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§ 31.3406(j)–1 Taxpayer Identification Number (TIN) matching program.

(a) *The matching program.* Under section 3406(i), the Commissioner has the authority to establish Taxpayer Identification Number (TIN) matching programs. The Commissioner may prescribe in a revenue procedure (see § 601.601(d)(2) of this chapter) or other appropriate guidance the scope of and the terms and conditions of participating in any TIN matching program. In general, under a matching program, prior to filing information returns with respect to reportable payments as defined under section 3406(b)(1), a payor of those reportable payments who is entitled to participate in the matching program may contact the Internal Revenue Service (IRS) with respect to the TIN furnished by a payee who has received or is likely to receive a reportable payment. The IRS will inform the payor whether or not a name/TIN combination furnished by the payee matches a name/TIN combination maintained in the data base utilized for the particular matching program.

(b) *Notice of incorrect TIN.* No matching details received by a payor through a matching program will constitute a notice regarding an incorrect name/TIN combination under § 31.3406(d)–5(c) for purposes of imposing backup withholding under section 3406(a)(1)(B).

(c) *Application of section 3406(f).* The provisions of section 3406(f), relating to confidentiality of information, apply to any matching details received by a payor through the matching program. A payor may not take into account any such matching details in determining whether to open or close an account with a payee.

(d) *Reasonable cause.* The IRS will not use either a payor's decision not to participate in an available TIN matching program or the results received by a payor from participation in a TIN matching program implemented under the authority of this section as a basis to assert that the payor lacks reasonable cause under section 6724(a) for the failure to file an information return under section 6721 or to furnish a correct payee statement under section 6722. If the establishment of reasonable cause may be relevant to a substantial number of the participants in a TIN matching program implemented under the authority of this section, the extent to which, if any, a payor may establish reasonable cause by participating in the TIN matching program will be set forth in the guidance establishing the program.

(e) *Definition of account. Account* means any account, instrument, or other relationship with a payor and with respect to which a payor has made or is likely to make a reportable payment as defined in section 3406(b)(1).

(f) *Effective date.* The provisions of this section are effective on and after June 18, 1997.

[T.D. 8721, 62 FR 33009, June 18, 1997]

Subpart F—General Provisions Relating to Employment Taxes (Chapter 25, Internal Revenue Code of 1954)

§ 31.3501(a)–1T Question and answer relating to the time employers must collect and pay the taxes on noncash fringe benefits (Temporary).

The following questions and answers relate to the time employers must collect and pay the taxes imposed by subtitle C on noncash fringe benefits:

Q–1: If a noncash fringe benefit constitutes ''wages'' under section 3121(a), 3306(b), or 3401(a), or constitutes ''compensation'' under section 3231(e), when must an employer collect and pay the taxes imposed by Subtitle C?

A–1: For purposes of an employer's liability to collect and pay the taxes imposed by Subtitle C, an employer may deem such fringe benefit to be paid at any time on or after the date on which it is provided, as long as such date is on or before the last day of the calendar quarter in which such benefit is provided. An employer may consider the benefit to be provided in two or more parts for purposes of the preceding sentence. For example, if a fringe benefit with a fair market value of $1,000 is provided on January 1, 1985, the employer could deem $500 paid on February 28, 1985 and $500 paid on March 31, 1985.

With respect to noncash fringe benefits provided during the first calendar quarter of 1985, a special rule applies. Such benefits may be deemed paid at

any time on or after the date on which they are provided as long as the date they are deemed paid is on or before the last day of the second calendar quarter of 1985.

In addition, for purposes of §31.6302(c)–1(a)(1)(i), the term ''tax'' does not include the employer tax under section 3111 with respect to noncash fringe benefits which are deemed by the employer to be paid on the last day of any calendar quarter. For purposes of the first sentence of §31.6302(c)–2(a)(1), the phrase ''employer tax imposed after December 31, 1983, under section 3221 (a) and (b)'' will not include any such employer tax with respect to noncash fringe benefits which are deemed by the employer to be paid on the last day of the quarter; provided that for purposes of deposits required under §31.6302(c)–1(a)(1)(v), such first sentence applies to such noncash fringe benefits.

Notwithstanding anything in this section to the contrary, if an employer in fact withholds, the amount withheld is subject to the general deposit rules.

