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Internal Revenue Code of 1954, or that on December 31, 1954, was in effect under section 1622(h) of the Internal Revenue Code of 1939, shall continue in effect with respect to the employee until another withholding exemption certificate takes effect under section 3402(f). Paragraphs (b) and (c) of this section are applicable only for withholding exemption certificates furnished by the employee to the employer after December 31, 1981. See § 31.3402(f)(4)–1 for the rules applicable to withholding exemption certificates furnished by the employee to the employer before January 1, 1982.

(b) *Withholding allowances under section 3402(m).* See paragraphs (b) and (c) of § 31.3402(f)(2)–1 (relating to withholding exemption certificates) for information as to when an employee claiming withholding allowances under section 3402(m) and the regulations thereunder must file a new withholding exemption certificate with his employer.

(c) *Statements under section 3402(n) eliminating requirement of withholding.* The statements described in § 31.3402(n)–1 made by an employee with respect to his preceding taxable year and current taxable year shall be effective until either a new withholding exemption certificate furnished by the employee takes effect or the existing certificate that contains such statements expires. In no case shall a withholding exemption certificate that contains such statements be effective with respect to any payment of wages made to an employee:

(1) In the case of an employee whose liability for tax under subtitle A is determined on a calendar year basis, after February 15 of the calendar year following the estimation year, or

(2) In the case of an employee to whom paragraph (c)(1) of this section does not apply, after the 15th day of the 2nd calendar month following the last day of the estimation year.

(d) *Estimation year.* The estimation year is the taxable year including the day on which the employee files the withholding exemption certificate with his employer, except that if the employee files the withholding exemption certificate with his employer and specifies on the certificate that the certificate is not to take effect until a specified future date, the estimation year shall be the taxable year including that specified future date.

(Secs. 3402(i) and (m) and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 3402 (i) and (m), 95 Stat. 172, 184; 26 U.S.C. 7805, 68A Stat. 917))

[T.D. 7915, 48 FR 44073, Sept. 27, 1983]

§ 31.3402(f)(5)–1 Form and contents of withholding exemption certificates.

(a) *Form W–4.* Form W–4 is the form prescribed for the withholding exemption certificate required to be filed under section 3402(f)(2). A withholding exemption certificate shall be prepared in accordance with the instructions and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. A withholding exemption certificate that does not set forth fully and clearly the data therein called for is an invalid withholding exemption certificate under § 31.3402(f)(2)–1(e) (relating to withhholding exemption certificates). Blank copies of paper Forms W–4 will be supplied to employers upon request to the Internal Revenue Service. In lieu of the prescribed form, employers may prepare and use a form the provisions of which are identical with those of the prescribed form, but only if employers also provide employees with all the tables and instructions contained in the Form W–4 in effect at that time and only if employers comply with all revenue procedures relating to substitute forms in effect at that time.

(b) *Invalid Form W–4.* A Form W–4 does not meet the requirements of section 3402(f)(5) or this section and is invalid if it contains an alteration or unauthorized addition. For purposes of § 31.3402(f)(2)–1(e) and this paragraph—

(1) An alteration of a withholding exemption certificate is any deletion of the language of the jurat or other similar provision of such certificate by which the employee certifies or affirms the correctness of the completed certificate, or any material defacing of such certificate;

(2) An unauthorized addition to a withholding exemption certificate is any writing on such certificate other than the entries requested (e.g., name,

address, and number of exemptions claimed).

(c) *Electronic Form W–4*—(1) *In general.* An employer may establish a system for its employees to file withholding exemption certificates electronically.

(2) *Requirements*—(i) *In general.* The electronic system must ensure that the information received is the information sent, and must document all occasions of employee access that result in the filing of a Form W–4. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and filing the Form W–4 is the employee identified in the form.

(ii) *Same information as paper Form W–4.* The electronic filing must provide the employer with exactly the same information as the paper Form W–4.

(iii) *Jurat and signature requirements.* The electronic filing must be signed by the employee under penalties of perjury.

(A) *Jurat.* The jurat (perjury statement) must contain the language that appears on the paper Form W–4. The electronic program must inform the employee that he or she must make the declaration contained in the jurat and that the declaration is made by signing the Form W–4. The instructions and the language of the jurat must immediately follow the employee's income tax withholding selections and immediately precede the employee's electronic signature.

(B) *Electronic signature.* The electronic signature must identify the employee filing the electronic Form W–4 and authenticate and verify the filing. For this purpose, the terms ''authenticate'' and ''verify'' have the same meanings as they do when applied to a written signature on a paper Form W–4. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the employee's Form W–4 submission.

(iv) *Copies of electronic Forms W–4.* Upon request by the Internal Revenue Service, the employer must supply a hardcopy of the electronic Form W–4 and a statement that, to the best of the employer's knowledge, the electronic Form W–4 was filed by the named employee. The hardcopy of the electronic Form W–4 must provide exactly the same information as, but need not be a facsimile of, the paper Form W–4.

(3) *Effective date*—(i) *In general.* This paragraph applies to all withholding exemption certificates filed electronically by employees on or after January 2, 1997.

(ii) *Special rule for certain Forms W–4.* In the case of an electronic system that precludes the filing of Forms W–4 required on commencement of employment and Forms W–4 claiming more than 10 withholding exemptions or exemption from withholding, the requirements of paragraph (c)(2)(iii) of this section will be treated as satisfied if the Form W–4 is filed electronically before January 1, 1999.

[T.D. 7423, 41 FR 26217, June 25, 1976, as amended by T.D. 7915, 48 FR 44074, Sept. 27, 1983; T.D. 8706, 62 FR 24, Jan. 2, 1997]

§ 31.3402(f)(6)–1 Withholding exemptions for nonresident alien individuals.

A nonresident alien individual (other than, in regard to wages paid after February 28, 1979, a nonresident alien individual treated as a resident under section 6013(g) or (h)) subject to withholding under section 3402 is on any 1 day entitled under section 3402(f)(1) and § 31.3402(f)(1)–1 to the number of withholding exemptions corresponding to the number of personal exemptions to which he is entitled on such day by reason of the application of section 873(b)(3) or section 876, whichever applies. Thus, a nonresident alien individual who is not a resident of Canada or Mexico and who is not a resident of Puerto Rico during the entire taxable year, is allowed under section 3402(f)(1) only one withholding exemption.

[T.D. 6908, 31 FR 16776, Dec. 31, 1966, as amended by T.D. 7670, 45 FR 6932, Jan. 31, 1980]

§ 31.3402(g)–1 Supplemental wage payments.

(a) *In general.* (1) An employee's remuneration may consist of wages paid for a payroll period and supplemental wages, such as bonuses, commissions, and overtime pay, paid for the same or a different period, or without regard to