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(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

defined in paragraph (h)(3) of this section) of the sick pay to withhold income tax with respect to payments of sick pay made on or after May 1, 1981. If such a request is made, the payor must deduct and withhold as requested.

(b) *Manner of making request.* A payee who wishes a payor to deduct and withhold income tax from sick pay shall file a written request with the payor to deduct and withhold a specific whole dollar amount (subject to the limitations of paragraph (c) of this section) from each sick pay payment. The request shall be made on Form W–4S in accordance with the instructions applicable thereto, and shall set forth fully and clearly the data therein called for. In lieu of Form W–4S, payors may prepare and use a form the provisions of which are identical to those of Form W–4S. The payee must include his social security account number in the request.

(c) *Amount requested to be withheld.* The payee shall request that the payor withhold a specific whole dollar amount. The specific whole dollar amount shall be at least $20 per weekly payment of sick pay. If the payee is paid sick pay computed on a daily basis, the specific whole dollar amount shall be at least $4 per daily payment of sick pay. If the payee is paid sick pay on a biweekly basis, the specific whole dollar amount shall be at least $40 per 2 week payment of sick pay. If the payee is paid sick pay on a semat least $4 per day, assuming a 5 day work week of 8 hours per day (40 hours total) in each 7 day calendar week. In the case of a payment which is greater or less than a full payment, the amount withheld is to bear the same relation to the specific whole dollar amount requested to be withheld as such payment bears to a full payment. For example, assume an individual receives sick pay of $100 per week and requests that $25 per week be withheld for taxes. After 4 full weeks of absence, the individual returns to work on a Wednesday (having been absent on sick leave Monday and Tuesday). For the week the individual returns to work, the individual would be entitled to $40 of sick pay, $10 of which would be withheld for taxes. The payor may, at his option, permit the payee to request that the payor withhold a specific percentage from each payment. The specific percentage shall be at least 10 percent. If the payor so opts, the payor must also accept requests under the whole dollar method. If the amount requested to be withheld under either the whole dollar method or the optional percentage method reduces the net amount of a sick pay payment received by the payee to below $10, no income tax shall be withheld from that payment by the payor.

(d) *When request takes effect.* The payor must deduct and withhold the amount specified in the request with respect to payments made more than 7 days after the date on which the request is received by the payor. At the election of the payor, the request may take effect before this deadline.

(e) *Duration and termination of request.* A request under this section shall continue in effect until changed or terminated. The payee may change the request by filing a new written request that meets all of the requirements of paragraphs (b) and (c) of this section. The new request shall take effect as specified in paragraph (d) of this section and the old request shall be deemed terminated when the new request takes effect. The payee may terminate the request by furnishing the payor a signed written notice of termination containing both a request to terminate withholding and all the information contained in the request to withhold. This written notice of termination shall take effect with respect to payments made more than 7 days after the date on which the notice of termination is received by the payor. At the election of the payor, the request may take effect before this deadline.

(f) *Special rules.* For purposes of chapter 24 on subtitle C of the Internal Revenue Code of 1954 (relating to collection of income tax at source on wages) and of subtitle F of the 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 a sick pay 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 taxpayer 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 a sick pay 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 sick pay which are subject to withholding under this section are ordinarily made.

(g) *Statements required to be furnished to payees.* See section 6051(f) and the regulations thereunder for requirements relating to statements required to be furnished to payees.

(h) *Definitions.* (1) (i) The term ''sick pay'' means any payment made to an individual which does not constitute wages (determined without regard to section 3402(o) and this section), which is paid to an employee pursuant to a plan to which the employer is a party, and which constitutes remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of personal injuries or sickness. The term ''personal injuries or sickness'' shall have the same meaning as ascribed thereto by section 105(a) and the regulations thereunder. The term ''sick pay'' does not include any amounts either excludable from gross income under section 104(a) (1), (2), (4) or (5) or section 105(b) or (c) or paid under section 3402(o)(1)(B). The term ''sick pay'' does not include amounts paid under a plan if all amounts paid under the plan are paid to individuals who are described in the first sentence of section 105(d)(4) (relating to the definition of permanent and total disability) and the regulations thereunder. Amounts paid under any other plan shall be deemed to be paid for a period during which the employee is temporarily absent from work. For sick pay paid in 1981 only, however, the payor may opt not to follow the rules of the two preceding sentences but to follow instead the rule that an employee is temporarily absent if his absence is not described in section 105(d)(4) (relating to the definition of permanent and total disability) and the regulations thereunder. An employer is not a party to the plan if the plan is a contract between only employees and a third party payor or the employer makes no contributions to provide sick pay benefits under the plan, even if the employer withholds amounts from the employees' salaries and pays the amounts over to the third party payor.

