§ 31.3505-1 Liability of third parties paying or providing for wages.

(a) Personal liability in case of direct payment of wages—(1) In general. A lender, surety, or other person—

(i) Who is not an employer for purposes of section 3102 (relating to deduction of tax from wages under the Federal Insurance Contributions Act), section 3202 (relating to deduction of tax from compensation under the Railroad Retirement Tax Act), or section 3402 (relating to deduction of income tax from wages) with respect to an employee or group of employees, and

(ii) Who pays wages on or after January 1, 1967, directly to such employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees,

shall be liable in his own person and estate for payment to the United States of an amount equal to the sum of the taxes required to be deducted and withheld from those wages by the employer under subtitle C of the Code and interest from the due date of the employer’s return relating to such taxes for the period in which the wages are paid.

(2) Example. The provisions of this paragraph may be illustrated by the following example:

Example. Pursuant to a wage claim of $200, A, a surety company, paid a net amount of $158 to B, an employee of the X Construction Company. This was done in accordance with A’s payment bond covering a private construction job on which B was an employee. If X Construction Company fails to make timely payment or deposit of the amounts of tax required by subtitle C of the Code to be deducted and withheld from wages paid on or after January 1, 1967, and which are not paid over to the United States by the employer, A becomes personally liable for $42.00 (i.e., an amount equal to the unpaid taxes), plus interest upon this amount from the due date of X’s return.

(b) Personal liability where funds are supplied—(1) In general. A lender, surety, or other person—

(i) Advances funds to or for the account of an employer for the specific purpose of paying wages of the employees of that employer, and

(ii) At the time the funds are advanced, has actual notice or knowledge (within the meaning of section 6323(i)(1)) that the employer does not intend to, or will not be able to, make timely payment or deposit of the amounts of tax required by subtitle C of the Code to be deducted and withheld from wages paid on or after January 1, 1967, and which are not paid over to the United States by the employer, and interest from the due date of the employer’s return relating to such taxes. However, the liability of the lender, surety, or other person shall not exceed 25 percent of the amount supplied by him for the payment of wages. The preceding sentence and the second sentence of section 3505(b) limit the liability of a lender, surety, or other person arising solely by reason of section 3505, and they do not limit the liability which the lender, surety or other person may incur to the United States as a third-party beneficiary of an agreement between the lender, surety, or other person and the employer. The liability of a lender, surety, or other person does not include penalties imposed on the taxpayer.

(2) Examples. The provisions of this paragraph may be illustrated by the following examples:

Example 1. D, a savings and loan association, advances $10,000 to Y for the specific purpose of paying the net wages of Y’s employees. D advances those funds with knowledge that Y will not be able to make timely payment of the taxes required to be deducted and withheld from wages by subtitle C of the Code, Y uses the $19,000 to pay the net wages of his employees but fails to remit withholding taxes under subtitle C in the amount of $2,600. D’s liability, under this section, is limited to $2,500, 25 percent of the amount supplied for the payment of wages to Y’s employees.

Example 2. E, a loan company, advances $15,000 to F, a contractor, for the specific purpose of paying $20,000 of net wages due to F’s employees. E advances those funds with knowledge that F will not be able to make timely payment of the taxes required to be
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deducted and withheld from these wages by
subtitle C of the Code. F applies $5,000 of its
own funds toward payment of these wages.
The amount of tax required to be deducted
and withheld from the gross wages is $4,500.
The limitation applicable to E’s liability is
$3,750 (25 percent of $15,000). However, be-
cause E furnished only a portion of the total
net wages, E is liable for $3,375 of the taxes
required to be deducted and withheld ($4,500-$15,000-$20,000).

(3) Ordinary working capital loan. The
provisions of section 3505(b) do not
apply in the case of an ordinary work-
ing capital loan made to an employer,
even though the person supplying the
funds knows that part of the funds ad-
vanced may be used to make wage pay-
ments in the ordinary course of busi-
ness. Generally, an ordinary working
capital loan is a loan which is made to
enable the borrower to meet current
obligations as they arise. The person
supplying the funds is not obligated to
determine the specific use of an ordi-
nary working capital loan or the abil-
ity of the employer to pay the amounts
of tax required by subtitle C of the
Code to be deducted and withheld.
However, section 3505(b) is applicable
when the person supplying the funds
has actual notice or knowledge (within
the meaning of section 6323(i)(1)) at the
time of the advance that the funds, or
a portion thereof, are to be used spe-
cifically to pay net wages, whether or
not the written agreement under which
the funds are advanced states a dif-
ferent purpose. Whether or not a lender
has actual notice or knowledge that
the funds are to be used to pay net
wages, or merely that the funds may be
so used, depends upon the facts and cir-
cumstances of each case. For example,
a lender, who has actual notice or
knowledge that the withheld taxes will
not be paid, will be deemed to have ac-
tual notice or knowledge that the
funds are to be used specifically to pay
net wages where substantially all of
the employer’s ordinary operating ex-
penes consist of salaries and wages
even though fund for other incidental
operating expenses may be supplied
pursuant to an agreement described as
a working capital loan agreement.

