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152(a) (9) or (10), whose death occurs before the first day of the employee's taxable year beginning in the calendar year of death.

(2) The determination that an individual may or may not reasonably be expected to be a dependent shall be made for the taxable year of the employee in respect of which amounts deducted and withheld in the calendar year in which the day in question falls are allowed as a credit. In general, amounts deducted and withheld during any calendar year are allowed as a credit against the tax imposed by chapter 1 of the Code for the taxable year which begins in, or with, such calendar year. Thus, in order for an employee to be able to claim for a calendar year a withholding exemption with respect to a particular individual as a dependent there must be a reasonable expectation that the employee will be allowed an exemption with respect to such individual under section 151(e) for his taxable year which begins in, or with, such calendar year.

(3) For the employee to be entitled on any day of the calendar year to a withholding exemption for an individual as a dependent, such individual must on such day—

(i) Be an individual referred to in one of the numbered paragraphs in section 152(a),

(ii) Reasonably be expected to receive over one-half of his support, within the meaning of section 152, from the employee in the calendar year, and

(iii) Either *(a)* reasonably be expected to have gross income of less than the amount determined pursuant to §1.151–2 of this chapter (Income Tax Regulations) applicable to the calendar year in which the taxable year of the taxpayer begins, or *(b)* be a child (son, stepson, daughter, stepdaughter, adopted son, or adopted daughter) of the employee who *(1)* will not have attained the age of 19 at the close of the calendar year or *(2)* is a student as defined in section 151.

(4) An employee is not entitled to claim a withholding exemption for an individual otherwise reasonably expected to be a dependent of the employee if such individual is not a citizen of the United States, unless such individual (i) is at any time during the calendar year a resident of the United States (including, in regard to wages paid after February 28, 1979, and individual treated as a resident under section 6013 (g) or (h)) Canada, Mexico, the Canal Zone, or the Republic of Panama, or (ii) is a child of the employee born to him, or legally adopted by him, in the Philippine Islands before January 1, 1956, and the child is a resident of the Republic of the Philippines, and the employee was a member of the Armed Forces of the United States at the time the child was born to him or legally adopted by him.

(e) *Additional withholding exemption to which an employee is entitled in respect of the standard deduction.* After November 30, 1986, an employee is entitled to one additional withholding exemption unless:

(1) The employee is married (as determined under section 143) and the employee's spouse is an employee receiving wages subject to withholding, or

(2) The employee has withholding exemption certificates in effect with respect to more than one employer.

These restrictions do not apply if the combined wages of the employee and the spouse (if any) from other than one employer is less than the amount specified in the instructions to Form W–4 or W–4A (Employee's Withholding Allowance Certificate).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6654, 28 FR 5252, May 28, 1963; T.D. 7065, 35 FR 16539, Oct. 23, 1970; T.D. 7114, 36 FR 9020, May 18, 1971; T.D. 7115, 36 FR 9234, May 21, 1971; T.D. 7670, 45 FR 6932, Jan. 31, 1980; T.D. 7915, 48 FR 44073, Sept. 27, 1983; T.D. 8164, 52 FR 45633, Dec. 1, 1987]

§ 31.3402(f)(2)–1 Withholding exemption certificates.

(a) *On commencement of employment.* On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed withholding exemption certificate relating to his marital status and the number of withholding exemptions which he claims, which number shall in no event exceed the number to which he is entitled, or, if the statements described in §31.3402(n)–1 are true with respect to an

individual, he may furnish his employer with a signed withholding exemption certificate which contains such statements. For form and contents of such certificates, see § 31.3402(f)(5)–1. The employer is required to request a withholding exemption certificate from each employee, but if the employee fails to furnish such certificate, such employee shall be considered as a single person claiming no withholding exemptions.

(b) *Change in status which affects calendar year.* (1) If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by him on the withholding exemption certificate then in effect, the employee must within 10 days after the change occurs furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which must in no event exceed the number to which he is entitled on such day. The number of withholding exemptions to which an employee is entitled decreases, for example, for any one of the following reasons:

(i) The employee's wife (or husband) for whom the employee has been claiming a withholding exemption *(a)* is divorced or legally separated from the employee, or *(b)* claims her (or his) own withholding exemption on a separate certificate.

(ii) In the case of an employee whose taxable year is not a calendar year, the employee's wife (or husband) for whom the employee has been claiming a withholding exemption dies in that portion of the calendar year which precedes the first day of the taxable year of the employee which begins in the calendar year in which the spouse dies.