(ii) This paragraph (h)(1) may be illustrated by the following examples:

Example 1. Employee A works for P Company and Employee B works for Q Company. P Company has contracted with R Insurance Company for R to pay P's employees the equivalent of their normal wages when they are temporarily absent from work because of sickness or personal injury. Q Company has neither entered into such a contract, nor will it make such payments directly from it own funds. B consequently goes to S Insurance Company and purchases directly an insurance policy which will pay him the equivalent of his normal wages when he is unable to work because of sickness or personal injury. Both A and B are subsequently temporarily absent from work on account of sickness or personal injuries. A receives payments from R and B receives payments from S. Neither the payments made by R to A nor the payments made by S to B constitute wages (determined without regard to section 3402(o) and this section). A may request that R withhold income taxes under section 3402(o) and this section from the payments he receives because the payments are sick pay as defined in section 3402(o) and this section. B may not request that S withhold income taxes under section 3402(o) and this section from the payments he receives because the payments are not paid pursuant to a plan to which Q Company is a party and thus are not sick pay as defined in section 3402(o) and this section.

Example 2. Employees C and D both work for T Company , which has contracted with U

Insurance Company for U to pay T's employees for all sickness or injury claims Employee C is sick and out from work for a month. U pays C the equivalent of C's regular pay. Employee D loses his arm in an accident and U pays D $10,000. C may request that U withhold income taxes under section 3402(o) and this section from the payments he receives because the payments constitute remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries. D may not request that U withhold income taxes from the payments he receives because the payments do not constitute remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries.

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

(3) (i) The term ''payor'' means any person making a sick pay payment who is not the employer (as defined in section 3401 and in §31.3401(d)–1 (except paragraph (f) thereof)) of the payee. If however the person making the payment is acting solely as an agent for another person, the term ''payor'' shall mean the other person and not the person actually making the payment.

(ii) This paragraph (h)(3) may be illustrated by the following examples:

Example 1. X Company contracts with Y Insurance Company for Y to pay X's employees the equivalent of their normal wages when they are temporarily absent from work because of sickness or personal injury. Y computes the amount to be paid and determines the date payment is to be made for each of X's employees. Y then instructs Z Bank to issue a check for that amount on that date. Y reimburses Z for the amount of the check plus Z's administrative costs. Under these circumstances, Z is the agent of Y and Y is the payor under section 3402(o) and this section.

Example 2. V Company contracts with W Company for W to pay V's employees the equivalent of their normal wages when they are temporarily absent from work on account of sickness or personal injury. Under the contractual arrangement, V advises W of the wages normally paid to each of V's employees. V tells W when an employee of V is temporarily absent from work on account of sickness or personal injury, and W computes the amount to be paid the employee and makes payments of sick pay to the employee during the period of the employee's absence. V subsequently reimburses W for the amount of those payments and pays W a fee for W's services. Under these circumstances, W is acting solely as the agent of V, and a payee may not request under section 3402(o) and these regulations that W withhold income taxes from his payments. However, see section 3401 and the regulations thereunder for the obligation of V to withhold income taxes from the payments that W makes as the agent of V, which are not excluded from income under section 105 and the regulations thereunder and which are wages under section 3401 and the regulations thereunder. See also §31.3402(g)–1 (relating to supplemental wage payments) for the conditions under which a flat percentage rate of withholding may be used.

Example 3. Assume the same facts as in Example 2, except that the consideration for W's services is a set insurance premium rather than reimbursement for costs plus a fee. Under these circumstances W is the payor and is not acting solely as the agent of V. An employee of V to whom W makes payments under the agreement may request under section 3402(o) and the regulations thereunder that W withhold income taxes from those payments.

