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Form W–4 if such employee does not already have a Form W–4 in effect with such employer.

(iii) No request for withholding under section 3402(p) shall be effective as an agreement between an employer and an employee until the employer accepts the request by commencing to withhold from the amounts with respect to which the request was made.

(2) An agreement under section 3402 (p) shall be effective for such period as the employer and employee mutually agree upon. However, either the employer or the employee may terminate the agreement prior to the end of such period by furnishing a signed written notice to the other. Unless the employer and employee agree to an earlier termination date, the notice shall be effective with respect to the first payment of an amount in respect of which the agreement is in effect which is made on or after the first ''status determination date'' (January 1, May 1, July 1, and October 1 of each year) that occurs at least 30 days after the date on which the notice is furnished. If the employee executes a new Form W–4, the request upon which an agreement under section 3402 (p) is based shall be attached to, and constitute a part of, such new Form W–4.

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

[T.D. 7096, 36 FR 5216, Mar. 18, 1971, as amended by T.D. 7577, 43 FR 59359, Dec. 20, 1978; T.D. 8619, 60 FR 49215, Sept. 22, 1995]

§ 31.3402(q)–1 Extension of withholding to certain gambling winnings.

(a)(1) *General rule.* Every person, including the Government of the United States, a State, or a political subdivision thereof, or any instrumentality of any of the foregoing making any payment of ''winnings subject to withholding'' (defined in paragraph (b) of the section) shall deduct and withhold a tax in an amount equal to 20 percent of the payment. The tax shall be deducted and withheld upon payment of the winnings by the person making such payment (''payer''). See paragraph (c)(5)(ii) of this section for a special rule relating to the time for making deposits of withheld amounts and filing the return with respect to those amounts. Any person receiving a payment of winnings subject to withholding must furnish the payer a statement as required in paragraph (e) of this section. Payers of winnings subject to withholding must file a return as required in paragraph (f) of this section. With respect to reporting requirements for certain payments of gambling winnings not subject to withholding, see section 6041 and the regulations thereunder.

(2) *Exceptions.* The tax imposed under section 3402(q)(1) and this section shall not apply (i) with respect to a payment of winnings which is made to a nonresident alien individual or foreign corporation under the circumstances described in paragraph (c)(4) of this section or (ii) with respect to a payment of winnings from a slot machine play, or a keno or bingo game.

(b) *Winnings subject to withholding.* Winnings subject to withholding means any payment from—

(1) A wager placed in a State-conducted lottery (defined in paragraph (c)(2) of this section) but only if the proceeds from the wager exceed $5,000;

(2) A wager placed in a sweepstakes, wagering pool, or lottery other than a State-conducted lottery but only if the proceeds from the wager exceed $1,000; or

(3) Any other wagering transaction (as defined in paragraph (c)(3) of this section) but only if the proceeds from the wager (i) exceed $1,000 and (ii) are at least 300 times as large as the amount of the wager.

If proceeds from the wager qualify as winnings subject to withholding, then the total proceeds from the wager, and not merely amounts in excess of $1,000 (or $5,000 in the case of winnings from a State-conducted lottery), are subject to withholding.

(c) *Definitions; special rules*—(1) *Rules for determining amount of proceeds from a wager.* (i) The amount of ''proceeds from a wager'' is the amount paid after January 2, 1977, with respect to the wager, less the amount of the wager. However, for any wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai, only amounts paid after April 30, 1977, are taken into account.

(ii) Amounts paid after December 31, 1983, with respect to identical wagers are treated as paid with respect to a single wager for purposes of calculating the amount of proceeds from a wager. For example, amounts paid on two bets placed in a parimutuel pool on a particular horse to win a particular race are treated as paid with respect to the same wager. However, those two bets would not be identical were one ''to win'' and the other ''to place'', or if the bets were placed in different parimutuel pools, *e.g.,* a pool conducted by the racetrack and a separate pool conducted by an off-track betting establishment in which the wagers are not pooled with those placed at the track. Tickets purchased in a lottery generally are not identical wagers, because the designation of each ticket as a winner generally would not be based on the occurrence of the same event, *e.g.,* the drawing of a particular number. If the recipient makes the statement which may be required pursuant to §1.6011–3, indicating whether or not the recipient (and any other persons entitled to a portion of the winnings) is entitled to winnings from identical wagers and indicating the amount of such winnings, if any, then the payer may rely upon such statement in determining the total amount of proceeds from the wager under paragraph (c)(1) of this section attributable to identical wagers.

(iii) In determining the amount paid with respect to a wager, proceeds which are not money shall be taken into account at the fair market value.

