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the treaty country involved, or the District Office, Foreign Operations District.

[34 FR 14601, Sept. 19, 1969, as amended at 49 FR 36500, Sept. 18, 1984]

Subpart C [Reserved]

Subpart D—Provisions Special to Certain Employment Taxes

§ 601.401 Employment taxes.

(a) *General*—(1) *Description of taxes.* Federal employment taxes are imposed by Subtitle C of the Internal Revenue Code. Chapter 21 (Federal Insurance Contributions Act) imposes a tax on employers of one or more individuals and also a tax on employees, with respect to ''wages'' paid and received. Chapter 22 (Railroad Retirement Tax Act) imposes (i) an employer tax and employee tax with respect to ''compensation'' paid and received, (ii) an employee representative tax with respect to ''compensation'' received, and (iii) a supplemental tax on employers, measured by man-hours for which ''compensation'' is paid. Chapter 23 (Federal Unemployment Tax Act) imposes a tax on employers of one or more individuals with respect to ''wages'' paid. Chapter 24 (collection of income tax at source on wages) requires every employer making payment of ''wages'' to deduct and withhold upon such wages the tax computed or determined as provided therein. The tax so deducted and withheld is allowed as a credit against the income tax liability of the employee receiving such wages.

(2) *Applicable regulations.* The descriptive terms used in this section to designate the various classes of taxes are intended only to indicate their general character. Specific information relative to the scope of each tax, the forms used, and the functioning of the Service with respect thereto is contained in the applicable regulations. Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from the district director of internal revenue.

(3) *Collection methods.* Employment taxes are collected by means of returns and by withholding by employers. Employee tax must be deducted and withheld by employers from ''wages'' or ''compensation'' (including tips reported in writing to employer) paid to employees, and the employer is liable for the employee tax whether or not it is so deducted. For special rules relating to tips see §§ 31.3102–3 and 31.3402(k)–1. Rev. Proc. 81–48, 1981–2 C.B. 623, provides guidelines for determining wages when the employer pays the employee tax imposed by Chapter 21 without deducting the amount from the employee's pay. Employee representatives (as defined in the Railroad Retirement Tax Act) are required to file returns. Employment tax returns must be filed with the district director or, if so provided in instructions applicable to a return, with the service center designated in the instructions. The return of the Federal unemployment tax is required to be filed annually on Form 940 with respect to wages paid during the calendar year. All other returns of Federal employment taxes (with the exception of returns filed for agricultural employees) are required to be filed for each calendar quarter except that if pursuant to regulations the district director so notifies the employer, returns on Form 941 are required to be filed on a monthly basis. In the case of certain employers required to report withheld income tax but not required to report employer and employee taxes imposed by Chapter 21 (for example, state and local government employers), Form 941E is prescribed for reporting on a quarterly basis. The employer and employee taxes imposed by Chapter 21 (other than the employer and employee taxes on wages paid for agricultural labor) and the tax required to be deducted and withheld upon wages by Chapter 24 are combined in a single return on Form 941. In the case of wages paid by employers for domestic service performed in a private home not on a farm operated for profit, the return of both the employee tax and the employer tax imposed by Chapter 21 is on Form 942. However, if the employer is required to file a return for the same quarter on Form 941, the employer may elect to include the taxes with respect to such domestic service on Form 941. The employer and employee taxes imposed by Chapter 21 with respect to

wages paid for agricultural labor are required to be reported annually on Form 943. Under the Railroad Retirement Tax Act, the return required of the employer is on Form CT–1, and the return required of each employee representative is on Form CT–2. An employee is not required to file a return of employee tax, except that the employee must include in his or her income tax return (as provided in the applicable instructions) any amount of employee tax (i) due with respect to tips that the employee failed to report to the employer or (ii) shown on the employee's Form W–2 as ''Uncollected Employee Tax on Tips''.

(4) *Receipts for employees.* Employers are required to furnish each employee a receipt or statement, in duplicate, showing the total wages subject to income tax withholding, the amount of income tax withheld, the amount of wages subject to tax under the Federal Insurance Contributions Act, and the amount of employee tax withheld. See section 6051 of the Code.