The manner in which and the time at which the employer withholds amounts from the wages of an employee to pay the taxes imposed under section 3101, 3201, and/or 3402 will generally be left to be determined by the employer and the employee. Any delay in withholding, however, does not affect the employer's obligation upon the filing of an employment tax return, to pay amounts which would be due under this subtitle if the employer had withheld, with respect to noncash fringe benefits, the amount which would have been required to be withheld if such noncash fringe benefits had been paid in cash on the date the benefits were deemed paid. However, if such amounts are not withheld from the wages of an employee within a reasonable period after payment of the taxes by the employer, payment by the employer may be deemed additional compensation of the employee.

Q–2: Are any fringe benefits excepted from the rules contained in Q/A–1 of this section?

A–2: Yes. The rules contained in Q/A–1 of this section do not apply to the transfer of personal property (both tangible and intangible) of a kind held for investment or to the transfer of real property. Accordingly, an employer is liable for the collection and payment of taxes imposed by this subtitle when such property is transferred. For example, stock transferred in connection with the performance of services is paid, for purposes of this subtitle C, on the date the stock is transferred, i.e., on the date the stock vests pursuant to section 83 (absent a section 83(b) election).

Q–3: What is an example of the application of the rules contained in Q/A–1 of this section with respect to obligations under Chapters 21 and 24 of subtitle C?

A–3: All of employer A's employees received $100 in cash as wages each week from A. In addition, during a calendar quarter, each such employee receives noncash fringe benefits, the fair market value of which is $500. A deems all such noncash fringe beneftis to be paid on the last day of the quarter. As of the end of the quarter, no amount has been withheld from the employee's wages with respect to such noncash fringe benefits, and A has ''undeposited taxes'' (within the meaning of §31.6302(c)–1(a)(1)(i)) of more than $3,000 attributable to amounts actually withheld under section 3102 or section 3402 or due under section 3111 with respect to cash wages of A's employees. The amount which A must deposit within 3 banking days after the end of the quarter will be determined without regard to the noncash fringe benefits deemed paid on the last day of the quarter.

During the month following the quarter, A withholds from its employees with respect to the noncash fringe benefits deemed paid on the last day of the quarter. As A withholds amounts, such amounts become ''taxes'' subject to §31.6302(c)–1(a)(1)(i). If, as of the date of filing of the return for the period which includes the last day of the quarter, A has not deposited all amounts with respect to the quarter which are due under section 3111 or which would have been due had A withheld, under sections 3102 and 3402, with respect to noncash fringe benefits, the amount which would have been required to be withheld had such benefits been paid in cash, A shall pay the balance with its

return. A must make such payment regardless of whether, at the time the return is filed, he has actually withheld all amounts which he would have been required to withhold had such benefits been paid in cash.

Q–4: If an employee is provided with a noncash fringe benefit and separates from service before the benefit is deemed paid by the employer, is the employer liable for the taxes imposed by subtitle C?

A–4: Yes. The employer's liability is unaffected by his ability to collect the tax from the former employer.

Q–5: If an entity other than the employer provides a noncash fringe benefit to an employee, is that entity considered the employer of such employee with respect to such noncash fringe benefit for any purposes of subtitle C?

A–5: The provision of noncash fringe benefits by an entity to an employee of another employer does not make such entity the employer of such employee with respect to such noncash fringe benefit for any purpose of subtitle C, so long as such noncash fringe benefits are incidental to the provision of wages by the employer to such employee. For example, if two unrelated airlines, A and B, enter into a reciprocal agreement where by the parents of employees of both airlines are entitled to free flights on both airlines, the fact that A is providing a noncash fringe benefit to the employees of B generally will not make A the employer of such employees for purposes of subtitle C.

Q–6: Do special rules apply to the provision of taxable noncash fringe benefits by a nonemployer under a reciprocal agreement with the employee's employer?

A–6: If the provision of taxable noncash fringe benefits meets the requirements of Q/A–5 of this section, the nonemployer provider of the benefits is not required to withhold. The employer must take the steps necessary to obtain the relevant information from the provider of the benefits in order to enable the employer to satisfy, in a timely manner, its obligations under subtitle C to collect and pay taxes with respect to the noncash fringe benefits provided by the nonemployer.