(iv) Periodic payments, including installment payments or payments which are to be made periodically for the life of a person, are aggregated for purposes of determining the proceeds from a wager. The aggregate amount of periodic payments to be made for a person's life shall be based on that person's life expectancy. See §§1.72–5 and 1.72–9 for rules used in computing the expected return on annuities. For purposes of determining the amount subject to withholding, the first periodic payment shall be reduced by the amount of the wager.

(2) *Wager placed in a State-conducted lottery.* The term ''wager placed in a State-conducted lottery'' means a wager placed in a lottery conducted by an agency of a State acting under authority of State law provided that the wager is placed with the State agency conducting such lottery or with its authorized employees or agents. This term includes wagers placed in State-conducted lotteries in which the amount of winnings is determined by a parimutuel system.

(3) *Other wagering transaction.* The term ''other wagering transaction'' means any wagering transaction other than one in a lottery, sweepstakes, or wagering pool. This term includes a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai.

(4) *Certain payments to nonresident aliens or foreign corporations.* A payment of winnings subject to withholding made to a nonresident alien individual or a foreign corporation is not subject to the tax imposed by section 3402(q) and this section if such payment is subject to withholding of tax under section 1441(a) (relating to withholding on nonresident aliens) or 1442(a) (relating to withholding on foreign corporations) and the payer complies with the requirements of those sections. For purposes of this section, a payment is treated as being subject to tax under section 1441(a) or 1442(a) notwithstanding that the rate of such tax is reduced (even to zero) as may be provided by an applicable treaty with another country. However, a reduced or zero rate of withholding of tax shall not be applied by the payer in lieu of the rate imposed by sections 1441 and 1442 unless the person receiving the winnings has completed, signed, and furnished the payer Form 1001 as required by §1.1441–6. See sections 1441 and 1442 and the regulations thereunder for rules regarding the withholding of tax on nonresident aliens and foreign corporations.

(5) *Gambling winnings treated as payments by employer to employee.* (i) Except as provided in subdivision (ii), for purposes of sections 3403 and 3404 and the regulations thereunder and for purposes of so much of subtitle F (except section 7205) and the regulations thereunder as relate to chapter 24, payments to any person of winnings subject to withholding under this section shall be

treated as if they are wages paid by an employer to an employee.

(ii) Solely for purposes of applying the deposit rules under 6302(c) and the return requirement of section 6011, the withholding from winnings shall be deemed to have been made no earlier than at the time the winner's identity is known to the payer. Thus, for example, winnings from a State-conducted lottery are subject to withholding when actually or constructively paid, whichever is earlier; however, the time for depositing the withheld taxes and filing a return with respect thereto shall be determined by reference to the date on which the winner's identity is known to the State, if such date is later than the date on which the winnings are actively or constructively paid. If a payer's obligation to pay winnings terminates other than by payment, all liabilities and requirements resulting from the requirement that the payer deduct and withhold with respect to such winnings shall also terminate.

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. A purchases a lottery ticket for $1 in the State W lottery from an authorized agent of State W. On February 1, 1977, the drawing is held and A wins $5,001. Since the proceeds of the wager ($5,001—$1) are not greater than $5,000, State W is not required to withhold or deduct any amount from A's winnings.

Example 2. Assume the same facts as in example 1 except that A purchases two $1 tickets and that A wins $5,002 when one of the tickets is drawn. State W must deduct and withhold tax at a rate of 20% from $5,001 ($5,002 less the $1 wager), or $1,000.20.

Example 3. On January 1, 1984, B makes two $2 bets in a parimutuel pool for a horse race. Each bet is on the same horse to win a particular race. B wins a total of $1,300 on those bets. B cashes the tickets at different cashier windows indicating on the statement demanded by each cashier the amount of winnings from identical wagers. Although the payment by each cashier ($650) is less than the $1,000 floor for the withholding requirement on payments of winnings from horse race parimutuel pools, each cashier is required to deduct and withhold tax from B's winnings equal to $129.60 (($650 − $2) × 20 percent = $129.60) based on the information B submitted indicating that the aggregated proceeds from the identical wagers ($1,300 − $4=$1,296) exceed $1,000 and the amount is at least 300 times as great as the amount wagered ($4×300=$1,200). Had B refused to make the statements, the payer would have no basis provided by the payee upon which to rely in determining whether the payment is subject to withholding. Under these circumstances, the payer would be required to deduct and withhold tax from the payment.

