§ 31.3402(g)—1 Supplemental wage payments.

(a) In general and withholding on supplemental wages in excess of $1,000,000—

(1) Determination of supplemental wages and regular wages. An employee’s remuneration may consist of regular wages and supplemental wages. Supplemental wages are all wages paid by an employer that are not regular wages. Supplemental wages include wage payments made without regard to an employee’s pay-roll period, but also may include payments made for a payroll period. Examples of wage payments that are included in supplemental wages include reported tips (except as provided in paragraph (a)(1)(v) of this section), overtime pay (except as provided in paragraph (a)(1)(iv) of this section), bonuses, back pay, commissions, wages paid under reimbursement or other expense allowance arrangements, non-qualified deferred compensation includible in wages, wages paid as noncash fringe benefits, sick pay paid by a third party as an agent of the employer, amounts that are includible in gross income under section 409A, income recognized on the exercise of a nonstatutory stock option, wages from imputed income for health coverage for a non-independent, and wage income recognized on the lapse of a restriction on restricted property transferred from an employer to an employee. Amounts that are described as supplemental wages in this definition are supplemental wages regardless of whether the employer has paid the employee any regular wages during either the calendar year of the payment or any prior calendar year. Thus, for example, if the only wages that an employer has ever paid an employee are payments of noncash fringe benefits and income recognized on the exercise of a nonstatutory stock option, such payments are classified as supplemental wages.

(2) Withholding exemptions. As distinguished from supplemental wages, regular wages are amounts that are paid at a regular hourly, daily, or similar periodic rate (and not an overtime rate) for the current payroll period or at a predetermined fixed determinable amount for the current payroll period. Thus, among other things, wages that vary from payroll period to payroll period (such as commissions, reported tips, bonuses, or overtime pay) are not regular wages, except that an employer may treat tips as regular wages under paragraph (a)(1)(v) of this section and an employer may treat overtime pay as regular wages under paragraph (a)(1)(iv) of this section.

(b) Withholding on supplemental wages.

(1) In general. Withholding on supplemental wages in excess of $1,000,000 shall be determined in accordance with paragraph (a) of this section.

(2) General rules. The amount of supplemental wages that shall be subject to withholding under paragraph (a) of this section shall be determined by subtracting from the supplemental wages the lesser of the amount of exemptions allowed under section 3402(f)(1) or the number of personal exemptions to which the employee is entitled for the calendar year.

(3) Limitation. The amount of supplemental wages subject to withholding under this section shall not exceed $1,000,000.

(4) Exemptions. The number of personal exemptions to which the employee is entitled for the calendar year shall be increased by the number of personal exemptions to which the employee is entitled for the prior calendar year.

(5) Period of applicability. The provisions of this section shall apply to supplemental wages paid in any calendar year for which the applicable amount of supplemental wages is in excess of $1,000,000.

(6) Amounts not wages subject to income tax withholding. If an amount of remuneration is not wages subject to income tax withholding, it is neither