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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