(i) *Special rules for sick pay paid pursuant to certain collective-bargaining agreements.* (1) Special rules (enumerated in subparagraph (2)) apply to sick pay where all of the following tests are met.

(i) The sick pay must be paid pursuant to a collective-bargaining agreement between employee representatives and one or more employers.

(ii) The agreement must contain a provision that section 3402(o)(5) is to apply to sick pay paid pursuant to the agreement.

(iii) The agreement must contain a provision for determining the amount to be deducted and withheld from each payment of sick pay.

(iv) The social security number of the payee must be furnished to the payor. The agreement may provide that the employer will furnish this or the payee may furnish his social security number directly to the payor.

(v) The payor must be furnished with information that is necessary for the payor to determine whether the payment is pursuant to the agreement and to determine the amount to be deducted and withheld. The agreement may provide that the employer will furnish this information directly to the payor.

(2) The following special rules apply to sick pay where all of the tests of subparagraph (1) are met.

(i) The requirement of section 3402(o)(1)(c) and this section that a request for withholding be in effect does not apply.

(ii) The amount to be deducted and withheld from the sick pay shall be determined according to the provisions of the agreement and not according to this section. This rule shall not however apply—

(A) To payments enumerated in section 3402(n) (relating to employees incurring no income tax liability) and the regulations thereunder, or

(B) To payments made to a payee more than 7 days after the date that the payor receives a statement from the payee that the payee expects to claim an exclusion from gross income under section 105(d). Such statement must include adequate verification of disability. A certificate from a qualified physician attesting that the employee is permanently and totally disabled (within the meaning of section 105(d)) shall be deemed to constitute adequate verification. If the payor receives such a statement, the payor shall not withhold any income tax from the payments made to the payee, regardless of the provisions of the collective bargaining agreement. This exception from withholding does not affect the requirements of §31.6051–3.

(Secs. 3402(o), 7805, Internal Revenue Code of 1954 (94 Stat. 3495, (26 U.S.C. 3402(o)); 68A Stat. 917 (26 U.S.C. 7805)))

[T.D. 7813, 47 FR 11277, Mar. 16, 1982, as amended by T.D. 7915, 48 FR 44076, Sept. 27, 1983]

§31.3402(p)–1 Voluntary withholding agreements.

(a) *In general.* An employee and his employer may enter into an agreement under section 3402(b) to provide for the withholding of income tax upon payments of amounts described in paragraph (b)(1) of §31.3401(a)–3, made after December 31, 1970. An agreement may be entered into under this section only with respect to amounts which are includible in the gross income of the employee under section 61, and must be applicable to all such amounts paid by the employer to the employee. The amount to be withheld pursuant to an agreement under section 3402(p) shall be determined under the rules contained in section 3402 and the regulations thereunder. See §31.3405(c)–1, Q&A–3 concerning agreements to have more than 20-percent Federal income tax withheld from eligible rollover distributions within the meaning of section 402.

(b) *Form and duration of agreement.* (1)(i) Except as provided in subdivision (ii) of this subparagraph, an employee who desires to enter into an agreement under section 3402(p) shall furnish his employer with Form W–4 (withholding exemption certificate) executed in accordance with the provisions of section 3402(f) and the regulations thereunder. The furnishing of such Form W–4 shall constitute a request for withholding.

(ii) In the case of an employee who desires to enter into an agreement under section 3402(p) with his employer, if the employee performs services (in addition to those to be the subject of the agreement) the remuneration for which is subject to mandatory income tax withholding by such employer, or if the employee wishes to specify that the agreement terminate on a specific date, the employee shall furnish the employer with a request for withholding which shall be signed by the employee, and shall contain—

(a) The name, address, and social security number of the employee making the request,

(b) The name and address of the employer,

(c) A statement that the employee desires withholding of Federal income tax, and applicable, of qualified State individual income tax (see paragraph (d)(3)(i) of §301.6361–1 of this chapter (Regulations on Procedures and Administration)), and

(d) If the employee desires that the agreement terminate on a specific date, the date of termination of the agreement.

If accepted by the employer as provided in subdivision (iii) of this subparagraph, the request shall be attached to, and constitute part of, the employee's Form W–4. An employee who furnishes his employer a request for withholding under this subdivision shall also furnish such employer with