**Section 2920.18 Voluntary Withholding for Federal and/or State of Illinois Income Tax**

a) Whenever an individual voluntarily elects, under Section 1300 of the Act, to have monies withheld from his or her unemployment insurance benefits to cover possible federal and/or State of Illinois income tax liability, the amount of benefits subject to income tax withholding is the sum of the individual's weekly benefit amount (WBA), following any of the mandatory deductions from unemployment benefits set forth in this subsection (a), plus any spouse or dependent allowance payable under the Act. The following are the mandatory deductions:

1) Disqualifying income, including vacation pay, holiday pay, retirement pay, and workers' compensation, under Section 2920.10;

2) Wages for less than full time work payable to him or her with respect to that week that are in excess of 50% of his or her weekly benefit amount;

3) One-fifth of the individual's WBA for each day that the individual was unable or unavailable for work as required by Section 402 of the Act.

b) Whenever an individual has voluntarily elected, under Section 1300 of the Act, to have monies withheld for federal and/or State income tax from his or her unemployment benefits for a period covered by a benefit payment, the Department shall, when withholding for federal income tax, withhold 10% of the amount of benefits that are subject to withholding under subsection (a), rounded (if not already a multiple of one dollar) to the nearest dollar and, when withholding for State income tax, withhold a percentage of the amount of benefits that are subject to withholding under subsection (a) equal to the tax rate for individuals pursuant to the Illinois Income Tax Act [35 ILCS 5], rounded (if not already a multiple of one dollar) to the nearest dollar. If the product is equally near 2 multiples of one dollar, it shall be rounded to the higher multiple of one dollar. If the individual's benefits for a week, less amounts subject to recoupment under Section 2835.15 and less any involuntary deductions for child support pursuant to Section 2815.105, are less than the amount that would otherwise be withheld pursuant to this subsection, the entire amount of the benefits remaining shall be withheld. If the individual elects to have both federal and State income taxes withheld and the amount remaining is insufficient to cover both taxes, the entire amount of State tax shall be withheld before any federal tax is withheld.

1) EXAMPLE: The individual elects both federal and State income tax withholding. The individual's WBA for each of the weeks ending February 5, 2011, and February 12, 2011, is $251. The individual receives a dependents' allowance of $81 for each week. The Department will deduct for federal income tax withholding 10% of $332 for each week that equals $33.20, which, rounded to the nearest dollar, is $33. Additionally, the Department will deduct for State income tax withholding 5% (the tax rate for individuals pursuant to the Illinois Income Tax Act for the 2 weeks in question) of $332, which equals $16.60 for each week, which rounded to the nearest dollar, is $17. Accordingly, the individual will receive $564 in benefits for the 2 week period after having $66 deducted for federal income tax withholding and $34 deducted for State income tax withholding.

2) EXAMPLE: The individual elects both federal and State income tax withholding. The individual's WBA for each of the weeks ending February 5, 2011 and February 12, 2011 is $129. The individual receives a dependents' allowance of $42 for each week.

For the first week of the payment period, the individual has $90 in disqualifying vacation pay, but in the second week the individual does not have any disqualifying vacation pay.

The amount of benefits subject to federal and State income tax withholding for the first week is $129 less $90 in vacation pay, which equals $39 plus his or her dependents' allowance of $42, which totals $81. Because the individual did not receive any disqualifying vacation pay for the second week of the period, the amount of benefits subject to federal and State income tax withholding attributable to the second week is $129 plus his or her dependents' allowance of $42, which totals $171.

The Department will deduct for federal income tax withholding 10% of $81 for the first week, which equals $8.10, which, rounded to the nearest dollar, is $8. The Department will deduct for State income tax withholding 5% (the tax rate for individuals pursuant to the Illinois Income Tax Act for the 2 weeks in question) of $81, which equals $4.05, which, rounded to the nearest dollar, is $4.