(5) *Use of authorized financial institutions in connection with payment of Federal employment taxes.* Most employers are required to deposit employment taxes either on a monthly basis, a semimonthly basis or quarter-monthly period basis as follows:

(i) *Quarter-monthly period deposits.* With respect to wages paid after January 31, 1971 (March 31, 1971, in the case of wages paid for agricultural labor), if at the close of any quarter-monthly period (that ends on the 7th, 15th, 22d, or the last day of any month) the aggregate amount of undeposited taxes, exclusive of taxes reportable on Form 942, is $2,000 or more, the employer shall deposit such taxes within 3 banking days after the close of such quarter-monthly period.

(ii) *Monthly deposits.* With respect to employers not required to make deposits under subdivision (i) of this subparagraph, if after January 31, 1971 (March 31, 1971, in the case of income tax withheld from wages paid for agricultural labor) *(a)* during any calendar month, other than the last month of a calendar quarter, the aggregate amount of the employee tax deducted and the employer tax under Chapter 21 and the income tax withheld at source on wages under Chapter 24, exclusive of taxes reportable on Form 942, exceeds $200 or *(b)* at the end of any month or period of 2 or more months and prior to December 1 of any calendar year, the total amount of undeposited taxes imposed by Chapter 21, with respect to wages paid for agricultural labor, exceeds $200, it is the duty of the employer to deposit such amount within 15 days after the close of such calendar month.

(iii) *Quarterly and year-end deposits.* Whether or not an employer is required to make deposits under subdivisions (i) and (ii) of this subparagraph, if the amount of such taxes reportable on Form 941 or 943 (reduced by any previous deposits) exceeds $200, the employer shall, on or before the last day of the first calendar month following the period for which the return is required to be filed, deposit such amount with an authorized financial institution. However, if the amount of such taxes (reduced by any previous deposits) does not exceed $200, the employer may either include with his return a direct remittance for the amount of such taxes or, on or before the last day of the first calendar month following the period for which the return is required to be filed, voluntarily deposit such amount with an authorized financial institution.

(iv) *Additional rules.* Deposits under subdivisions (i), (ii) and (iii) of this subparagraph are made with an authorized financial institution. The remittance of such amount must be accompanied by a Federal Tax Deposit form. Each employer making deposits shall report on the return for the period with respect to which such deposits are made information regarding such deposits in accordance with the instructions applicable to such return and pay therewith (or deposit by the due date of such return) the balance, if any, of the taxes due for such period.

(v) *Employers under Chapter 22 of the Code.* Depositary procedures similar to those prescribed in this subparagraph are prescribed for employers as defined by the Railroad Retirement Tax Act, except that railroad retirement taxes are not requested to be deposited semimonthly or quarter-monthly. Such

taxes must be deposited by using a Federal Tax Deposit form.

(vi) *Employers under chapter 23 of the Code.* Every person who is an employer as defined by the Federal Unemployment Tax Act shall deposit the tax imposed under Chapter 23 on or before the last day of the first calendar month following the quarterly period in which the amount of such tax exceeds $100.

(6) *Separate accounting.* If an employer fails to withhold and pay over income, social security, or railroad retirement tax due on wages of employees, the employer may be required by the district director to collect such taxes and deposit them in a separate banking account in trust for the United States not later than the second banking day after such taxes are collected.

(b) *Provisions special to the Federal Insurance Contributions Act*—(1) *Employers' identification numbers.* For purposes of the Federal Insurance Contributions Act each employer who files Form 941 or Form 943 must have an identification number. Any such employer who does not have an identification number must secure a Form SS–4 from the district director of internal revenue or from a district office of the Social Security Administration and, after executing the form in accordance with the instructions contained thereon, file it with the district director or the district office of the Social Security Administration. At a subsequent date the district director will assign the employer a number which must appear in the appropriate space on each tax return, Form 941 or Form 943, filed thereafter. The requirement to secure an identification number does not apply to an employer who employs only employees who are engaged exclusively in the performance of domestic service in the employer's private home not on a farm operated for profit.

