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rules relating to the deposit of other taxes by electronic funds transfer.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8305, July 2, 1964; T.D. 8723, 62 FR 37493, July 14, 1997]

§31.0–4 Extent to which the regulations in this part supersede prior regulations.

The regulations in this part, with respect to the subject matter within the scope thereof, supersede 25 CFR (1939) Parts 403, 406, 408, and 411 (Regulations 107, 120, 128, and 114, respectively). The Regulation on Monthly Returns and Payment of Employment Taxes (23 FR 5006) are also superseded.

Subpart B—Federal Insurance Contributions Act (Chapter 21, Internal Revenue Code of 1954)

TAX ON EMPLOYEES

§31.3101–1 Measure of employee tax.

The employee tax is measured by the amount of wages received after 1954 with respect to employment after 1936. See §31.3121(a)–1, relating to wages; and §§31.3121(b)–1 to 31.3121(b)–4, inclusive, relating to employment. For provisions relating to the time of receipt of wages, see §31.3121(a)–2.

[T.D. 6744, 29 FR 8305, July 2, 1964]

§31.3101–2 Rates and computation of employee tax.

(a) *Old-age, survivors, and disability insurance.* The rates of employee tax for old-age, survivors, and disability insurance with respect to wages received in calendar years after 1954 are as follows:

Calendar year	Percent
1955 and 1956	2
1957 and 1958	2.25
1959	2.5
1960 and 1961	3
1962	3.125
1963 to 1965, both inclusive	3.625
1966	3.85
1967	3.9
1968	3.8
1969 and 1970	4.2
1971 and 1972	4.6
1973	4.85
1974 to 2010, both inclusive	4.95
2011 and subsequent calendar years	5.95

(b) *Hospital insurance.* The rates of employee tax for hospital insurance with respect to wages received in calendar years after 1965 are as follows:

Calendar year	Percent
1966	0.35
1967	.50
1968 to 1972, both inclusive	.60
1973	1.0
1974 to 1977, both inclusive	0.90
1978 to 1980, both inclusive	1.10
1981 to 1985, both inclusive	1.35
1986 and subsequent calendar years	1.50

(c) *Computation of employee tax.* The employee tax is computed by applying to the wages received by the employee the rate in effect at the time such wages are received.

Example. In 1972, employee A performed for employer X services which constituted employment (see §31.3121(b)–2). In 1973 A receives from X $1,000 as remuneration for such services. The tax is payable at the 5.85 percent rate (4.85 percent plus 1.0 percent) in effect for the calendar year 1973 (the year in which the wages are received) and not at the 5.2 percent rate which was in effect for the calendar year 1972 (the year in which the services were performed).

[T.D. 7374, 40 FR 30947, July 24, 1975]

§31.3101–3 When employee tax attaches.

The employee tax attaches at the time that the wages are received by the employee. For provisions relating to the time of such receipt, see §31.3121(a)–2.

§31.3102–1 Collection of, and liability for, employee tax; in general.

(a) The employer shall collect from each of his employees the employee tax with respect to wages for employment performed for the employer by the employee. The employer shall make the collection by deducting or causing to be deducted the amount of the employee tax from such wages as and when paid. (For provisions relating to the time of such payment, see §31.3121(a)–2.) The employer is required to collect the tax, notwithstanding the wages are paid in something other than money, and to pay over the tax in money. (As to the exclusion from wages of remuneration paid in any medium other than cash for certain types of services, see §31.3121(a)(7)–1, relating to such remuneration paid for service not in the course of the employer's

trade or business or for domestic service in a private home of the employer; and § 31.3121(a)(8)–1, relating to such remuneration paid for agricultural labor.) For provisions relating to the collection of, and liability for, employee tax in respect of tips, see § 31.3102–3.

(b) The employer is permitted, but not required, to deduct amounts equivalent to employee tax from payments to an employee of cash remuneration to which the sections referred to in this paragraph are applicable prior to the time that the sum of such payments equals:

(1) $50 in the calendar quarter, for service not in the course of the employer's trade or business, to which § 31.3121(a)(7)–1 is applicable; or

(2) $50 in the calendar quarter, for domestic service in a private home of the employer, to which § 31.3121(a)(7)–1 is applicable; or

(3) (i) $100 in the calendar year 1955 or 1956, for agricultural labor, to which § 31.3121(a)(8)–1 is applicable; or

(ii) $150 in any calendar year after 1956, for agricultural labor, to which § 31.3121(a)(8)–1 is applicable, but only to the extent that such payments are made prior to the twentieth day in such calendar year on which the employee has performed such agricultural labor for the employer for cash remuneration computed on a time basis; or

(4) $50 in the calendar quarter, for service performed as a home worker, to which § 31.3121(a)(10)–1 is applicable.

