

§ 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]

§ 31.3402(t)-0 Outline of the Government withholding regulations.

This section lists paragraphs contained in §§ 31.3402(t)-1 through 31.3402(t)-7.

31.3402(t)-1 Withholding requirement on certain payments made by government entities.

- (a) In general.
- (b) Special rules.
- (c) Deposit and reporting requirements.
- (d) Effective/applicability date.

31.3402(t)-2 Government entities required to withhold under section 3402(t).

- (a) In general.
- (b) Government of the United States.
- (c) State.
- (d) Political Subdivision.
- (e) [Reserved]
- (f) Possessions of the United States.
- (g) Passthrough entities.
- (h) Small entity exception.
- (i) Effective/applicability date.

31.3402(t)-3 Payments subject to withholding.

- (a) In general.
- (b) Payment threshold of \$10,000.
- (c) No withholding on successive payments.
- (d) Payments made through a payment administrator or to a contractor.
- (e) [Reserved]
- (f) Examples.
- (g) Effective/applicability date.

31.3402(t)-4 Certain payments excepted from withholding.

- (a) Payments subject to withholding under chapter 3 or chapter 24 (other than section 3406).
- (b) Payments subject to withholding under section 3406 with backup withholding deducted.
- (c) [Reserved]
- (d) Payments for real property.
- (e) Payments to government entities, tax-exempt organizations, and foreign governments.
- (f) Payments made pursuant to a classified or confidential contract.

§ 31.3402(t)-1

26 CFR Ch. I (4-1-12 Edition)

(g) Exception for political subdivisions or instrumentalities thereof making less than \$100,000,000 of payments for property or services annually.

(h) Payments made in connection with a public assistance or public welfare program.

(i) Payments made to any government employee with respect to his or her services.

(j) Payments received by nonresident alien individuals and foreign corporations.

(k) Payments to Indian Tribal governments.

(l) Payments in emergency or disaster situations.

(m) Grants.

(n) Sales tax, excise tax, value-added tax, and other taxes.

(o) Loan guarantees.

(p) Debt.

(q) Investment securities.

(r) Partially exempt payments.

(s) Determination of eligibility for exemption.

(t) Withholding relief for 2012.

(u) Effective/applicability date.

31.3402(t)-5 Application to passthrough entities.

(a) In general.

(b) Definitions.

(c) Payments from a passthrough entity.

(d) Payments to a passthrough entity.

(e) Effective/applicability date.

31.3402(t)-6 Crediting of tax withheld under section 3402(t).

(a) Crediting against income tax liability only.

(b) Taxable year of credit.

(c) Estimated tax.

(d) Effective/applicability date.

31.3402(t)-7 Transition relief from interest and penalties.

(a) Good faith exception for interest and penalties on payments before January 1, 2014.

(b) Effective/applicability date.

[T.D. 9524, 76 FR 26594, May 9, 2011]

§ 31.3402(t)-1 Withholding requirement on certain payments made by government entities.

(a) *In general.* Except as provided in §§ 31.3402(t)-3(b) and 31.3402(t)-4, the Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making any payment to any person providing any property or services must deduct and withhold from the payment a tax in an amount equal to 3 percent of such payment.

(b) *Special rules.* See § 31.3402(t)-2 for government entities required to with-

hold under this section, § 31.3402(t)-3 for what constitutes a payment to a person for property or services and when such payment is deemed to occur for purposes of this section, and § 31.3402(t)-4 for payments that are excepted from withholding under this section.

(c) *Deposit and reporting requirements.* See § 31.6302-4 for deposit requirements with respect to withholding under section 3402(t). See §§ 31.6011(a)-4(b) and 31.6051-5 for the reporting requirements with respect to withholding under section 3402(t).

(d) *Effective/applicability date.* (1) Except as provided in paragraph (d)(2) of this section, this section applies to payments by the Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) to any person providing property or services made after December 31, 2012.

(2) Payments made under a written binding contract that was in effect on December 31, 2012, are not subject to the withholding requirements of this section. The preceding sentence does not apply to payments made under any contract that is materially modified after December 31, 2012. For this purpose, a material modification includes only a modification that materially affects the property or services to be provided under the contract, the terms of payment for the property or services under the contract, or the amount payable for the property or services under the contract. Notwithstanding the foregoing, a material modification does not include a mere renewal of a contract that does not otherwise materially affect the property or services to be provided under the contract, the terms of payment for the property or services under the contract, or the amount payable for the property or services under the contract. A material modification also does not include a modification to the contract to the extent required by applicable Federal, State or local law.

[T.D. 9524, 76 FR 26594, May 9, 2011]