(2) *Employees' account numbers.* Each employee (or individual making a return of net earnings from self-employment) who does not have an account number must file an application on Form SS–5, a copy of which may be obtained from any district office of the Social Security Administration or from a district director of internal revenue. The form, after execution in accordance with the instructions thereon, must be filed with the district office of the Social Security Administration, and at a later date the employee will be furnished an account number. The employee must furnish such number to each employer for whom the employee works, in order that such number may be entered on each tax return filed thereafter by the employer.

(3) *Reporting of wages.* Forms 941, 942, and 943 each require, as a part of the return, that the wages of each employee paid during the period covered by the return be reported thereon. Form 941a is available to employers who need additional space for the listing of employees. Employers who meet the requirements of the Social Security Administration may, with the approval of the Commissioner of Internal Revenue, submit wage information on reels of magnetic tape in lieu of Form 941a. It is necessary at times that employers correct wage information previously reported. A special form, Form 941c, has been adopted for use in correcting erroneous wage information or omissions of such wage information on Form 941, 942, or 943. Instructions on Form 941, 941c, 942, and 943 explain the manner of preparing and filing the forms. Any further instructions should be obtained from the district director.

(c) *Adjustments by employers*—(1) *Undercollections and underpayments*—(i) *Employer tax or employee tax.* If a return is filed by an employer under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act, and the employer reports and pays less than the correct amount of employer tax or employee tax, the employer is required to report and pay the additional amount due. The reporting will be an adjustment without interest only if the employer reports and pays the additional amount on or before the last day on which the return is required to be filed for the return period in which the error is ascertained. The employer may so report the additional amount either on the return for that period or on a supplemental return for the period for which the underpayment was made. If the employer fails to report the additional amount due within the time so fixed for making an interest-free adjustment, the employer nevertheless is

required to report the additional amount in the same manner, but interest will be due. No adjustment of an underpayment may be made under this section or § 31.6205–1(b)(2) if the employer is sent a notice and demand for payment of the additional tax.

(ii) *Income tax withholding.* If an employer files a return reporting and paying less than the correct amount of income tax required to be withheld from wages paid during the return period, the employer is required to report and pay the additional amount due, either *(a)* on a return for any return period in the calendar year in which the wages were paid, or *(b)* on a supplemental return for the return period in which the wages were paid. The reporting will be an adjustment without interest only if the employer reports and pays the additional amount on or before the last day on which the return is required to be filed for the return period in which the error was ascertained. If an employer reports and pays less than the correct amount of income tax required to be withheld in a calendar year, and the employer does not correct the underpayment in the same calendar year, the employer should consult the District Director of Internal Revenue as to the manner of correcting the error.

(2) *Overcollections from employees*—(i) *Employee tax.* If an employer collects from an employee more than the correct amount of employee tax under the Federal Insurance Contributions Act or the Railroad Retirement Act, and the error is ascertained within the applicable period of limitation on credit or refund, the employer is required either to repay the amount to the employee, or to reimburse the employee by applying the amount of the overcollection against employee tax which otherwise would be collected from the employee after the error is ascertained. If the overcollection is repaid to the employee, the employer is required to obtain and keep the employee's written receipt showing the date and amount of the repayment. In addition, if the employer repays or reimburses an employee in any calendar year for an overcollection which occurred in a prior calendar year, the employer is required to obtain and keep the employee's written statement *(a)* that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and *(b)* that the employee will not claim refund or credit of such amount.

(ii) *Income tax withholding.* If, in any return period in a calendar year, an employer withholds more than the correct amount of income tax, and pays over to the Internal Revenue Service the amount withheld, the employer may repay or reimburse the employee in the excess amount in any subsequent return period in the same calendar year. If the amount is so repaid, the employer is required to obtain and keep the employee's written receipt showing the date and amount of the repayment.