At such time as the sum of the cash payments in the calendar quarter or the calendar year, as the case may be, for a type of service referred to in this paragraph equals or exceeds the amount specified, the employer is required to collect from the employee any amount of employee tax not previously deducted. Further, at such time in any calendar year after 1956 as the employee has performed agricultural labor for the employer on 20 days during such year for cash remuneration computed on a time basis, the employer is required, regardless of the amount of remuneration paid by him to the employee in the calendar year, to collect from the employee any amount of employee tax not previously deducted. If an employer pays cash remuneration to an employee for two or more of the types of service referred to in this paragraph, the provisions of this paragraph are to be applied separately to the amount of remuneration attributable to each type of service. For provisions relating to the repayment to an employee, or other disposition, of amounts deducted from an employee's remuneration in excess of the correct amount of employee tax, see § 31.6413(a)–1. The application of this paragraph may be illustrated by the following examples:

Example 1. In the calendar year 1957 employer X makes several payments of cash remuneration to employee A for agricultural labor which constitutes employment. In March employee A works on some part of each of 8 days for which employer X makes his first payment of such cash remuneration to A in the amount of $40. X deducts 90 cents (2¼ percent of $40) as an amount equivalent to employee tax. In June A works 5 days for which X makes his second payment of cash remuneration to A in the amount of $50. X does not deduct from this payment an amount equivalent to employee tax. In October A works 6 days for which X makes his third payment of cash remuneration to A in the amount of $60. This amount brings the sum of such payments in 1957 to $150, and X is now required to collect employee tax from A even though A has performed agricultural labor for X on only 19 days in 1957 and regardless of whether the cash remuneration for A's services is computed on a time basis. The amount of employee tax applicable to the $150 paid by X to A is $3.38 (2¼ percent of $150). Inasmuch as X previously deducted 90 cents in March 1957, X is required to deduct $2.48 ($3.38 minus 90 cents) from the $60 paid in October 1957.

Example 2. In the calendar year 1957 employer Y makes several payments of cash remuneration to employee B for agricultural labor which constitutes employment. B's cash remuneration is computed on a time basis. In January employer Y makes his first payment to employee B in the amount of $20 for work performed in 1957 on each of 5 days. Y deducts 45 cents (2¼ percent of $20) as an amount equivalent to employee tax. In April Y makes his second payment of cash remuneration to B in the amount of $40 for work performed in 1957 on each of 10 days. Y deducts 90 cents (2¼ percent of $40) as an amount equivalent to employee tax. In May B works for Y on each of 5 days and on the last of such days Y makes his third payment of cash remuneration to B in the amount of $20 for such work. This period of work brings to 20 the number of days in the calendar year 1957 on which B has performed agricultural

labor for Y for cash remuneration computed on a time basis, and Y is required to collect employee tax from B even though the amount of remuneration paid is less than $150. The amount of employee tax applicable to the $80 paid by Y to B is $1.80 (2¼ percent of $80). Inasmuch as Y previously deducted $1.35 in 1957 (45 cents in January and 90 cents in April), Y is required to deduct 45 cents ($1.80 minus $1.35) from the $20 paid in May 1957.

(c) In collecting employee tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. The employer is liable for the employee tax with respect to all wages paid by him to each of his employees whether or not it is collected from the employee. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. Until collected from him the employee also is liable for the employee tax with respect to all the wages received by him. Any employee tax collected by or on behalf of an employer is a special fund in trust for the United States. See section 7501. The employer is indemnified against the claims and demands of any person for the amount of any payment of such tax made by the employer to the district director.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8305, July 2, 1964; T.D. 7001, 34 FR 998, Jan. 23, 1969]

§31.3102–2 Manner and time of payment of employee tax.

The employee tax is payable to the district director in the manner and at the time prescribed in Subpart G of the regulations in this part. For provisions relating to the payment by an employee of employee tax in respect of tips, see paragraph (d) of §31.3102–3.