Q–7: For purposes of subtitle C, how is the fair market value of an employer-provided automobile or other road vehicle during any time period to be determined?

A–7: The value of the availability of an employer-provided automobile or other road vehicle must be determined under the rules provided in §1.61–2T and §1.132–1T. (For purposes of this section, the terms ''automobile'' and ''road vehicle'' have the meaning given those terms in Q/A–11 of §1.61–2T). For example, assume that an employee adopts the special rule provided in §1.61–2T and that the Annual Lease Value, as defined in §1.61–2T, of an automobile or other road vehicle is $2,100. The automobile or other road vehicle is provided to employee A on January 1, 1985. As of March 31, A had driven the automobile or other road vehicle 1,000 personal miles and 3,000 miles in the course of his employer's business. For the quarter, A would have had wages of $131.25 attributable to his personal use of the automobile or other road vehicle computed by subtracting a $393.75 working condition fringe from $525 ($2,100 divided by 4). See section 132(d) and §1.132–1T. During the second quarter of 1985, A drives the automobile or other road vehicle only 1,000 miles, all of which are personal. In order to calculate the value of the wages provided to A in the second quarter in the form of the availability of the employer-provided automobile or other road vehicle, first A's employer calculates the Annual Lease Value attributable to the first six months of 1985 which is $1,050 ($2,100 divided by 2). Second, A's employer calculates the working condition fringe exclusion which is $630 ($1,050 multiplied by a fraction the numerator of which is A's business mileage (3,000 miles) and the denominator of which is A's total mileage (5,000 miles)). The calculations result in a total inclusion of $420 ($1,050—$630). From the total inclusion of $420, the wages provided in the first quarter, $131.25, are subtracted, leaving $288.75 as the wages includible in the second quarter attributable to the availability to A of the employer-provided automobile or other road vehicle.

Q–8: May an employer treat any part of the Annual Lease Value or Daily Lease Value (as defined in §1.61–2T), or

the fair market value if the special rule of §1.61–2T is not or cannot be used, of an automobile or other road vehicle made available to an employee as includible in the employee's gross income without regard to whether the employee has used the automobile or other road vehicle in the employer's business?

A–8: No, except as otherwise provided in this Q/A–8, an employer may not include any amount in an employee's income with respect to an employer-provided automobile or other road vehicle unless such inclusion is based on:

(a) Records or a statement submitted by an employee that contain the business and total mileage for the period beginning on January 1, 1985, and ending on the last day of the employer's taxable year that began in 1984, or

(b) Records that satisfy the employer's ''adequate contemporaneous record'' requirement under section 274(d)(4) and the regulations thereunder for the employer's taxable years beginning after December 31, 1984.

For example, an employer who is subject to (b) of this Q/A–8 may rely on a statement submitted by the employee indicating for the period the number of miles driven by the employee in the employer's business and the total number of miles driven by the employee unless the employer knows or has reason to know the statement submitted is not based on ''adequate contemporaneous records''. (For purposes of this section, if a road vehicle is available to any person and such availability would be taxable to an employee, miles driven by that person will be considered miles driven by the employee).

Notwithstanding the preceding paragraph of this Q/A–8, an employer may include in an employee's income the value of the availability of an employer-provided road vehicle, calculated without regard to a working condition fringe exclusion based on business mileage if one of the conditions listed in §1.274–6T(f)(1) is satisfied with respect to the relevant period.

In addition, the employer must, before including any amount in an employee's income with respect to an employer-provided road vehicle, take into account other working condition fringe exclusions, such as the security exclusion discussed in §1.132–1T. If proper calculation of an exclusion requires information from the employee and the employee does not respond within a reasonable period of time to a request for that information or produces information which the employer knows or has reason to know is not accurate, the employer may disregard such exclusion in reporting the employee's gross income.

Q–8a: May an employer withhold amounts attributable to noncash fringe benefits on the basis of average wages as permitted under section 3402(h)(1)?

A–8a: In general, yes. In estimating wages under section 3402(h)(1)(A), however, the employer must take into account estimated business use of the benefit (such as an employer-provided road vehicle). In no event, however, may the amount reported by the employer as ''wages'' for any employee for any quarter be based on an estimation. However, the rules in Q/A–1 of this section regarding permissible delays in actual withholding apply.

