Internal Revenue Service, Treasury

the treaty country involved, or the
District Office, Foreign Operations Dis-
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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 re-
spect to “wages” paid and received.
Chapter 22 (Railroad Retirement Tax
Act) imposes (i) an employer tax and
employee tax with respect to “compen-
sation” paid and received, (ii) an
employee representative tax with re-
spect 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) im-
poses a tax on employers of one or
more individuals with respect to
“wages” paid. Chapter 24 (collection of
income tax at source on wages) re-
quires every employer making pay-
ment of “wages” to deduct and with-
hold 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 li-
ability of the employee receiving such
wages.

(2) Applicable regulations. The descrip-
tive terms used in this section to des-
ignate the various classes of taxes are
intended only to indicate their general
character. Specific information rel-
ative to the scope of each tax, the
forms used, and the functioning of the
Service with respect thereto is con-
tained in the applicable regulations.
Copies of all necessary forms, and in-
structions as to their preparation and
filing, may be obtained from the dis-
trict director of internal revenue.

(3) Collection methods. Employment
taxes are collected by means of returns
and by withholding by employers. Em-
ployee tax must be deducted and with-
held by employers from “wages” or
“compensation” (including tips re-
ported 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 relat-
ing to tips see §§ 31.3102–3 and 31.3402
provides guidelines for determining
wages when the employer pays the em-
ployee tax imposed by Chapter 21 with-
out deducting the amount from the em-
ployee’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 pro-
vided in instructions applicable to a re-
turn, with the service center des-
ignated in the instructions. The return
of the Federal unemployment tax is re-
quired to be filed annually on Form 940
with respect to wages paid during the
calendar year. All other returns of Fed-
eral employment taxes (with the excep-
tion of returns filed for agricultural
employees) are required to be filed for
each calendar quarter except that if
pursuant to regulations the district di-
rector 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 em-
ployee taxes imposed by Chapter 21
(other than the employer and employee
taxes on wages paid for agricultural
labor) and the tax required to be de-
ducted and withheld upon wages by
Chapter 24 are combined in a single re-
turn 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 em-
ployer 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 im-
posed 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 required to be deposited semi-monthly 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.

(1) 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—(1) 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 for income tax withheld at source on wages.

(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.


Subpart E—Conference and Practice Requirements


§ 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.