AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

§ 35.3405–1 Questions and answers relating to withholding on pensions, annuities, and certain other deferred income.

The following questions and answers relate to withholding on pensions, annuities, and other deferred income under section 3405 of the Internal Revenue Code of 1986, as added by section 334 of the Tax Equity and Fiscal Responsibility Tax Act of 1982 (Public Law 97–248) (TEFRA).

a–1 through d–34 [Reserved] For further guidance, see § 35.3405–1T.

d–35. Q. *Through what medium may a payor provide the notice required under section 3405 to a payee?*

A. A payor may provide the notice required under section 3405 (including the abbreviated notice described in d–27 of § 35.3405–1T and the annual notice described in d–31 of § 35.3405–1T) to a payee either on a written paper document or through an electronic medium reasonably accessible to the payee. A notice provided through an electronic medium must be provided under a system that satisfies the following requirements:

(a) The system must be reasonably designed to provide the notice in a manner no less understandable to the payee than a written paper document.

(b) At the time the notice is provided, the payee must be advised that the payee may request and receive the notice on a written paper document at no charge, and, upon request, that document must be provided to the payee at no charge.

d–36. Q. *Are there examples that illustrate the provisions of d–35 of this section?*

A. The provisions of d–35 of this section are illustrated by the following examples:

Example 1. (i) An employer deferred compensation plan (Plan A) permits participants to request distributions by e-mail. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan A's records in order for the transaction to proceed. The plan administrator is the payor. If a participant requests a distribution from Plan A by e-mail, the plan administrator provides the participant with the notice required under section 3405 by e-mail. The plan administrator also advises the participant by e-mail that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution by e-mail, the participant must acknowledge receipt, review, and comprehension of the notice.

(ii) In this *Example 1,* the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 2. (i) An employer deferred compensation plan (Plan B) permits participants to request distributions through the Plan B web site (Internet or intranet). Under Plan B's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan B's records in order for the transaction to proceed. The plan administrator is the payor. A participant may request a distribution from Plan B by following the applicable instructions on the Plan B web site. After the participant has requested a distribution, the participant is automatically shown a page on the web site containing the notice required by section 3405. Although this page of the web site may be printed, the page also advises the participant that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. To proceed with the distribution through the web site, the participant must acknowledge receipt, review, and comprehension of the notice.

(ii) In this *Example 2,* the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 3. (i) An employer deferred compensation plan (Plan C) permits participants to request distributions through Plan C's automated telephone system. Under Plan C's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan C's records in order for the transaction to proceed. The plan administrator is the payor. A participant may request a distribution from Plan C by following the applicable instructions on the automated telephone system. After the participant has requested a distribution, the automated telephone system reads the notice required by section 3405 to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. Before proceeding with the distribution transaction,

the participant must acknowledge receipt, review, and comprehension of the notice.

(ii) In this *Example 3,* the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 4. (i) Same facts as *Example 3,* except that, pursuant to the system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the notice required by section 3405 by reading from a prepared text.

(ii) *Conclusion.* In this *Example 4,* the plan administrator does not fail to satisfy the notice requirement of section 3405 merely because the notice is provided to the participant other than through a written paper document.

Example 5. (i) Same facts as *Example 1,* except that Participant D requested a distribution by e-mail and then terminated employment. Participant D no longer has access to e-mail.

(ii) In this *Example 5,* the plan administrator does not satisfy the notice requirement of section 3405 because the electronic medium through which the notice is provided is not reasonably accessible to Participant D. Plan A must provide the notice required by section 3405 to Participant D in a written paper document or by an electronic medium that is reasonably accessible to Participant D.

[T.D. 8873, 65 FR 6007, Feb. 8, 2000; 65 FR 17149, Mar. 31, 2000]

EFFECTIVE DATE NOTE: By T.D. 8873, 65 FR 6007, Feb. 8, 2000, § 35.3405–1 was redesignated as § 35.3405–1T and new § 35.3405–1 was added, effective Jan. 1, 2001.

§ 35.3405–1T Questions and answers relating to withholding on pensions, annuities, and certain other deferred income (temporary regulations).

The following questions and answers relate to withholding on pensions, annuities, and other deferred income under section 3405 of the Internal Revenue Code of 1954, as added by section 334 of the Tax Equity and Fiscal Responsibility Tax Act of 1982 (Pub. L. 97–248) (TEFRA):

a. In general.
b. Periodic payments.
c. Nonperiodic distributions.
d. Notice and election procedures.
e. Reporting and recordkeeping.

A. IN GENERAL

a–1. Q. How did TEFRA change the law on withholding requirements for pensions, annuities, and other deferred income?

A. TEFRA amended the Internal Revenue Code to impose withholding requirements on designated distributions paid after December 31, 1982. Further, although under prior law individuals could elect to have Federal income tax withheld from certain pension and annuity payments, TEFRA requires withholding on all designated distributions unless the payee elects not to have withholding apply.

a–2. Q. What type of payment is a designated distribution that is subject to the new withholding rules?

A. A designated distribution is any distribution or payment from or under an employer deferred compensation plan, an individual retirement plan (as defined in section 7701(a)(37)), or a commercial annuity. However, a designated distribution does not include any portion of a distribution which it is reasonable to believe is not includible in the gross income of the payee. For rules concerning when it is reasonable to believe that all or part of a distribution is not includible in the gross income of the recipient, see questions a–24 through a–33. In addition, a payment or distribution that is treated as wages under section 3401(a) is not a designated distribution subject to the new withholding rules. For examples of these payments, see questions a–18 through a–23.

a–3 Q. What is an employer deferred compensation plan for purposes of the new withholding rules?

A. An employer deferred compensation plan is any pension, annuity, profit-sharing, stock bonus, or other plan that defers the receipt of compensation.

a–4. Q. What is a commercial annuity for purposes of the new withholding rules?

A. A commercial annuity is an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any State. See, also, question f–21.

a–5. Q. When does the new law take effect?

A. In general, withholding is required on any designated distribution made