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wages are paid in order that the status of employer exist. Thus, for purposes of withholding, a person for whom an individual has performed past services for which he is still receiving wages from such person is an *employer*.

(c) An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group or entity. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

(d) The term *employer* embraces not only individuals and organizations engaged in trade or business, but organizations exempt from income tax, such as religious and charitable organizations, educational institutions, clubs, social organizations and societies, as well as the governments of the United States, the States, Territories, Puerto Rico, and the District of Columbia, including their agencies, instrumentalities, and political subdivisions.

(e) The term *employer* also means (except for the purpose of the definition of *wages*) any person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States (including Puerto Rico as if a part of the United States).

(f) If the person for whom the services are or were performed does not have legal control of the payment of the wages for such services, the term *employer* means (except for the purpose of the definition of *wages*) the person having such control. For example, where wages, such as certain types of pensions or retired pay, are paid by a trust and the person for whom the services were performed has no legal control over the payment of such wages, the trust is the *employer*.

(g) The term *employer* also means a person making a payment of a supplemental unemployment compensation benefit which is treated under paragraph (b)(14) of §31.3401(a)–1 as if it were wages. For example, if supplemental unemployment compensation benefits are paid from a trust which was created under the terms of a collective bargaining agreement, the trust shall generally be deemed to be the employer. However, if the person making such payment is acting solely as an agent for another person, the term *employer* shall mean such other person and not the person actually making the payment.

(h) It is a basic purpose to centralize in the employer the responsibility for withholding, returning, and paying the tax, and for furnishing the statements required under section 6051 and §31.6051–1. The special definitions of the term *employer* in paragraphs (e), (f), and (g) of this section are designed solely to meet special or unusual situations. They are not intended as a departure from the basic purpose.

[T.D. 6516, 25 FR 13096, Dec. 20, 1960, as amended by T.D. 7068, 35 FR 17329, Nov. 11, 1970]

§31.3401(e)–1 Number of withholding exemptions claimed.

(a) The term *number of withholding exemptions claimed* means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402(f) of the Internal Revenue Code of 1954 or in effect under section 1622(h) of the Internal Revenue Code of 1939. If no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero. The number of withholding exemptions claimed must be taken into account in determining the amount of tax to be deducted and withheld under section 3402, whether the employer computes the tax in accordance with the provisions of subsection (a) or subsection (c) of section 3402.

(b) The employer is not required to ascertain whether or not the number of withholding exemptions claimed is greater than the number of withholding exemptions to which the employee is entitled. For rules relating to invalid withholding exemption certificates, see §31.3402(f)(2)–1(e), and for rules relating to required submission of copies of certain withholding exemption certificates to the Internal Revenue Service, see §31.3402(f)(2)–1(g).

(c) As to the number of withholding exemptions to which an employee is entitled, see § 31.3402(f)(1)–1.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7423, 41 FR 26217, June 23, 1976; T.D. 7682, 45 FR 15526, Mar. 11, 1980; T.D. 7803, 47 FR 3547, Jan. 26, 1982]

§ 31.3401(f)–1 Tips.

(a) *Tips considered wages.* Tips received after 1965 by an employee in the course of his employment are considered to be wages, and thus subject to withholding of income tax at source. For an exception to the rule that tips constitute wages, see §§ 31.3401(a)(16) and 31.3401(a)(16)–1, relating to tips paid in a medium other than cash and cash tips of less than $20. For definition of the term ''employee,'' see §§ 31.3401(c) and 31.3401(c)–1.

(b) *When tips deemed paid.* Tips reported by an employee to his employer in a written statement furnished to the employer pursuant to section 6053(a) (see § 31.6053–1) shall be deemed to be paid to the employee at the time the written statement is furnished to the employer. Tips received by an employee which are not reported to his employer in a written statement furnished pursuant to section 6053(a) shall be deemed to be paid to the employee at the time the tips are actually received by the employee.

[T.D. 7001, 34 FR 1001, Jan. 23, 1969]

§ 31.3402(a)–1 Requirement of withholding.

(a) Section 3402 provides alternative methods, at the election of the employer, for use in computing the amount of income tax to be collected at source on wages. Under the percentage method of withholding (see § 31.3402(b)–1), the employer is required to deduct and withhold a tax computed in accordance with the provisions of section 3402(a). Under the wage bracket method of withholding (see § 31.3402(c)–1), the employer is required to deduct and withhold a tax determined in accordance with the provisions of section 3402(c). The employer may elect to use the percentage method, the wage bracket method, or certain other methods (see § 31.3402(h) (4)–1). Different methods may be used by the employer with respect to different groups of employees.

(b) The employer is required to collect the tax by deducting and withholding the amount thereof from the employee's wages as and when paid, either actually or constructively. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case, the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition.

(c) Except as provided in sections 3402 (j) and (k) (see §§ 31.3402(j)–1 and 31.3402(k)–1, relating to noncash remuneration paid to retail commission salesman and to tips received by an employee in the course of his employment, respectively), an employer is required to deduct and withhold the tax notwithstanding the wages are paid in something other than money (for example, wages paid in stocks or bonds; see § 31.3401 (a)–1) and to pay over the tax in money. If wages are paid in property other than money, the employer should make necessary arrangements to insure that the amount of the tax required to be withheld is available for payment in money.

(d) For provisions relating to the circumstances under which tax is required to be deducted and withheld from certain amounts received under accident and health plans, see paragraph (b)(8) of § 31.3401(a)–1.

(e) As a matter of business administration, certain of the mechanical details of the withholding process may be handled by representatives of the employer. Thus, in the case of an employer having branch offices, the branch manager or other representative may actually, as a matter of internal administration, withhold the tax or prepare the statements required under section 6051. Nevertheless, the legal responsibility for withholding, paying,