(c) Definition of other person.—(1) In
general. As used in this section, the
term ‘other person’ means any person
who directly pays the wages or supplies
funds for the specific purpose of paying
the wages of an employee or group of
employees of another employer. It does
not include a person acting only as
agent of the employer or as agent of
the employees.

(2) Examples. The provisions of this
paragraph may be illustrated by the
following examples:

Example 1. Pursuant to an agreement be-
tween L, a labor union, and M, an employer,
M makes monthly vacation payments (of a
sum equal to a certain percentage of the re-
muneration paid to each union member em-
ployed by M during the previous month) to a
union administered pool plan under which
each employee’s rights are fully vested and
nonforfeitable from the time the money is
paid by M. Vacation allowances are accumu-
lated by the plan and distributed to eligible
employees during their vacations. L, acting
merely as a conduit with respect to these
payments, would incur no liability under
section 3505.

Example 2. N, a construction company,
maintains a payroll account with the O Bank
in which N deposits its own funds. Pursuant
to an automated payroll service agreement
between N and O, O prepares payroll checks
and earnings statements for each of N’s em-
ployees reflecting the net pay due each such
employee. These checks are delivered to N
for signature. After the checks are signed, O
distributes them directly to N’s employees
on the regularly scheduled pay day. O, acting
in the capacity of a disbursing agent of
N’s funds, would incur no liability under sec-
tion 3505 with respect to these payroll dis-
tributions. However, O may incur liability
under section 3505 if it supplies the funds for
the payment of wages.

(d) Payment of taxes and interest.—(1)
Procedure for payment. A lender, surety,
or other person may satisfy the per-
sonal liability imposed upon him by
section 3505 by executing Form 4219
and filing it, accompanied by payment
of the amount of tax and interest due
the United States, in accordance with
the instructions for the form. In the
event that the lender, surety, or other
person does not satisfy the liability im-
posed by section 3505, the United
States may collect the liability by ap-
propriate civil proceedings commenced
within 10 years after assessment of the
tax against the employer.

(2) Effect of payment.—(i) In general. A
person paying the amounts of tax re-
quired to be deducted and withheld by
subtitle C of the Code as a result of section 3505 and this section is not required to pay the employer’s portion of the payroll taxes upon those wages, or file an employer’s tax return with respect to those wages, or furnish annual wage and tax statements to the employee.

(ii) Amounts paid by a lender, surety, or other person. Any amounts paid by the lender, surety, or other person to the United States pursuant to this section shall be credited against the liability of the employer on whose behalf those payments are made and shall also reduce the total liability imposed upon the lender, surety, or other person under section 3505 and this section.

(iii) Amounts paid by the employer. Any amounts paid to the United States by an employer and applied to his liability under subtitle C of the Code shall reduce the total liability imposed upon that employer by subtitle C. Such payments will also reduce the liability imposed upon a lender, surety, or other person under section 3505 except that such liability shall not be reduced by any portion of an employer’s payment applied against the employer’s liability under subtitle C which is in excess of the total liability imposed upon the lender, surety, or other person under section 3505. For example, if a lender supplies $1,000 to an employer for the payment of net wages, upon which $300 withholding tax liability is imposed, a part-payment of $25 by the employer which is applied to this liability would reduce the employer’s total liability under subtitle C of the Code by that amount, but the liability imposed upon the lender by section 3505(b) in an amount equal to the withholding tax liability of the employer, which is limited to 25 percent of the amount supplied by him, would remain $250. However, if the employer makes another payment of $200 which is applied to his liability for the withholding taxes, the lender’s liability under section 3505 attributable to the withholding taxes is reduced by $175 ($225 less $50 (the amount by which the employer’s liability exceeds the lender’s liability after application of the limitation)). Thus, after the second payment by the employer, the lender’s liability under section 3505(b) is $75 ($250 less $175), plus interest due on the underpayment for the period of underpayment, to a maximum of $250, 25 percent of the funds supplied.

(3) Extensions of the period for collection. Prior to the expiration of the 10-year period for collection after assessment against the employer, the lender, surety, or other third party may agree in writing with the district director, service center director, or compliance center director to extend the 10-year period for collection. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. If any timely proceeding in court for the collection of the tax and any applicable interest is commenced, the period during which such tax and interest may be collected shall be extended and shall not expire until the liability for the tax (or a judgment against the lender, surety, or other third party arising from such liability) is satisfied or becomes unenforceable.

(e) Returns required by employers and statements for employees. This section does not relieve the employer of the responsibilities imposed upon him to file the returns and supply the receipts and statements required under subchapter A, Chapter 61 of the Code (relating to returns and records).

(f) Time when liability arises. The liability under section 3505 and this section of a lender, surety, or other person paying or supplying funds for the payment of wages is incurred on the last day prescribed for the filing of the employer’s Federal employment tax return (determined without regard to any extension of time) in respect of such wages.

(g) Effective date. These regulations are effective on August 1, 1995.


§ 31.3506–1 Companion sitting placement services.

(a) Definitions—(1) Companion sitting placement service. For purposes of this section, the term “companion sitting placement service” means a person (whether or not an individual) engaged...