

# HOUSE BILL 1246

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CF 6lr3608

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By: **Delegate Adams**

Introduced and read first time: February 12, 2016

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax Withholding – Employer Liability – Safe Harbor**

3 FOR the purpose of providing that certain employers and payors that fail to withhold or  
4 pay income tax are not personally liable for the income tax under certain  
5 circumstances; and generally relating to the failure of an employer or payor to  
6 withhold or pay certain income tax.

7 BY repealing and reenacting, with amendments,  
8 Article – Tax – General  
9 Section 10–906  
10 Annotated Code of Maryland  
11 (2010 Replacement Volume and 2015 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
13 That the Laws of Maryland read as follows:

14 **Article – Tax – General**

15 10–906.

16 (a) Except as provided in § 10–907 of this subtitle, each employer or payor shall:

17 (1) withhold the income tax required to be withheld under § 10–908 of this  
18 subtitle; and

19 (2) pay to the Comptroller the income tax withheld for a period with the  
20 withholding return that covers the period.

21 (b) Any income tax withheld is deemed to be held in trust for the State by the  
22 employer or payor who withholds the tax.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (c) An employer or payor who withholds income tax shall keep a separate ledger  
2 account for withholdings that indicates clearly:

3 (1) the amount of income tax withheld; and

4 (2) that the income tax withheld is the property of the State.

5 (d) **[If EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, IF** an  
6 employer or payor negligently fails to withhold or to pay income tax in accordance with  
7 subsection (a) of this section, personal liability for that income tax extends:

8 (1) to the employer or payor;

9 (2) if the employer or payor is a corporation, to:

10 (i) any officer of the corporation who exercises direct control over its  
11 fiscal management; or

12 (ii) any agent of the corporation who is required to withhold and pay  
13 the income tax; and

14 (3) if the employer or payor is a limited liability company as defined under  
15 Title 4A of the Corporations and Associations Article or a limited liability partnership as  
16 defined under Title 9A of the Corporations and Associations Article, including a limited  
17 partnership registered as a limited liability limited partnership, to:

18 (i) any person who exercises direct control over its fiscal  
19 management; and

20 (ii) any agent of the limited liability company or limited liability  
21 partnership who is required to withhold and pay the income tax.

22 **(E) AN EMPLOYER OR PAYOR THAT FAILS TO WITHHOLD OR PAY INCOME**  
23 **TAX IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION IS NOT PERSONALLY**  
24 **LIABLE FOR THAT INCOME TAX UNDER SUBSECTION (D) OF THIS SECTION IF THE**  
25 **EMPLOYER OR PAYOR:**

26 **(1) CONSISTENTLY TREATED THE WORKER OR SIMILAR WORKERS AS**  
27 **INDEPENDENT CONTRACTORS; AND**

28 **(2) CONSISTENTLY TREATED THE WORKER OR SIMILAR WORKERS AS**  
29 **INDEPENDENT CONTRACTORS IN ANY REQUIRED TAX FILINGS.**

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
31 1, 2016.