

to take into account under § 31.3402(m)-1 for the calendar year for which the withholding allowance certificate is in effect;

(vi) The basic standard deduction (as defined in section 63(c)(2)) relating to the filing status the employee reasonably expects to claim on the employee's income tax return for the calendar year for which the withholding allowance certificate is in effect; and

(vii) Any adjustment resulting from multiple withholding allowance certificates the employee, the employee's spouse, or both have or reasonably expect to have in effect with respect to one or more employers, determined based on the instructions to the withholding allowance certificate and other guidance for the calendar year for which the withholding allowance certificate is in effect.

(c) *Applicability date.* The provisions of this section apply on and after October 6, 2020. Taxpayers may choose to apply this section on or after January 1, 2020 and before October 6, 2020. For rules that apply before October 6, 2020, see 26 CFR part 31, revised as of April 1, 2020.

[T.D. 9924, 85 FR 63027, Oct. 6, 2020]

§ 31.3402(f)(2)-1 Furnishing of withholding allowance certificates.

(a) *On commencement of employment.*

(1) On or before the date on which an individual commences employment with an employer, the individual must furnish the employer with a signed withholding allowance certificate (see § 31.3402(f)(5)-1) relating to the filing status the employee reasonably expects to claim under § 31.3402(l)-1(b) for the calendar year for which the withholding allowance certificate is in effect and the withholding allowance under § 31.3402(f)(1)-1(b) that the employee claims.

(2) In no event may the withholding allowance exceed the withholding allowance that the employee is entitled to as determined based on the employee's reasonable expectations and the instructions set forth in forms, instructions, publications, and other guidance prescribed by the Commissioner.

(3) The employee may claim exemption from withholding if the certifications described in section 3402(n) and

§ 31.3402(n)-1(a)(1) and (2) are true with respect to the employee.

(4) If an employee has no valid withholding allowance certificate in effect with the employer at the time of the payment of the wages, and fails to furnish a valid withholding allowance certificate to the employer, the employee will be treated as single but having the withholding allowance provided in forms, instructions, publications, and other guidance prescribed by the Commissioner.

(b) *Change of status that affects calendar year—(1) General rule.* If, on any day during the calendar year, the employee experiences a change of status that reduces the employee's withholding allowance or withholding allowances, in the manner described in paragraph (b)(2) of this section, the employee must, within 10 days after the change occurs, furnish the employer with a new withholding allowance certificate claiming the withholding allowance to which the employee is entitled under § 31.3402(f)(1)-1(b), unless paragraph (b)(3) of this section applies to the employee.

(2) *Changes of status.* A change of status occurs if any of the following changes occur on any day during the calendar year:

(i) The employee's filing status changes in the manner described in § 31.3402(l)-1(c).

(ii) The employee no longer has only one withholding allowance certificate in effect for the employee, the employee's spouse, or both, and the employee or the employee's spouse selects higher withholding rate tables on the additional withholding allowance certificate, but higher withholding rate tables are not selected on any previously furnished withholding allowance certificate.

(iii) The employee has multiple withholding allowance certificates in effect on which higher withholding rate tables are not selected, and the employee or the employee's spouse reasonably expects an increase in regular wages for the calendar year (as defined in § 31.3402(g)-1(a)(1)(ii)) in excess of \$10,000.

(iv) The employee has included on a valid withholding allowance certificate

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the child tax credit allowed under section 24(a) but reasonably expects the number of individuals who satisfy the definition of “qualifying child” as defined in section 24(c) who will be reported on the employee’s income tax return for the year for which tax is being withheld to be less than the number taken into account in completing the withholding allowance certificate.

(v) The employee has included on a valid withholding allowance certificate a tax credit allowed under section 24(a) or other tax credits allowed under § 31.3402(m)-1 but reasonably expects the employee’s tax credits that will be reported on the employee’s income tax return for the year for which tax is being withheld to decrease by more than \$500 from the amount taken into account in completing the withholding allowance certificate.

(vi) The employee has included on a valid withholding allowance certificate deductions allowed under § 31.3402(m)-1 but reasonably expects the employee’s included income tax deductions that will be reported on the employee’s income tax return for the year for which tax is being withheld to decrease by more than \$2,300 from the amount taken into account in completing the withholding allowance certificate.

(vii) It is no longer reasonable for an employee who has furnished the employer with a withholding allowance certificate which relies upon the certifications described in § 31.3402(n)-1(a) to anticipate that the employee will incur no liability for income tax imposed under subtitle A of the Code for the current or previous taxable year.

(3) *Exception.* If one or more of the changes described in paragraph (b)(2) of this section occurs, but the total effect of the changes together with any other changes affecting the employee’s anticipated tax liability under subtitle A is not anticipated to result in an amount of tax to be deducted and withheld from the employee’s wages under section 3402 for the year that is less than the employee’s anticipated tax liability under subtitle A, the employee is not required to furnish a new withholding allowance certificate.

(c) *Increase in withholding allowance.* If, on any day during the calendar year, the employee experiences a

change of status that increases the employee’s withholding allowance, the employee may furnish the employer with a new withholding allowance certificate claiming the withholding allowance the employee is entitled to under § 31.3402(f)(1)-1(b).

(d) *Exemption from withholding.* If, on any day during the calendar year, the certifications described in section 3402(n) and § 31.3402(n)-1(a)(1) and (2) are true with respect to an employee, the employee may furnish the employer with a withholding allowance certificate claiming exemption from withholding in the manner described in forms, instructions, publications, and other guidance prescribed by the Commissioner.

