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by the employer. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. See, however, §31.3402(d)–1. The employer is relieved of liability to any other person for the amount of any such tax withheld and paid to the district director or deposited with a duly designated depositary of the United States.

§ 31.3404–1 Return and payment by governmental employer.

If the United States, or a State, Territory, Puerto Rico, or a political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, is an employer required to deduct and withhold tax under Chapter 24, the return of the amount deducted and withheld as such tax may be made by the officer or employee having control of the payment of the wages or other officer or employee appropriately designated for that purpose. (For provisions relating to the execution and filing of returns, see Subpart G of the regulations in this part.)

§ 31.3405(c)–1 Withholding on eligible rollover distributions; questions and answers.

The following questions and answers relate to withholding on eligible rollover distributions under section 3405(c) of the Internal Revenue Code of 1986, as added by section 522(b) of the Unemployment Compensation Amendments of 1992 (Public Law 102– 318, 106 Stat. 290) (UCA). For additional UCA guidance under sections 401(a)(31), 402(c), 402(f), and 403(b)(8) and (10), see §§ 1.401(a)(31)–1, 1.402(c)–2, 1.402(f)–1, and 1.403(b)–2 of this chapter, respectively.

LIST OF QUESTIONS

Q–1: What are the withholding requirements under section 3405 for distributions from qualified plans and section 403(b) annuities?

Q–2: May a distributee elect under section 3405(c) not to have Federal income tax withheld from an eligible rollover distribution?

Q–3: May a distributee be permitted to elect to have more than 20-percent Federal income tax withheld from an eligible rollover distribution?

Q–4: Who has responsibility for complying with section 3405(c) relating to the 20-percent income tax withholding on eligible rollover distributions?

Q–5: May the plan administrator shift the withholding responsibility to the payor and, if so, how?

Q–6: How does the 20-percent withholding requirement under section 3405(c) apply if a distributee elects to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder of that distribution paid to the distributee?

Q–7: Will the plan administrator be subject to liability for tax, interest, or penalties for failure to withhold 20 percent from an eligible rollover distribution that, because of erroneous information provided by a distributee, is not paid to an eligible retirement plan even though the distributee elected a direct rollover?

Q–8: Is an eligible rollover distribution that is paid to a qualified defined benefit plan subject to 20-percent withholding?

Q–9: If property other than cash, employer securities, or plan loans is distributed, how is the 20-percent income tax withholding required under section 3405(c) accomplished?

Q–10: What assumptions may a plan administrator make regarding whether a benefit is an eligible rollover distribution for purposes of determining the amount of a distribution that is subject to 20-percent mandatory withholding?

Q–11: Are there special rules for applying the 20-percent withholding requirement to employer securities and a plan loan offset amount distributed in an eligible rollover distribution?

Q–12: How does the mandatory withholding rule apply to net unrealized appreciation from employer securities?

Q–13: Does the 20-percent withholding requirement apply to eligible rollover distributions from a qualified plan distributed annuity contract?

Q–14: Must a payor or plan administrator withhold tax from an eligible rollover distribution for which a direct rollover election was not made if the amount of the distribution is less than $200?

Q–15: If eligible rollover distributions are made from a qualified plan, who has responsibility for making the returns and reports required under these regulations?

Q–16: What eligible rollover distributions must be reported on Form 1099–R?

Q–17: Must the plan administrator, trustee or custodian of the eligible retirement plan report amounts received in a direct rollover?

QUESTIONS AND ANSWERS

Q–1: What are the withholding requirements under section 3405 for distributions