(iii) The employee finds that no exemption for his taxable year which begins in, or with, the current calendar year will be allowable to him under section 151(e) in respect of an individual claimed as a dependent on the employee's withholding exemption certificate.

(iv) It becomes unreasonable for the employee to believe that his wages for an estimation year will not be more, or that the determinable additional amounts for each item under § 31.3402(m)–1 for an estimation year will not be less, than the corresponding figure used in connection with a claim by him under section 3402 (m) of a withholding allowance to such an extent that the employee would no longer be entitled to such withholding allowance.

(v) It becomes unreasonable for an employee who has in effect a withholding exemption certificate on which he claims a withholding allowance under section 3402(m), computed on the basis of the preceding taxable year, to believe that his wages and the determinable additional amounts for each item under § 31.3402(m)–1 in such preceding taxable year or in his present taxable year will entitle him to such withholding allowance in the present taxable year.

(2) If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is more than the number of withholding exemptions claimed by him on the withholding exemption certificate then in effect, the employee may furnish the employer with a new withholding exemption certificate on which the employee must in no event claim more than the number of withholding exemptions to which he is entitled on such day.

(3) If, on any day during the calendar year, the statements described in § 31.3402(n)–1 are true with respect to an employee, such employee may furnish his employer with a withholding exemption certificate which contains such statements.

(4) If, on any day during the calendar year, it is not reasonable for an employee, who has furnished his employer with a withholding exemption certificate which contains the statements described in § 31.3402(n)–1, to anticipate that he will incur no liability for income tax imposed under subtitle A (as defined in § 31.3402(n)–1) for his current taxable year, the employee must within 10 days after such day furnish the employer with a new withholding exemption certificate which does not contain such statements. If, on any day during the calendar year, it is not reasonable for such an employee whose liability for income tax imposed under

subtitle A is determined on a basis other than the calendar year to so anticipate with respect to his taxable year following his current taxable year, the employee must furnish the employer with a new withholding exemption certificate which does not contain such statements within 10 days after such day or on or before the first day of the last month of his current taxable year, whichever is later.

(c) *Change in status which affects next calendar year.* (1) If, on any day during the calendar year, the number of exemptions to which the employee will be, or may reasonably be expected to be, entitled under sections 151 and 3402(m) for his taxable year which begins in, or with, the next calendar year is different from the number to which the employee is entitled on such day, the following rules shall be applicable:

(i) If such number is less than the number of withholding exemptions claimed by the employee on a withholding exemption certificate in effect in such day, the employee must, on or before December 1 of the year in which the change occurs, unless such change occurs in December, furnish his employer with a new withholding exemption certificate reflecting the decrease in the number of withholding exemptions. If the change occurs in December, the new certificate must be furnished within 10 days after the change occurs. The number of exemptions to which an employee is entitled for his taxable year which begins in, or with, the next calendar year decreases, for example, for any of the following reasons:

(a) The spouse or a dependent of the employee dies.

(b) The employee finds that is not reasonable to expect that an individual claimed as a dependent on the employee's withholding exemption certificate will qualify as a dependent of the employee for such taxable year.

(c) It becomes unreasonable for an employee who has in effect a withholding exemption certificate on which he claims a withholding allowance under section 3402(m) to believe that his wages and the determinable additional amounts for each item under §31.3402(m)–1 for his taxable year which begins in, or with, the next calendar year will entitle him to such withholding allowance for such taxable year.

(ii) If such number is greater than the number of withholding exemptions claimed by the employee on a withholding exemption certificate in effect on such day, the employee may, on or before December 1 of the year in which such change occurs, unless such change occurs in December, furnish his employer with a new withholding exemption certificate reflecting the increase in the number of withholding exemptions. If the change occurs in December, the certificate may be furnished on or after the date on which the change occurs.

(2) If, on any day during the calendar year, it is not reasonable for an employee, who has furnished his employer with a withholding exemption certificate which contains the statements described in §31.3402(n)–1 and whose liability for such tax is determined on a calendar-year basis, to anticipate that he will incur no liability for income tax imposed under subtitle A (as defined in §3l.3402(n)–1) for his taxable year which begins with the next calendar year, the employee must furnish his employer with a new withholding exemption certificate which does not contain such statements, on or before December 1 of the first-mentioned calendar year. If it first becomes unreasonable for the employee to so anticipate in December, the new certificate must be furnished within 10 days after the day on which it first becomes unreasonable for the employee to so anticipate.

(3) Before December 1 of each year, every employer should request each of his employees to file a new withholding exemption certificate for the ensuing calendar year, in the event of change in the employee's exemption status since the filing of his latest certificate.

