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same amount, and that he will not incur income tax liability for that year. On April 20, 1971, A commences employment and furnishes his employer an exemption certificate stating that he incurred no liability for income tax imposed under subtitle A for 1970, and that he anticipates that he will incur no liability for income tax imposed under subtitle A for 1971. A's employer shall not deduct and withhold on payments of wages made to A on or after April 20, 1971. Under paragraph (c) of §31.3402(f)(4)–1, unless A files a new exemption certificate with his employer, his employer is required to deduct and withhold upon payments of wages to A made on or after May 1, 1972. (Under §31.3402(f)(3)–1(b), if A had been employed by his employer prior to April 20, 1971, and had furnished his employer a withholding exemption certificate not containing the statements described in §31.3402(n)–1 prior to furnishing the withholding exemption certificate containing such statements on April 20, 1971, his employer would not be required to give effect to the new certificate with respect to payments of wages made by him prior to July 1, 1971 (the first status determination date which occurs at least 30 days after April 20, 1971). However his employer could, if he chose, make the new certificate effective with respect to any payment of wages made on or after April 20 and before July 1, 1971.)

Example 2. Assume the facts are the same as in example 1 except that for 1970 A has taxable income of $8,000, income tax liability of $1,630, and income tax withheld of $1,700. Although A received a refund of $70 due to income tax withholding of $1,700, he may not state on his exemption certificate that he incurred no liability for income tax imposed by subtitle A for 1970.

(86 Stat. 944, 26 U.S.C. 6364; and 68A Stat. 917, 26 U.S.C. 7805, 68A Stat. 731, 26 U.S.C. 6001; 68A Stat. 732, 26 U.S.C. 6011)

[T.D. 7048, 35 FR 10292, June 24, 1970, as amended by T.D. 7577, 43 FR 59359, Dec. 20, 1978; T.D. 7598, 44 FR 14553, Mar. 13, 1979; T.D. 7682, 45 FR 15527, Mar. 11, 1980; T.D. 7803, 47 FR 3547, Jan. 26, 1982]

§31.3402(o)–1 Extension of withholding to supplemental unemployment compensation benefits.

(a) *In general.* Withholding of income tax is required under section 3402(o) with respect to payments of supplemental unemployment compensation benefits made after December 31, 1970, which are treated under paragraph (b)(14) of §31.3401(a)–1 as if they were wages.

(b) *Withholding exemption certificates.* For purposes of section 3402(f) (2) and (3) and the regulations thereunder (relating to withholding exemption certificates), in the case of supplemental unemployment compensation benefits an employment relationship shall be considered to commence with either the date on which such benefits begin to accrue or January 1, 1971, whichever is later, and the withholding exemption certificate furnished the employer with respect to such commencement of employment shall be considered the first certificate furnished the employer. The withholding exemption certificate furnished by the employee to his former employer (with whom his employment has been involuntarily terminated, within the meaning of paragraph (b)(14)(ii) of §31.3401(a)–1) shall be treated as meeting the requirements of section 3402(f)(2)(A) and the regulations thereunder if such former employer furnishes such certificate to the employee's current employer, as defined in paragraph (g) of §31.340(d)–1, or if such former employer is the agent of such current employer with respect to the employee's withholding exemption certificate. However, the preceding sentence shall not be applicable if such employee furnishes a new withholding exemption certificate to such current employer (or his agent), provided that such withholding exemption certificate meets the requirements of section 3402(f)(2)(A) and the regulations thereunder. See the definitions of payroll period in paragraph (c) of §31.3401(b)–1 and of employee in paragraph (g) of §31.3401(c)–1.

[T.D. 7068, 35 FR 17329, Nov. 11, 1970, as amended by T.D. 7803, 47 FR 3546, Jan. 26, 1982]

§31.3402(o)–2 Extension of withholding to annuity payments if requested by payee.

(a) *In general.* Under section 3402(o) of the Internal Revenue Code of 1954 and this section, the payee (as defined in paragraph (g)(2) of this section) of an annuity (as defined in paragraph (g)(1) of this section) may request the payor (as defined in paragraph (g)(3) of this section) of the annuity to withhold income tax with respect to payments of the annuity made after December 31, 1970. If such a request is made, the

payor shall deduct and withhold as requested.

(b) *Manner of making request.* A payee who wishes a payor to deduct and withhold income tax from annuity payments shall file a request with the payor to deduct and withhold a specific whole dollar amount from each annuity payment. Such specific dollar amount requested shall be at least $5 per month and shall not reduce the net amount of any annuity payment received by the payee below $10. The request shall be made on Form W–4P (annuitant's withholding exemption certificate and request) in accordance with the instructions applicable thereto, and shall set forth fully and clearly the data therein called for. In lieu of Form W–4P, payors may prepare and use a form the provisions of which are identical with those of Form W–4P.

For the requirements relating to Form W–4P with respect to qualified State individual income taxes, see paragraph (d)(3)(i) of §301.6361–1 of this chapter (Regulations on Procedure and Administration).

(c) *When request takes effect.* Upon receipt of a request under this section the payor of the annuity with respect to which such request was made shall deduct and withhold the amount specified in such request from each annuity payment commencing with the first annuity payment made on or after the date which occurs—

(1) In a case in which no previous request is in effect, 3 calendar months after the date on which such request is furnished to such payor, and

(2) In a case in which a previous request is in effect, the first status determination date (see section 3402(f)(3)(B) and paragraph (d) of §31.3402(f)(3)–1 of this chapter) which occurs at least 30 days after the date on which such request is so furnished.