[T.D. 7001, 34 FR 998, Jan. 23, 1969]

§31.3102–3 Collection of, and liability for, employee tax on tips.

(a) *Collection of tax from employee*— (1) *In general.* Subject to the limitations set forth in subparagraph (2) of this paragraph, the employer shall collect from each of his employees the employee tax on those tips received by the employee which constitute wages for purposes of the tax imposed by section 3101. (For provisions relating to the treatment of tips as wages, see 3121(a)(12) and 3121(q).) The employer shall make the collection by deducting or causing to be deducted the amount of the employee tax from wages (exclusive of tips) which are under the control of the employer or other funds turned over by the employee to the employer (see subparagraph (3) of this paragraph). For purposes of this section the term ''wages (exclusive of tips) which are under the control of the employer'' means, with respect to a payment of wages, an amount equal to wages as defined in section 3121(a) except that tips and noncash remuneration which are wages are not included, less the sum of—

(i) The tax under section 3101 required to be collected by the employer in respect of wages as defined in section 3121(a) (exclusive of tips);

(ii) The tax under section 3402 required to be collected by the employer in respect of wages as defined in section 3401(a) (exclusive of tips); and

(iii) The amount of taxes imposed on the remuneration of an employee withheld by the employer pursuant to State and local law (including amounts withheld under an agreement between the employer and the employee pursuant to such law) except that the amount of taxes taken into account in this subdivision shall not include any amount attributable to tips.

(2) *Limitations.* An employer is required to collect employee tax on tips which constitute wages only in respect of those tips which are reported by the employee to the employer in a written statement furnished to the employer pursuant to section 6053(a). The employer is responsible for the collection of employee tax on tips reported to him only to the extent that the employer can—

(i) During the period beginning at the time the written statement is submitted to him and ending at the close of the 10th day of the month following the month in which the statement was submitted, or

(ii) In the case of an employer who elects to deduct the tax on an estimated basis (see paragraph (c) of this

section), during the period beginning at the time the written statement is submitted to him and ending at the close of the 30th day following the quarter in which the statement was submitted,

collect the employee tax by deducting it or causing it to be deducted as provided in subparagraph (1).

(3) *Furnishing of funds to employer.* If the amount of employee tax in respect of tips reported by the employee to the employer in a written statement (or statements) furnished pursuant to section 6053(a) exceeds the wages (exclusive of tips) which are under the control of the employer, the employee may furnish to the employer, within the period specified in subparagraph (2) (i) or (ii) of this paragraph (whichever is applicable), an amount of money equal to the amount of such excess.

(b) *Less than $20 of tips.* Notwithstanding the provisions of paragraph (a) of this section, if an employee furnishes to his employer a written statement—

(1) Covering a period of less than 1 month, and

(2) The statement is furnished to the employer prior to the close of the 10th day of the month following the month in which the tips were actually received by the employee, and

(3) The aggregate amount of tips reported in the statement and in all other statements previously furnished by the employee covering periods within the same month is less than $20, and the statements, collectively, do not cover the entire month,

the employer may deduct amounts equivalent to employee tax on such tips from wages (exclusive of tips) which are under the control of the employer or other funds turned over by the employee to the employer. For provisions relating to the repayment to an employee, or other disposition, of amounts deducted from an employee's remuneration in excess of the correct amount of employee tax, see § 31.6413(a)–1. (As to the exclusion from wages of tips of less than $20, see § 31.3121(a)(12)–1.)

(c) *Collection of employee tax on estimated basis*—(1) *In general.* Subject to certain limitations and conditions, an employer may, at his discretion, make collection of the employee tax in respect of tips reported by an employee to the employer on an estimated basis. An employer who elects to make collection of the employee tax on an estimated basis shall:

(i) In respect of each employee, make an estimate of the amount of tips that will be reported, pursuant to section 6053(a), by the employee to the employer in a calendar quarter.

(ii) Determine the amount which must be deducted upon each payment of wages (exclusive of tips) which are under the control of the employer to be made during the quarter by the employer to the employee in order to collect from the employee during the quarter an amount equal to the amount obtained by multiplying the estimated quarterly tips by the sum of the rates of tax under subsections (a) and (b) of section 3101.