(d) *Inclusion of account number on withholding exemption certificate.* Every individual to whom an account number has been assigned shall include such number of any withholding exemption certificate filed with an employer. For provisions relating to the obtaining of an account number, see §31.6011 (b)–2.

(e) *Invalid withholding exemption certificates.* Any alteration of or unauthorized addition to a withholding exemption certificate shall cause such certificate to be invalid; see paragraph (b) of § 31.3402(f)(5)–1 for the definitions of alteration and unauthorized addition. Any withholding exemption certificate which the employee clearly indicates to be false by an oral statement or by a written statement (other than one made on the withholding exemption certificate itself) made by him to the employer on or before the date on which the employee furnishes such certificate is also invalid. For purposes of the preceding sentence, the term ''employer'' includes any individual authorized by the employer either to receive withholding exemption certificates, to make withholding computations, or to make payroll distributions. If an employer receives an invalid withholding exemption certificate, he shall consider it a nullity for purposes of computing withholding; he shall inform the employee who submitted the certificate that it is invalid, and shall request another withholding exemption certificate from the employee. If the employee who submitted the invalid certificate fails to comply with the employer's request, the employer shall withhold from the employee as from a single person claiming no exemptions (see § 31.3402 (f)(2)–1(a)); if, however, a prior certificate is in effect with respect to the employee, the employer shall continue to withhold in accordance with the prior certificate.

(f) *Applicability of withholding exemption certificate to qualified State individual income taxes.* The withholding exemption certificate shall be use for purposes of withholding with respect to qualified State individual income taxes as well as Federal tax. For provisions relating to the withholding exemption certificate with respect to such State taxes, see paragraph (d)(3)(i) of § 301.6361–1 of this chapter (Regulation on Procedure and Administration).

(g) *Submission of certain withholding certificates*—(1) *General rule.* With respect to withholding exemption certificates received after November 30, 1986, an employer shall submit, in accordance with paragraph (g)(3) of this section, a copy of any withholding exemption certificate, together with a copy of any written statement received from the employee in support of the claims made on the certificate, which is received from the employee during the reporting period (even if the certificate is not in effect at the end of the quarter) if the employee is employed by that employer on the last day of the reporting period and if—

(i) The total number of withholding exemptions (within the meaning of section 3402(f)(1) and the regulations thereunder) claimed on the certificate exceeds 10, or

(ii) The certificate indicates that the employee claims a status exempting the employee from withholding, and the exception provided by paragraph (g)(2) of this section does not apply.

(2) *Exception.* A copy of the certificate shall not be submitted under paragraph (g)(1)(ii) of this section if the employer reasonably expects, at the time the certificate is received, that the employee's wages (under chapter 24 of the Code) from that employer shall not then usually exceed $200 per week.

(3) *Rules for submission*—(i) *In general.* The reporting period is a calendar quarter. Copies required to be submitted under paragraph (g)(1) of this section shall be submitted at the time and place of filing Form 941 or 941E for the reporting period, or Form 941–M for the last month of the reporting period. Form 941, 941E or 941–M shall be used, in accordance with the instructions for the form, to transmit the copies.

(ii) *Option.* At the choice of the employer, copies required to be submitted under paragraph (g)(1) of this section may be submitted earlier and for shorter reporting periods than a calendar quarter. In such case, the employer shall submit the copies to the service center where the employer would file a Form 941 or 941E and shall include with the submission a statement showing the employer's name, address, employer identification number, and the number of copies of withholding exemption certificates submitted. However, in no event shall a copy be submitted later than the time for filing the report required to be submitted for the calendar quarter reporting period under subdivision (i) of this paragraph (g)(3).

(iii) *First report.* The first submission of copies shall include a copy of any certificate required to be submitted under paragraph (g)(1) of this section which is received by the employer on or after April 1, 1980.

(4) *Other withholding exemption certificates.* An employer shall also submit a copy of any currently effective withholding exemption certificate (or make the original certificate available for inspection), together with a copy of any written statement received from the employee in support of the claims made on the certificate, upon written request of the Internal Revenue Service. This request of the Service may relate either to one or more named employees or to one or more reasonably segregable units of the employer. In this regard, the Service may, by written notice, advise the employer that a copy of each new withholding exemption certificate received from one or more named employees, or from one or more reasonably segregable units of the employer, which is required, under this paragraph (g) to be submitted to the Service is to be submitted to the District Director. The employer shall then submit to the District Director a copy of each such new certificate of each such employee immediately after the employer receives the new certificate from the named employee.