(3) *Employer's claims for credit or refund of overpayments*—(i) *Employee tax.* If an employer repays or reimburses an employee for an overcollection of employee tax, as described in subparagraph (2)(i) of this paragraph, the employer may claim credit on a return in accordance with the instructions applicable to the return. In lieu of claiming credit the employer may claim refund by filing Form 843, but the employer may not thereafter claim credit for the same overpayment.

(ii) *Income tax withholding.* If an employer repays or reimburses an employee for an excess amount withheld as income tax, as described in subparagraph (2)(ii) of this paragraph, the employer may claim credit on a return for a return period in the calendar year in which the excess amount was withheld. The employer is not otherwise permitted to claim credit or refund for any overpayment of income tax that the employer deducted or withheld from an employee.

(d) *Special refunds of employee social security tax.* (1) An employee who receives wages from more than one employer during a calendar year may, under certain conditions, receive a ''special refund'' of the amount of employee social security tax (*i.e.,* employee tax under the Federal Insurance Contributions Act) deducted and withheld from wages that exceed the following amounts: calendar years 1968 through 1971, $7,800; calendar year 1972, $9,000; calendar year 1973, $10,800; calendar year 1974, $13,200; calendar years

after 1974, an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) effective with respect to that year. An employee who is entitled to a special refund of employee tax with respect to wages received during a calendar year, and who is required to file an income tax return for such calendar year (or for his last taxable year beginning in such calendar year), may obtain the benefits of such special refund only by claiming credit for such special refund on such income tax return in the same manner as if such special refund were an amount deducted and withheld as income tax at source on wages.

(2) The amount of the special refund allowed as a credit shall be considered as an amount deducted and withheld as income tax at source on wages. If the amount of such special refund when added to amounts deducted and withheld as income tax under chapter 24 exceeds the income tax imposed by chapter 1, the amount of the excess constitutes an overpayment of income tax, and interest on such overpayment is allowed to the extent provided under section 6611 of the Code upon an overpayment of income tax resulting from a credit for income tax withheld at source on wages.

(3) If an employee entitled to a special refund of employee social security tax is not required to file an income tax return for the year in which such special refund may be claimed as a credit, the employee may file a claim for refund of the excess social security tax on Form 843. Claims must be filed with the district director of internal revenue for the district in which the employee resides.

(4) Employee taxes under the Federal Insurance Contributions Act and the Railroad Retirement Tax Act include a percentage rate for hospital insurance. If in 1968 or any calendar year thereafter employee taxes under both Acts are deducted from an employee's wages and compensation aggregating more than $7,800, the ''special refund'' provisions may apply to the portion of the tax that is deducted for hospital insurance. The employee may take credit on Form 1040 for the amount allowable, in accordance with the instructions applicable to that form.

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Subpart E—Conference and Practice Requirements

AUTHORITY: 68A Stat. 917, 26 U.S.C. 7805; 5 U.S.C. 301.

§ 601.501 Scope of rules; definitions.

(a) *Scope of rules.* The rules prescribed in this subpart concern, among other things, the representation of taxpayers before the Internal Revenue Service under the authority of a power of attorney. These rules apply to all offices of the Internal Revenue Service in all matters under the jurisdiction of the Internal Revenue Service and apply to practice before the Internal Revenue Service (as defined in 31 CFR 10.2(a) and 10.7(a)(7). For special provisions relating to alcohol, tobacco, and firearms activities, see §§ 601.521 through 601.527. These rules detail the means by which a recognized representative is authorized to act on behalf of a taxpayer. Such authority must be evidenced by a power of attorney and declaration of representative filed with the appropriate office of the Internal Revenue Service. In general, a power of attorney must contain certain information concerning the taxpayer, the recognized representative, and the specific tax matter(s) for which the recognized representative is authorized to act. (See § 601.503(a).) A ''declaration of representative'' is a written statement made by a recognized representative that he/she is currently eligible to practice before the Internal Revenue Service and is authorized to represent the particular party on whose behalf he/she acts. (See § 601.502(c).)

(b) *Definitions*—(1) *Attorney-in-fact.* An agent authorized by a principal under a power of attorney to perform certain specified act(s) or kinds of act(s) on behalf of the principal.