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withholding of tax on the basis of average estimated tips, see paragraph (b) of § 31.3402(h)(1)–1.

(2) *Examples.* The application of paragraph (b)(1) of this section may be illustrated by the following examples (The amounts used in the following examples are intended for illustrative purposes and do not necessarily reflect currently effective rates or amounts.):

Example 1. W is a waiter employed by R restaurant. W's principal remuneration for his services is in the form of tips received from patrons of R; however, he also receives a salary from R of $40 per week, which is paid to him every Friday. W is a member of a labor union which has a contract with R pursuant to which R is to collect dues for the union by withholding from the wages of its employees at the rate of $1 per week. In addition to the taxes required to be withheld under the Internal Revenue Code, W's wages are subject to withholding of a state income tax imposed upon both his regular wage and his tips received and reported to R.

On Monday of a given week W furnishes a written statement to R pursuant to section 6053(a) in which he reports the receipt of $160 in tips. The $40 wage to be paid to W on Friday of the same week is subject to the following items of withholding:

	Taxes with respect to regular wage	Taxes with respect to tips	Total
Section 3101 (F.I.C.A.) ..	$1.76	$7.04	$8.80
Section 3402 (income tax at source)	5.65	28.30	33.95
State income tax	1.20	4.80	6.00
Union dues	.....	.....	1.00
Total	.....	.....	49.75

W does not turn over any funds to R. R should satisfy the taxes imposed by sections 3101 and 3402 out of W's $40 wage as follows: The taxes imposed with respect to the regular wage (a total of $74l) should be satisfied first. The taxes imposed with respect to tips are to be withheld only out of ''wages (exclusive of tips) which are under the control of the employer'' as that phrase is defined in §§ 31.3102–3(a)(1) and 31.3402(k)–1(a)(1). The amount of such wages under the control of employer in this example is $31.39, or $40, less the amounts applied in satisfaction of the Federal and State withholding taxes imposed with respect to the regular $40 wage ($8.61). This $31.39 is applied first in satisfaction of the tax under section 3101 with respect to tips ($7.04) in the balance of $24.35 is applied in partial satisfaction of the withholding of income tax at source under section 3402 with respect to tips. The amount of the tax with respect to tips under section 3402 which remains unsatisfied ($3.95) should be withheld from wages under the control of the employer the following week.

Example 2. During the week following the week dealt with in example 1, W furnishes a written statement to R pursuant to withholding:

	Taxes with respect to regular wage	Taxes with respect to tips	Total
Section 3101 (F.I.C.A.) ..	$1.76	$5.72	$7.48
Section 3402 (Income tax at source):			
Current week	5.65	22.30	27.95
Carryover from prior week	.....	3.95	3.95
State income tax	1.20	3.90	5.10
Union dues	.....	.....	1.00
Garnishment	.....	.....	10.00
Total	.....	.....	55.48

As in example 1, the amount of ''wages (exclusive of tips) which are under the control of the employer'' is $31.39. This amount is applied first in satisfaction of the tax under section 3101 with respect to tips ($5.72) and the balance is applied in partial satisfaction of the withholding of income tax at source under section 3402 with respect to tips (a total of $26.25), including that portion of the amount required to be withheld from the prior week's wages which remained unsatisfied. The amount of the tax with respect to tips under section 3402 which remains unsatisfied ($0.58) should be withheld from wages under the control of the employer the following week.

[T.D. 7001, 34 FR 1002, Jan. 23, 1969, as amended by T.D. 7053, 35 FR 11628, July 21, 1970]

§ 31.3402(l)–1 Determination and disclosure of marital status.

(a) *Determination of status by employer.* An employer in computing the tax to be deducted and withheld from an employee's wages paid after April 30, 1966, shall apply the applicable percentage method or wage bracket method withholding table (see section 3402 (a), (b), and (c) and the regulations thereunder) for the pertinent payroll period which relates to employees who are single persons, unless there is in effect with respect to such payment of wages a withholding exemption certificate furnished to the employer by the employee after March 15, 1966, indicating that the employee is married in which

case the employer shall apply the applicable table relating to employees who are married persons.

(b) *Disclosure of status by employee.* (1) An employee shall be entitled to furnish the employer with a withholding exemption certificate indicating he is married only if, on the day of such furnishing, he is married (determined by application of the rules in paragraph (c) of this section). Thus, an employee who is contemplating marriage may not, prior to the actual marriage, furnish the employer with a withholding exemption certificate indicating that he is a married person.

(2) (i) If, on any day during the calendar year, the marital status (as determined by application of the rules in paragraph (c) of this section) of an employee who has in effect a withholding exemption certificate indicating that he is a married person, changes from married to single, the employee must within 10 days after the change occurs furnish the employer with a new withholding exemption certificate indicating that the employee is a single person.

(ii) If an employee who has in effect a withholding exemption certificate indicating that he is a married person, is considered married solely because of the application of subparagraph (2)(ii) of paragraph (c) of this section, and his spouse died during the taxable year which precedes by 2 years the current taxable year, the employee must, on or before December 1 of the current taxable year, furnish the employer with a new withholding exemption certificate indicating that he is a single person. Such certificate shall not, however become effective until the next calendar year (see paragraph (c) of §31.3402(f)(3)–1).

(3) If, on any day during the calendar year, the marital status (as determined by application of the rules in paragraph (c) of this section) of an employee who has in effect a withholding exemption certificate indicating that he is a single person changes from single to married, the employee may furnish the employer with a new withholding exemption certificate indicating that the employee is a married person.

(c) *Determination of marital status.* For the purposes of section 3402(l)(2) and paragraph (b) of this section, the following rules shall be applied in determining whether an employee is a married person or a single person—

(1) An employee shall on any day be considered as a single person if—

(i) He is legally separated from his spouse under a decree of divorce or separate maintenance, or

(ii) Either he or his spouse is, or on any preceding day within the same calendar year was, a nonresident alien.

(2) An employee shall on any day be considered as a married person if—

(i) His spouse (other than a spouse referred to in paragraph (c)(1) of this section) died within the portion of his taxable year which precedes such day, or

(ii) His spouse died during one of the two taxable years immediately preceding the current taxable year and, on the basis of facts existing at the beginning of such day, he reasonably expects, at the close of his taxable year, to be a surviving spouse as defined in section 2 and the regulations thereunder.

[T.D. 7115, 36 FR 9234, May 21, 1971]

§ 31.3402(m)–1 Withholding allowances.

(a) *General rule.* An employee may claim, with respect to wages paid after December 31, 1981, a number of withholding allowances determined in accordance with this section. In order to receive the benefit of such allowances, the employee must have in effect with his employer a withholding exemption certificate claiming such allowances.

(b) *Items that may be taken into account.* The following items may be taken into account in determining the number of withholding allowances an employee may claim:

(1) Estimated itemized deductions allowable under chapter 1,

(2) The estimated tax credits allowable under Subpart A of Part IV of Subchapter A of Chapter 1, except:

(i) For the credit for tax withheld on wages under section 31(a) (relating to wage withholding),

(ii) For the credit for tax withheld at source on nonresident aliens and foreign corporations and on tax-free covenant bonds under section 32,