However, the payor may, at his election, commence to deduct and withhold such specified amount with respect to an annuity payment which is made prior to the annuity payment described in the preceding sentence with respect to which the payor must commence to deduct and withhold.

(d) *Duration and termination of request.* A request under this section shall continue in effect until terminated. The payee may terminate the request by furnishing the payor a signed written notice of termination. Such notice of termination shall, except as hereinafter provided, take effect with respect to the first payment of an amount in respect of which the request is in effect which is made on or after the first status determination date (see section 3402(f)(3)(B) and paragraph (d) of §31.3402(f)(3)–1 of this chapter) which occurs at least 30 days after the date on which such notice is so furnished. However, at the election of such payor, such notice may be made effective with respect to any payment of an amount in respect of which the request is in effect which is made on or after the date on which such notice is so furnished and before such status determination date.

(e) *Special rules.* For purposes of chapter 24 of subtitle C of the Internal Revenue Code of 1954 (relating to collection of income tax at source on wages) and of subtitle F of such Code (relating to procedure and administration), and the regulations thereunder—

(1) An amount which is requested to be withheld pursuant to this section shall be deemed a tax required to be deducted and withheld under section 3402.

(2) An amount deducted and withheld pursuant to this section shall be deemed an amount deducted and withheld under section 3402.

(3) The term ''wages'' includes the gross amount of an annuity payment with respect to which there is in effect a request for withholding under this section. However, references to the definition of wages in section 3401(a) which are made in section 6014 (relating to election by the taxpayor not to compute the tax on his annual return) and section 6015(a) (relating to declaration of estimated tax by individuals) shall not be deemed to include any portion of such an annuity payment.

(4) The term ''employer'' includes a payor with respect to whom a request for withholding is in effect under this section.

(5) The term ''employee'' includes a payee with respect to whom a request for withholding is in effect under this section.

(6) The term ''payroll period'' includes the period of accrual with respect to which payments of an annuity which is subject to withholding under this section are ordinarily made.

(f) *Returns of income tax withheld and statements for payees.* (1) Form W–2P is to be used in lieu of Form W–2, which is required to be furnished by an employer to an employee under § 31.6051–1 of this chapter and to the Social Security Administration under paragraph (a) of § 31.6051–2 of this chapter, with respect to an annuity subject to withholding under this section. If an amount is required to be deducted and withheld under this section from any or all of the payments made to a payee under an annuity contract during a calendar year, all payments with respect to that annuity contract are required to be reported on Form W–2P, in lieu of Form 1099, as prescribed in §§ 1.6041–1, 1.6041–2, and 1.6047–1 of this chapter; any other annuity payments made by the same payor to the same payee may, at the option of the payor, be reported on Form W–2P.

(2) Each statement on Form W–2P shall show the following:

(i) The gross amount of annuity payments made during the calendar year, whether or not income tax withholding under this section was in effect with respect to all such payments,

(ii) The total amount deducted and withheld as tax under section 3402 of this section, and

(iii) The information required to be shown by Form W–2P and the instructions applicable thereto.

For the requirements relating to Form W–2P with respect to qualified State individual income taxes, see paragraph (d)(3)(ii) of § 301.6361–1 of this chapter (Regulations on Procedure and Administration).

(3) The provisions of § 1.9101–1 of this chapter (relating to permission to submit information required by certain returns and statements on magnetic tape) shall be applicable to the information required to be furnished on Form W–2P.

(4) The provisions of § 31.6109–1 of this chapter (relating to supplying of identifying numbers) shall be applicable to Form W–2P and to any payee of an annuity to whom a statement on Form W–2P is required to be furnished.

(g) *Definitions.* For purposes of this section—

(1) The term ''annuity'' means periodic payments which are payable over a period greater than 1 year and which are treated under section 72 as amounts received as an annuity, whether or not such periodic payments are variable in amount. Also, periodic payments to an individual who is retired before the normal retirement age for reasons of disability, to which the provisions of section 105(d) apply, shall be deemed to be an annuity for purposes of this section. A lump-sum payment (including a total distribution under section 72(n)) is not an annuity.

(2) The term ''payee'' means an individual who is a citizen or resident of the United States and who receives an annuity payment.

(3) The term ''payor'' means a person making an annuity payment except that, if the person making the payment is acting soley as an agent for another person, the term ''payor'' shall mean such other person and not the person actually making the payment. For example, if a bank makes an annuity payment only as agent for an employees' trust, the trust shall be deemed to be the ''payor.'' Notwithstanding the preceding two sentences, any person who, under section 3401(a) (5) or (8), would not be required to deduct and withhold the tax under section 3402 if the annuity payment were remuneration for services shall not be considered a ''payor.''

(Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805; 86 Stat. 944, 26 U.S.C. 6364; 68A Stat. 747, 26 U.S.C. 6051)

[T.D. 7056, 35 FR 13436, Aug. 22, 1970, as amended by T.D. 7577, 43 FR 59360, Dec. 20, 1978: T.D. 7580, 43 FR 60160, Dec. 26, 1978. Redesignated by T.D. 7803, 47 FR 3546, Jan. 26, 1982]

§ 31.3402(o)–3 Extension of withholding to sick pay.

(a) *In general.* Under section 3402(o) of the Internal Revenue Code of 1954 and this section, the payee (as defined in paragraph (h)(2) of this section) of sick pay (as defined in paragraph (h)(1) of this section) may request the payor (as