

§ 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 sec-

tion 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 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 depository 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.)