(iii) Deduct from any payment of such employee's wages (exclusive of tips) which are under the control of the employer, or from funds referred to in paragraph (a)(3) of this section, such amount as may be necessary to adjust the amount of tax withheld on the estimated basis to conform to the amount of employee tax imposed upon, and required to be deducted in respect of, tips reported by the employee to the employer during the calendar quarter in written statements furnished to the employer pursuant to section 6053(a). If an adjustment is required, the additional employee tax required to be collected may be deducted upon any payment of the employee's wages (exclusive of tips) which are under the control of the employer during the quarter and within the first 30 days following the quarter or from funds turned over by the employee to the employer for such purposes within such period. For provisions relating to the repayment to an employee, or other disposition, of amounts deducted from an employee's remuneration in excess of the correct amount of employee tax, see § 31.6413(a)–1.

(2) *Estimating tips employee will report*— (i) *Initial estimate.* The initial estimate of the amount of tips that will be reported by a particular employee in a calendar quarter shall be made on the basis of the facts and circumstances surrounding the employment of that

employee. However, if a number of employees are employed under substantially the same circumstances and working conditions, the initial estimate established for one such employee may be used as the initial estimate for other employees in that group.

(ii) *Adjusting estimate.* If the quarterly estimate of tips in respect of a particular employee continues to differ substantially from the amount of tips reported by the employee and there are no unusual factors involved (for example, an extended absence from work due to illness) the employer shall make an appropriate adjustment of his estimate of the amount of tips that will be reported by the employee.

(iii) *Reasonableness of estimate.* The employer must be prepared, upon request of the district director, to disclose the factors upon which he relied in making the estimate, and his reasons for believing that the estimate is reasonable.

(d) *Employee tax not collected by employer.* If—

(1) The amount of the employee tax imposed by section 3101 in respect of those tips received by an employee which constitute wages exceeds

(2) The amount of employee tax imposed by section 3101 (in respect of tips reported by the employee to the employer) which can be collected by the employer from such employee's wages (exclusive of tips) which are under the control of the employer or from funds referred to in paragraph (a)(3) of this section,

the employee shall be liable for the payment of tax in an amount equal to such excess. For provisions relating to the manner and time of payment of employee tax by an employee, see paragraph (d) of § 31.6011(a)–1 and paragraph (a)(4) of § 31.6071(a)–1. For provisions relating to statements required to be furnished by employers to employees in respect of uncollected employee tax on tips reported to the employer, see § 31.6053–2.

[T.D. 7001, 34 FR 998, Jan. 23, 1969; 34 FR 1554, Jan. 31, 1969]

TAX ON EMPLOYERS

§ 31.3111–1 Measure of employer tax.

The employer tax is measured by the amount of wages paid after 1954 with respect to employment after 1936. See § 31.3121(a)–1, relating to wages, and §§ 31.3121(b)–1 to 31.3121(b)–4, inclusive, relating to employment. For provisions relating to time of payment of wages, see § 31.3121(a)–2.

[T.D. 6744, 29 FR 8306, July 2, 1964]

§ 31.3111–2 Rates and computation of employer tax.

(a) *Old-age, survivors, and disability insurance.* The rates of employer tax for old-age, survivors, and disability insurance with respect to wages paid in calendar years after 1954 are as follows:

Calendar year	*Percent*
1955 and 1956	2
1957 and 1958	2.25
1959	2.5
1960 and 1961	3
1962	3.125
1963 to 1965, both inclusive	3.625
1966	3.85
1967	3.9
1968	3.8
1969 and 1970	4.2
1971 and 1972	4.6
1973	4.85
1974 to 2010, both inclusive	4.95
2011 and subsequent calendar years	5.95

(b) *Hospital insurance.* The rates of employer tax for hospital insurance with respect to wages paid in calendar years after 1965 are as follows:

Calendar year	*Percent*
1966	0.35
1967	.50
1968 to 1972, both inclusive	.60
1973	1.0
1974 to 1977, both inclusive	0.90
1978 to 1980, both inclusive	1.10
1981 to 1985, both inclusive	1.35
1986 and subsequent calendar years	1.50

(c) *Computation of employer tax.* The employer tax is computed by applying to the wages paid by the employer the rate in effect at the time such wages are paid.

[T.D. 6983, 33 FR 18014, Dec. 4, 1968, as amended by T.D. 7374, 40 FR 30948, July 24, 1975]

§ 31.3111–3 When employer tax attaches.

The employer tax attaches at the time that the wages are paid by the