

(1) In the case of an employee whose liability for tax under subtitle A is determined on a calendar year basis, after February 15 of the calendar year following the estimation year, or

(2) In the case of an employee to whom paragraph (c)(1) of this section does not apply, after the 15th day of the 2nd calendar month following the last day of the estimation year.

(d) *Estimation year.* The estimation year is the taxable year including the day on which the employee files the withholding exemption certificate with his employer, except that if the employee files the withholding exemption certificate with his employer and specifies on the certificate that the certificate is not to take effect until a specified future date, the estimation year shall be the taxable year including that specified future date.

(Secs. 3402(i) and (m) and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 3402 (i) and (m), 95 Stat. 172, 184; 26 U.S.C. 7805, 68A Stat. 917))

[T.D. 7915, 48 FR 44073, Sept. 27, 1983]

§ 31.3402(f)(5)-1 Form and contents of withholding exemption certificates.

(a)(1) *Form W-4.* Form W-4, “Employee’s Withholding Allowance Certificate,” is the form prescribed for the withholding exemption certificate required to be furnished under section 3402(f)(2). A withholding exemption certificate must be prepared in accordance with the instructions and regulations applicable thereto, and must set forth fully and clearly the data that is called for therein. Blank copies of paper Forms W-4 will be supplied to employers upon request to the Internal Revenue Service (IRS). An employer may also download and print Form W-4 from the IRS Internet site at www.irs.gov. In lieu of the prescribed form, employers may prepare and use a form the provisions of which are identical with those of the prescribed form, but only if employers also provide employees with all the tables, instructions, and worksheets contained in the Form W-4 in effect at that time, and only if employers comply with all revenue procedures relating to substitute forms in effect at that time.

(2) Employers are prohibited from accepting a substitute form developed by

an employee, and the employee submitting such form will be treated as failing to furnish a withholding exemption certificate. For further guidance regarding the employer’s obligations when an employee is treated as failing to furnish a withholding exemption certificate, see § 31.3402(f)(2)-1.

(3) *Effective/applicability date.* Paragraph (a)(1) applies on April 14, 2005. Paragraph (a)(2) applies to any substitute withholding exemption certificate furnished to an employer on or after October 11, 2007.

(b) *Invalid Form W-4.* A Form W-4 does not meet the requirements of section 3402(f)(5) or this section and is invalid if it contains an alteration or unauthorized addition. For purposes of § 31.3402(f)(2)-1(e) and this paragraph—

(1) An alteration of a withholding exemption certificate is any deletion of the language of the jurat or other similar provision of such certificate by which the employee certifies or affirms the correctness of the completed certificate, or any material defacing of such certificate;

(2) An unauthorized addition to a withholding exemption certificate is any writing on such certificate other than the entries requested (e.g., name, address, and number of exemptions claimed).

(c) *Electronic Form W-4—(1) In general.* An employer may establish a system for its employees to file withholding exemption certificates electronically.

(2) *Requirements—(i) In general.* The electronic system must ensure that the information received is the information sent, and must document all occasions of employee access that result in the filing of a Form W-4. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and filing the Form W-4 is the employee identified in the form.

(ii) *Same information as paper Form W-4.* The electronic filing must provide the employer with exactly the same information as the paper Form W-4.

(iii) *Jurat and signature requirements.* The electronic filing must be signed by the employee under penalties of perjury.

(A) *Jurat*. The jurat (perjury statement) must contain the language that appears on the paper Form W-4. The electronic program must inform the employee that he or she must make the declaration contained in the jurat and that the declaration is made by signing the Form W-4. The instructions and the language of the jurat must immediately follow the employee's income tax withholding selections and immediately precede the employee's electronic signature.

(B) *Electronic signature*. The electronic signature must identify the employee filing the electronic Form W-4 and authenticate and verify the filing. For this purpose, the terms "authenticate" and "verify" have the same meanings as they do when applied to a written signature on a paper Form W-4. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the employee's Form W-4 submission.

(iv) *Copies of electronic Forms W-4*. Upon request by the Internal Revenue Service, the employer must supply a hardcopy of the electronic Form W-4 and a statement that, to the best of the employer's knowledge, the electronic Form W-4 was filed by the named employee. The hardcopy of the electronic Form W-4 must provide exactly the same information as, but need not be a facsimile of, the paper Form W-4.

(3) *Effective date*—(i) *In general*. This paragraph applies to all withholding exemption certificates filed electronically by employees on or after January 2, 1997.

(ii) *Special rule for certain Forms W-4*. In the case of an electronic system that precludes the filing of Forms W-4 required on commencement of employment and Forms W-4 claiming more than 10 withholding exemptions or exemption from withholding, the requirements of paragraph (c)(2)(iii) of this section will be treated as satisfied if the Form W-4 is filed electronically before January 1, 1999.

[T.D. 7423, 41 FR 26217, June 25, 1976, as amended by T.D. 7915, 48 FR 44074, Sept. 27, 1983; T.D. 8706, 62 FR 24, Jan. 2, 1997; T.D. 9196, 70 FR 19696, Apr. 14, 2005; T.D. 9337, 72 FR 38483, July 13, 2007]

§ 31.3402(f)(6)-1 Withholding exemptions for nonresident alien individuals.

A nonresident alien individual (other than, in regard to wages paid after February 28, 1979, a nonresident alien individual treated as a resident under section 6013(g) or (h)) subject to withholding under section 3402 is on any 1 day entitled under section 3402(f)(1) and § 31.3402(f)(1)-1 to the number of withholding exemptions corresponding to the number of personal exemptions to which he is entitled on such day by reason of the application of section 873(b)(3) or section 876, whichever applies. Thus, a nonresident alien individual who is not a resident of Canada or Mexico and who is not a resident of Puerto Rico during the entire taxable year, is allowed under section 3402(f)(1) only one withholding exemption.

[T.D. 6908, 31 FR 16776, Dec. 31, 1966, as amended by T.D. 7670, 45 FR 6932, Jan. 31, 1980]

§ 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*—(i) *Supplemental 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 payroll 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, nonqualified 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-