Example 4. C purchases a lottery ticket for $1. On June 1, 1979, the lottery drawing is held and C wins the grand prize of $50,000, payable $500 monthly. The payer must deduct and withhold tax at a rate of 20% from each payment of winnings. Therefore, $99.80 must be withheld from the first monthly payment to B ($500 − $1)×20%=$99.80) and $100 ($500×20%) must be withheld from each monthly payment thereafter.

Example 5. Assume the same facts as in example 4, except that C wins an automobille rather than the grand prize. The fair market value of the automobile on the date on which it is made available to C is $10,000. the payer must deduct and withhold a tax of $2,000 (($10,001 − $1)×20%). This may be accomplished, for example, if C pays $2,000 to the payer. Alternatively, if the payer, as part of the prize, pays all taxes required to be duducted and withheld, the payer must deduct and withhold tax not only on the fair market value of the automobile less the wager, but also on the taxes it pays that are required to be deducted and withheld. This results in a pyramiding of taxes requiring the use of an algebraic formula. Under this formula, the payer must deduct and withhold a tax of 25 percent of the fair market value of the automobile less the wager ($2,500) and, in addition, the payer must indicate on Form W–2G the amount of such winnings as $12,501 ($10,001+25%($10,001 − $1)).

Example 6. D purchases a ticket for $1 in the State Y lottery from an authorized agent of State Y On January 1, 1976, a drawing is held and D wins $100 a month for the rest of D's life. It is actuarially determined that, on January 3, 1977, D's life expectancy is 5 years. Based on that determination, the proceeds from the wager paid to D on or after January 3, 1977, will exceed $5,000. Therefore, State Y must deduct and withhold $20 from each monthly payment made on or after January 3, 1977. (None of such payments is reduced by the amount of the wager because the amount of the wager was offset by the first payment of winnings which was made before January 3, 1977)).

Example 7. Assume the same facts as in example 6 except that State Y purchases in its own name, as owner, an annuity of $100 a month for D's life from E Corporation, in order to fund its own obligation to make the payments. Although State Y remains liable

for the withholding of tax, E Corporation as paying agent for State Y, making payments directly to D, should deduct and withhold from each monthly payment in the manner described in example 6.

Example 8. E purchases a sweepstakes ticket for $1 in a sweepstakes conducted by W. E purchases the ticket on behalf of himself and on behalf of F and G, who have contributed equal amounts toward the purchase of the ticket and who have agreed to share equally in any prizes won. The ticket which E purchases wins $1,002. Since the proceeds of the wager ($1,002—$1) are greater than $1,000 W is required to withhold and deduct 20 percent of such proceeds.

Example 9. On February 1, 1977, a drawing is held in the State X lottery in which a winning ticket is selected. The person holding the winning ticket is entitled to proceeds of $100,000 payable either as a lump sum upon demand or $10,000 a year for 10 years. Under State law, the winning ticket must be presented to an authorized agent of State X before February 1, 1978. Until the ticket is presented, State X does not know the identity of the winner. On December 1, 1977, H, the winner, presents the winning ticket to an authorized agent of the State X lottery. The winnings are constructively paid to H on February 1, 1977. Since H, has the option of receiving the entire proceeds upon demand, State X is required to deduct and withhold $20,000 ($100,000×20%) from the proceeds of H's winnings on February 1, 1977; but for purposes of determining the time at which the deposit and inclusion on Form 941 of these taxes is to be made, the withholding shall be deemed to have beem made on December 1, 1977.

Example 10. J purchases a subscription to N magazine, at the regular subscription price. All new subscribers are automatically eligible for a special drawing. The drawing is held and J wins $50,000. Since J has not paid any more than the regular subscription price, J has not placed a wager or entered a wagering transaction. Therefore, N is not required to deduct and withhold J's winnings.

Example 11. C makes two $2 bets in the same parimutuel pool for a horse race. One bet is an ''exacta'' in which C bets on horse M to win and horse N to ''place''. The other bet is a ''trifecta''. C bets on horse M to win, horse N to ''place'' and horse O to ''show''. C wins both bets and is paid $600 with respect to the ''exacta'' and $900 with respect to the ''trifecta''. The bets are not identical wagers, however, and on these facts neither payment is subject to withholding.

(e) *Statement by recipient.* Each person who is to receive a payment of winnings subject to withholding shall furnish the payer a statement on Form W–2G or 5754 (whichever is applicable) made under the penalties of perjury containing—

(1) The name, address, and taxpayer identification number of the winner accompanied by a declaration that no other person is entitled to any portion of such payment, or

(2) The name, address, and taxpayer identification number of the recipient and of every person entitled to any portion of such payment.

