature enacted the withholding provisions in Section 473-2288. The installment payment provision, Section 473-2246(B) was also amended to read in part:

"In the case of a taxpayer, other than a corporation, on or before the date prescribed for the payment of the tax the taxpayer may elect to pay the tax in (3) three equal installments. The first (1st) installment shall be paid on the date prescribed for the payment of the tax, the second (2nd) installment shall be paid on the fifteenth (15th) day of the fourth (4th) month, and the third (3rd) installment on the fifteenth (15th) day of the eighth (8th) month after that date. . . ."

The language of the above provision implies that the installment payment election was applicable to the amount of the tax, after any amounts withheld were deducted for the total tax liability. Any other interpretation would disregard the words that state in effect that the taxpayer may elect to pay the tax in three equal installments, the first of which shall be paid on the date prescribed for the payment of the tax. This construction is further supported by the 1973 amendment to A.R.S. § 43-146(b), Laws 1973, Chapter 6, Section 1. That amendment changed subsection (b) to read in part:

"In the case of a taxpayer, other than a corporation, on or before the date prescribed for the payment of the tax the taxpayer may elect to pay the tax in three

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installments, the first of which may not be less than one-third and the second not less than one-half of the remaining balance. The first installment shall be paid on the date prescribed for the payment of the tax, . . ."

Under the 1973 amendment, the amount of each installment was to be determined by a fraction of the remaining balance, and not by a percentage of the total tax obligation. The words "remaining balance" could only refer to the taxes actually payable after amounts withheld had been credited against the total tax obligation. Therefore, amounts withheld would not constitute the payment of the first installment.

In 1975, the Legislature amended A.R.S. § 43-146(b) into its present form by Laws 1975, Chapter 121, Section 1. The only purpose of this amendment was to reduce the number of installments from three to two. This purpose is illustrated by the title of Chapter 21, which states:

"An Act relating to taxation of income; providing for payment of taxes in two installments, and amending section 43-146, Arizona Revised Statutes."

While the title of an Act is not a part of the statute, it may be considered in determining the purpose of an enactment. Nunez v. Superior Court In and For Pima County, 18 Ariz. App. 462, 503 P.2d 420 (1972); State v. Govorko, 23 Ariz. App. 380, 533 P.2d 688 (1975).

Even though the 1975 amendment did significantly change the language of subsection (b), this change did not manifest an intention by the Legislature to amend the statute so as to allow amounts withheld to be applied as the payment of the first installment. The Legislature, in amending subsection (b) to provide for two installments, simply used language already contained in A.R.S. § 43-146(a), allowing corporations to pay their tax obligation in two installments. Unfortunately,

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since corporations do not pay any estimated taxes, the literal language borrowed from subsection (a) does not exactly comply with the obvious intent of subsection (b). Technical statutory wording though must yield when the clear legislative intent would be frustrated. In re Henry's Estate, 6 Ariz. App. 183, 430 P.2d 937 (1967). Therefore, the words "the tax disclosed by the return" have to be construed as meaning "the taxes due and payable" after amounts withheld had been deducted from the total tax liability.

Finally, in your letter, you stated that the Income Tax Division has consistently maintained for a period of many years that the total amount of taxes withheld does not constitute an installment payment under A.R.S. § 43-146(b). Generally, administrative construction of a statute is entitled to considerable weight in interpreting it. Begay v. Graham, 18 Ariz. App. 336, 501 P.2d 964 (1972). Therefore, based upon the history of the legislation in question, and upon the consistent interpretation of the Income Tax Division, it is our opinion that amounts withheld do not constitute an installment payment under A.R.S. § 43-146(b).

In your letter you also asked whether the election to pay on the installment basis under A.R.S. § 43-146(b) would be recognized and the total amount of tax withheld considered the first installment payment of the taxpayer's income tax liability even though such individual's tax return is filed after the date of the return. Since amounts withheld cannot be used as the first installment, a taxpayer must file his return, and pay the first installment on or before the date prescribed for the payment of the tax in order to take advantage of the installment payment election.

Sincerely,

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