(5) *Computation of withholding.* (i) Until receipt of written notice from the Internal Revenue Service that a certificate, a copy of which was submitted under this section, is defective, that certificate is effective and the employer shall withhold on the basis of the statements made in that certificate, unless that certificate must be disregarded under the provisions of paragraph (g)(5)(vi) of this section.

(ii) The Internal Revenue Service may find that a copy of a withholding exemption certificate submitted contains a materially incorrect statement or it may determine, after written request to the employee for verification of the statements on the certificate, that it lacks sufficient information to determine if the certificate is correct. If the Internal Revenue Service so finds or determines and notifies the employer in writing that the certificate is defective, the employer shall then consider the certificate to be defective for purposes of computing amounts of withholding.

(iii) If the Internal Revenue Service notifies the employer that the certificate is defective, the Internal Revenue Service will, based upon its findings, advise the employer that the employee either is not entitled to claim a status exempting the employee from withholding or is not entitled to claim a total number of withholding exemptions in excess of a number specified by the Internal Revenue Service in the notice, or both. The Internal Revenue Service will also specify the Internal Revenue Service office to be contacted for further information.

(iv) The Internal Revenue Service will provide the employer with a copy for the employee of each notice it furnishes to the employer under this paragraph (g)(5) in addition to the notice furnished to the employer for his own use. The Internal Revenue Service will also mail a similar notice to the employee at the address of the employee as shown on the certificate under review.

(v) The employer shall promptly furnish the employee who filed the defective certificate, if still in his employ, with a copy of the written notice of the Internal Revenue Service with respect to the certificate and may request another withholding exemption certificate from the employee. The employer shall withhold amounts from the employee on the basis of the maximum number specified in the written notice received from the Service.

(vi) If and when the employee does file any new certificate (after an earlier certificate of the employee was considered to be defective), the employer shall withhold on the basis of that new certificate (whenever filed) as currently effective only if the new certificate does not make a claim of exempt status or of a number of withholding exemptions which claim is inconsistent with the advice earlier furnished by the Internal Revenue Service in its written notice to the employer. If any new certificate does make a claim which is inconsistent with the advice

contained in the Service's written notice to the employer, then the employer shall disregard the new certificate, shall not submit that new certificate to the Service, and shall continue to withhold amounts from the employee on the basis of the maximum number specified in the written notice received from the Service.

(vii) If the employee makes a claim on any new certificate that is inconsistent with the advice in the Service's written notice to the employer, the employee may specify on such new certificate, or by a written statement attached to that certificate, any circumstances of the employee which have changed since the date of the Service's earlier written notice, or any other circumstances or reasons, as justification or support for the claims made by the employee on the new certificate. The employee may then submit that new certificate and written statement either to (A) the Internal Revenue Service office specified in the notice earlier furnished to the employer under this paragraph (g)(5), or to (B) the employer, who must then submit a copy of that new certificate and the employee's written statement (if any) to the Internal Revenue Service office specified in the notice earlier furnished to the employer. The employer shall continue to disregard that new certificate and shall continue to withhold amounts from the employee on the basis of the maximum number specified in the written notice received from the Service unless and until the Internal Revenue Service by written notice (under paragraph (g)(5)(iii) of this section) advises the employer to withhold on the basis of that new certificate and revokes its earlier written notice.

(6) *Definition of employer.* For purposes of this paragraph (g), the term ''employer'' includes any individual authorized by the employer to receive withholding exemption certificates, to make withholding computations, or to make payroll distributions.

(68A Stat. 731 (26 U.S.C. 6001); 68A Stat. 732 (26 U.S.C. 6011); 68A Stat. 917 (26 U.S.C. 7805))

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§ 31.3402(f)(3)–1 When withholding exemption certificate takes effect.

(a) A withholding exemption certificate furnished the employer in any case in which no previous withholding exemption certificate is in effect with such employer, shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

(b) A withholding exemption certificate furnished the employer in any case in which a previous withholding exemption certificate is in effect with such employer shall, except as hereinafter provided, take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days after the date on which such certificate is so furnished. However, at the election of the employer, except as hereinafter provided, such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished and before such status determination date.

(c) A withholding exemption certificate furnished the employer pursuant to section 3402(f)(2)(C) (see paragraph (c) of § 31.3402(f)(2)–1 or paragraph (b)(2)(ii) of § 31.3402(1)–1) which effects a change for the next calendar year, shall not take effect, and may not be made effective, with respect to the calendar year in which the certificate is furnished. A withholding exemption certificate furnished the employer by an employee who determines his income tax liability on a basis other than