The individual will receive $69 for the first week after having $8 deducted for federal income tax withholding and $4 deducted for State income tax withholding. The Department will deduct for federal income tax withholding 10% of $171 for the second week, which equals $17.10, which, rounded to the nearest dollar, is $17.

The Department will deduct for State income tax withholding 5% of $171, which equals $8.55, which, rounded to the nearest dollar, is $9. The individual will receive $145 for the second week after having $17 deducted for federal income tax withholding and $9 deducted for State income tax withholding. The individual's payment for the two week period will be $214.

3) EXAMPLE: The individual's WBA for each of the weeks ending February 5, 2011 and February 12, 2011 is $129. The amount of benefits subject to federal and State income tax withholding for each week of the two week period is $129.

10% of $129 equals $12.90, which, rounded to the nearest dollar, is $13. 5% of $129 equals $6.45, which, rounded to the nearest dollar, is $6.

In this example, assume that the individual has elected both federal and State income tax withholding, that the individual is also subject to recoupment for both weeks in an amount up to 25% of his or her WBA, which amount is $32.25 for both weeks, and that the individual is subject to a withholding order of $100 for child support for the first week.

For the first week, the Department will first recoup the entire amount of $32.25 due for that first week. $129 minus $32.25 equals $96.75. Because the individual does not have sufficient benefits to cover the full amount of child support due for that first week, the Department will deduct $96.75, the amount of benefits available for that week. The individual's payment for the two week period will not include any benefits with respect to that first week.

For the second week of the payment period, the individual is not subject to a withholding order for child support. Accordingly, the individual is eligible to receive $96.75 for the second week, the difference between the benefits payable to him or her for that week ($129) and the amount recouped ($32.25). Because the individual has elected both federal and State income tax withholding for the period covered by the payment, the Department will deduct $13 for federal income tax withholding and $6 for State income tax withholding from the individual's benefits and pay the individual the remaining $77.75.

4) EXAMPLE: Assume the same situation described in subsection (b)(3), except that the individual's withholding for court ordered child support is $90 for each week. The amount of benefits subject to federal and State income tax withholding for the two week period remains the same.

The individual has sufficient benefits for the Department to recoup the maximum amount and to deduct for child support in full for both weeks. If the individual had not elected to withhold federal and State income tax, the individual would have received $13.50, the sum of $6.75 and $6.75 for each week. Because the individual has elected federal and State income tax withholding for this period and because the benefits for the period after recoupment and child support are less than 10% plus 5% of the amount subject to withholding, the Department will deduct the entire $13.50 for income tax withholding ($12 for State income tax withholding ($6 in each week) and the remaining $1.50 for federal income tax withholding ($.75 in each week)) and not pay the individual any benefits for this period.

c) An individual's election and his or her revocation of his or her election to have monies withheld from his or her benefits for possible federal and/or State income tax liability shall be prospective only. Any decision made by the Department as to whether an individual has, under the Act, elected withholding or revoked a withholding election shall constitute a final administrative decision, subject to review under the Administrative Review Law [735 ILCS 5/Art. III].

EXAMPLE: Upon filing an additional claim during his or her benefit year, an individual elects to have federal and State income tax withheld from his or her unemployment benefits paid in 2006. His or her first benefit check covers the two-week period beginning January 8, 2006 and ending January 21, 2006. His or her WBA is $250, and the amount subject to withholding for the period is $65 (10% and 3% of $500). For each week, he or she is subject to recoupment of 25% of his or her WBA and a withholding order of $100 for child support. Consequently, his or her benefit check for the two-week period is for $110. When he or she receives his or her benefit check, he or she asks to revoke the elections, explaining he or she thought the income tax withholding would be based on a percentage of his or her WBA after recoupment and child support. While the Department, if he or she desires, will revoke his or her elections to withhold with respect to a period that has not yet ended, it will not retroactively revoke his or her elections with respect to January 8 through January 21. Elections and revocations can only operate prospectively.

(Source: Amended at 43 Ill. Reg. 6563, effective May 14, 2019)