If more than one payment of winnings subject to withholding is to be made with respect to a single wager, for example in the case of an annuity, the recipient is required by paragraph (e) of this section to furnish the payer a statement with respect to the first such payment only, provided that such other payments are taken into account in a return required by paragraph (f) of this section.

(f) *Return of payer*—(1) *In general.* Every person making payment of winnings for which a statement is required under paragraph (e) of this section shall file a return on Form W–2G with the Internal Revenue Service Center serving the district in which is located the principal place of business of the person making the return on or before February 28 of the calendar year following the calendar year in which the payment of winnings is made. The return required by this paragraph (f) of the section, need not include the statement by the recipient required by paragraph (e) of this section and, therefore, need not be signed by the recipient, provided such statement is retained as long as the contents thereof may become material in the administration of any internal revenue law. For payments to more than one winner, a separate Form W–2G, which in no event need be signed by the winner, shall be filed with respect to each such winner. Each Form W–2G shall contain the following:

(i) The name, address, and employer identification number of the payer;

(ii) The name, address, and social security account number of the winner;

(iii) The date, amount of the payment, and amount withheld;

(iv) The type of wagering transaction;

(v) Except with respect to winnings from a wager placed in a State-conducted lottery, a specific description of two types of identification, *e.g.*, driver's license number and issuing State, social security account number of voter registration number and jurisdiction, furnished the payer for verification of the recipient's name, address, and social security account number; and

(vi) With respect to amounts paid after December 31, 1983, the amount of winnings from identical wagers.

The return of the payer need not contain the information required by subdivision (v) of this paragraph (f)(1) provided such information is obtained with respect to the recipient of such winnings and retained as long as the contents thereof may become material in the administration of any internal revenue law.

(2) *Transmittal form.* Persons making payments of winnings subject to withholding shall use Form W–3G to transmit Forms W–2G to the Internal Revenue Service Centers.

(Secs. 6011 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 732, 917; 26 U.S.C. 6011, 7805)

[T.D. 7787, 46 FR 46908, Sept. 23, 1981, as amended by T.D. 7919, 48 FR 46298, Oct. 12, 1983; 48 FR 55728, Dec. 15, 1983; T.D. 7943, 49 FR 5345, Feb. 13, 1984; 49 FR 8437, Mar. 7, 1984]

§ 31.3402(r)–1 Withholding on distributions of Indian gaming profits to tribal members.

(a) (1) *General rule.* Section 3402(r)(1) requires every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of any class II or class III gaming activity, as defined in 25 U.S.C. 2703, conducted or licensed by such tribe to deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax, as that term is defined in section 3402(r)(3).

(2) *Withholding tables.* Except as provided in paragraph (a)(4) of this section, the amount of a payment's proportionate share of the annualized tax shall be determined under the applicable table provided by the Commissioner.

(3) *Annualized amount of payment.* Section 3402(r)(5) provides that payments shall be placed on an annualized basis under regulations prescribed by the Secretary. A payment may be placed on an annualized basis by multiplying the amount of the payment by the total number of payments to be made in a calendar year. For example, a monthly payment may be annualized by multiplying the amount of the payment by 12. Similarly, a quarterly payment may be annualized by multiplying the amount of the payment by 4.

(4) *Alternate withholding procedures*—(i) *In general.* Any procedure for determining the amount to be deducted and withheld under section 3402(r) may be used, provided that the amount of tax deducted and withheld is substantially the same as it would be using the tables provided by the Commissioner under paragraph (a)(2) of this section. At the election of an Indian tribe, the amount to be deducted and withheld under section 3402(r) shall be determined in accordance with this alternate procedure.

(ii) *Method of election.* It is sufficient for purposes of making an election under this paragraph (a)(4) that an Indian tribe evidence the election in any reasonable way, including use of a particular method. Thus, no written election is required.

(5) *Additional withholding permitted.* Consistent with the provisions of section 3402(p), a tribal member and a tribe may enter into an agreement to provide for the deduction and withholding of additional amounts from payments in order to satisfy the anticipated tax liability of the tribal member. The agreement may be made in a manner similar to that described in § 31.3402(p)–1 (with respect to voluntary withholding agreements between employees and employers).

(b) Effective date. This section applies to payments made after December 31, 1994.

[T.D. 8634, 60 FR 65238, Dec. 19, 1995]

§ 31.3403–1 Liability for tax.

Every employer required to deduct and withhold the tax under section 3402 from the wages of an employee is liable for the payment of such tax whether or not it is collected from the employee