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## **TITLE 45 DEPARTMENT OF STATE REVENUE**

### **Proposed Rule** LSA Document #02-305

#### **DIGEST**

Adds 45 IAC 3.1-1-99.1 to provide employers with withholding instructions for employees electing to claim the advance earned income credit payments. Effective 30 days after filing with the secretary of state.

#### **45 IAC 3.1-1-99.1**

SECTION 1. 45 IAC 3.1-1-99.1 IS ADDED TO READ AS FOLLOWS:

#### **45 IAC 3.1-1-99.1 Advance earned income credit payments**

Authority: IC 6-3-4-8

Affected: IC 6-3-4

**Sec. 99.1. (a) An employee subject to withholding of Indiana adjusted gross income tax may request his or her employer to reduce the amount of adjusted gross income tax withheld, based on the procedures contained in this section as an advance payment of the Indiana earned income credit.**

**(b) To qualify for the advance earned income credit payment, the employee must comply with all of the following requirements:**

- (1) Be an Indiana resident.**
- (2) Have a federal Form W-5 on file with the employer.**
- (3) Receive federal advance earned income credit payments from the employer.**

**(c) The employer shall make available to the employee Form WH-5 for the employee to complete and sign.**

**(d) An employer required to withhold federal advance earned income credit payments for an employee is only required to withhold if the employee has properly completed Form WH-5.**

**(e) The employer is required to maintain the Form WH-5 for three (3) years after the year that the form is completed by the employee.**

**(f) The amount that the employer shall advance to the employee shall be computed at six percent (6%) of the federal advance earned income credit payment, but shall not be less than one dollar (\$1) per pay period.**

**(g) The total amount that the employer advances to all employees shall be reported when the employer remits the Indiana adjusted gross income tax withheld. The advance shall be deducted from the total tax withheld for all employees when calculating the net remittance that the employer is required to remit to the department.**

**(h) The total annual amount that the employer advances for the earned income credit payments will be reported on the Form WH-3, Annual Withholding Tax Reconciliation Return. (*Department of State Revenue; 45 IAC 3.1-1-99.1*)**

*Notice of Public Hearing*

*Under IC 4-22-2-24, notice is hereby given that on January 3, 2003 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 2, Indianapolis, Indiana the Department of State Revenue will hold a public hearing on a proposed new rule to provide employers with withholding instructions for employees electing to claim the advance earned income credit. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room 248 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Kenneth L. Miller  
Commissioner  
Department of State Revenue