Q–9: If an employee purchases any property or service from an employer at a discount and the discount is not excludable under section 132 and any applicable regulations thereunder, when is the noncash fringe benefit provided?

A–9: Such property or service is provided at the time that ownership is transferred, in the case of property, or the time service is rendered, in the case of services. This will be true regardless of when the employee pays for such property or service or the date payment is due or the rate of interest charged prior to payment. The time at which ownership of the property is transferred must be determined under general tax principles.

Q–10: What rules apply with respect to the treatment of the payment of any noncash fringe benefit as the payment of supplemental wages under section 3402?

A–10: An employer may treat the payment of any noncash fringe benefit as the payment of supplemental wages. Thus, if noncash fringe benefits are provided and tax has been withheld from the employee's regular wages, the employer may determine the tax to be withheld with respect to such noncash

fringe benefits by using a flat percentage rate of 20 percent, without allowance for exemptions and without reference to any regular payment of wages. For example, assume that during a calendar quarter A receives from his employer a taxable noncash fringe benefit with a fair market value of $1,000. If the requirements specified above are satisfied, A's employer may determine the tax to be withheld with respect to such benefit by using a flat percentage rate of 20 percent. The employer may also determine the tax to be withheld with respect to such benefit by use of the method described in § 31.3402 (g)–1(a)(2).

(Approved by the Office of Management and Budget under control numbers 1545–0074 and 1545–0907)

[T.D. 8004, 50 FR 756, Jan. 7, 1985, as amended by T.D. 8009, 50 FR 7046, Feb. 20, 1985]

§ 31.3502–1 Nondeductibility of taxes in computing taxable income.

For provisions relating to the nondeductibility, in computing taxable income under subtitle A, of the taxes imposed by sections 3101, 3201, and 3211, and of the tax deducted and withheld under chapter 24, see §§ 1.164–2 and 1.275–1 of this chapter (Income Tax Regulations). For provisions relating to the credit allowable to the recipient of the income in respect of the tax deducted and withheld under chapter 24, see § 1.31–1 of this chapter (Income Tax Regulations).

[T.D. 6780, 29 FR 18148, Dec. 22, 1964]

§ 31.3503–1 Tax under chapter 21 or 22 paid under wrong chapter.

If, for any period, an amount is paid as tax—

(a) Under chapter 21 or corresponding provisions of prior law by a person who is not liable for tax for such period under such chapter or prior law, but who is liable for tax for such period under chapter 22 or corresponding provisions of prior law, or

(b) Under chapter 22 or corresponding provisions of prior law by a person who is not liable for tax for such period under such chapter or prior law, but who is liable for tax for such period under chapter 21 or corresponding provisions of prior law,

the amount so paid shall be credited against the tax for which such person is liable and the balance, if any, shall be refunded. Each claim for refund or credit under this section shall be made on Form 843 and in accordance with § 31.6402(a)–2 and the applicable provisions of section 6402(a) and the regulations thereunder in Part 301 of this chapter (Regulations on Procedure and Administration).

§ 31.3504–1 Acts to be performed by agents.

(a) *In general.* In the event wages as defined in chapter 21 or 24 of the Internal Revenue Code of 1954, or compensation as defined in chapter 22 of such Code, of an employee or group of employees, employed by one or more employers, is paid by a fiduciary, agent, or other person, or if such fiduciary, agent, or other person has the control, receipt, custody, or disposal of such wages, or compensation, the district director, or director of a service center, may, subject to such terms and conditions as he deems proper, authorize such fiduciary, agent, or other person to perform such acts as are required of such employer or employers under those provisions of the Internal Revenue Code of 1954 and the regulations thereunder which have application, for purposes of the taxes imposed by such chapter or chapters, in respect of such wages or compensation. If the fiduciary, agent, or other person is authorized by the district director, or director of a service center, to perform such acts, all provisions of law (including penalties) and of the regulations prescribed in pursuance of law applicable to employers in respect of such acts shall be applicable to such fiduciary, agent, or other person. However, each employer for whom such fiduciary, agent, or other person performs such acts shall remain subject to all provisions of law (including penalties) and of the regulations prescribed in pursuance of law applicable to an employer in respect of such acts. Any application for authorization to perform such acts, signed by such fiduciary, agent, or other person, shall be filed with the district director, or director of a service center, with whom the fiduciary,