(e) *Change of status which affects next calendar year—(1) General rule.* If, on any day during the calendar year, the withholding allowance to which the employee will be, or may reasonably be expected to be, entitled under § 31.3402(f)(1)-1(b) for the next calendar year, but not for the current calendar year, decreases in the manner prescribed in paragraph (b)(2) of this section, the employee must furnish a new withholding allowance certificate claiming the withholding allowance the employee is entitled to under § 31.3402(f)(1)-1(b) to take effect in the next calendar year by the later of December 1 of the calendar year of the year in which the change occurs or within 10 days after the change occurs, unless paragraph (e)(2) of this section applies to the employee.

(2) *Exception.* If one or more of the changes in paragraph (b)(2) of this section occurs, but the total effect of the changes together with any other changes affecting the employee’s anticipated tax liability under subtitle A is not anticipated to result in an amount of tax to be deducted and withheld from the employee’s wages under section 3402 for the employee’s next year that is less than the employee’s anticipated tax liability under subtitle A, the employee is not required to furnish a new withholding allowance certificate.

(f) *Special rules—(1) Employer requests.* Before December 1 of each year, every

employer should request each employee to furnish a new withholding allowance certificate for the next calendar year, in the event of a change to the employee's withholding allowance.

(2) *Social security account numbers.* Every individual to whom a social security number has been assigned must include such number on any withholding allowance certificate furnished to an employer. An employee may not use a truncated social security number (see §301.6109-4 of this chapter) in completing the withholding allowance certificate. For provisions relating to the obtaining of an account number from the Social Security Administration, see §31.6011(b)-2.

(3) *Invalid withholding allowance certificates—(i) General rule.* Any alteration or unauthorized addition to a withholding allowance certificate causes such certificate to be invalid; see §31.3402(f)(5)-1(b) for the definitions of alteration and unauthorized addition. Any withholding allowance certificate which the employee clearly indicates to be false by an oral statement or by a written statement (other than one made on the withholding allowance certificate itself) made by the employee to the employer on or before the date on which the employee furnishes such certificate is also invalid. For purposes of the preceding sentence, the term "employer" includes any individual authorized by the employer either to receive withholding allowance certificates, to make withholding computations, or to make payroll distributions.

(ii) *Employer disregard of invalid withholding allowance certificate.* If an employer receives an invalid withholding allowance certificate, the employer must disregard it for purposes of computing withholding. The employer must inform the employee who furnished the certificate that it is invalid and must request another withholding allowance certificate from the employee. If the employee who furnished the invalid certificate fails to comply with the employer's request, the employer must treat the employee as single but having the withholding allowance provided by the forms, instructions, publications, and other guidance prescribed by the Commissioner. If,

however, a prior certificate is in effect with respect to the employee, the employer must continue to withhold in accordance with the prior certificate.

(g) *Submission of certain withholding allowance certificates and notice of maximum withholding allowance permitted—*

(1) *Submission of certain withholding allowance certificates—(i) In general.* An employer must submit to the Internal Revenue Service (IRS) a copy of any currently effective withholding allowance certificate as directed in a written notice to the employer from the IRS or as directed in published guidance.

(A) *Notice to submit withholding allowance certificates.* A notice to the employer to submit withholding allowance certificates may relate either to one or more named employees, to one or more reasonably segregable units of the employer, or to withholding allowance certificates under certain specified criteria. The notice will designate the IRS office to which the copies of the withholding allowance certificates must be submitted. Alternatively, upon notice from the IRS, the employer must make available for inspection by an IRS employee withholding allowance certificates received from one or more named employees, from one or more reasonably segregable units of the employer, or from employees who have furnished withholding allowance certificates under certain specified criteria.

(B) *Published guidance.* Employers may also be required to submit copies of withholding allowance certificates under certain specified criteria when directed to do so by the IRS in published guidance in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter).

(ii) *Withholding after submission of withholding allowance certificate.* After a copy of a withholding allowance certificate has been submitted to the IRS under this paragraph (g)(1), the employer must withhold tax on the basis of the withholding allowance certificate, if the withholding allowance certificate meets the requirements of §31.3402(f)(5)-1. However, the employer may not withhold on the basis of the withholding allowance certificate if the certificate must be disregarded

based on a notice of the maximum withholding allowance permitted under the provisions of paragraph (g)(2) of this section.

(2) *Notice of the maximum withholding allowance permitted*—(i) *Notice to employer*. The IRS may notify the employer in writing that the employee is not entitled to claim a complete exemption from withholding or more than the maximum withholding allowance specified by the IRS in the written notice. The notice will also specify the applicable filing status for purposes of calculating the required amount of withholding. The notice will specify the IRS office to be contacted for further information. The notice of maximum withholding allowance permitted may be issued if—

(A) The IRS determines that a copy of a withholding allowance certificate submitted under paragraph (g)(1) of this section or otherwise provided to the IRS includes a materially incorrect statement or determines, after a request to the employee for verification of the statements on the certificate, that the IRS lacks sufficient information to determine if the certificate is correct; or

(B) The IRS otherwise determines that the employee is not entitled to claim a complete exemption from withholding and is not entitled to claim more than a specified number of withholding exemptions, withholding allowances, or a specified withholding allowance.

(ii) *Notice to employee*. If the IRS provides a notice to the employer under this paragraph (g)(2), the IRS will also provide the employer with a similar notice for the employee (employee notice) that identifies the maximum withholding allowance permitted and specifies the filing status to be used for calculating the required amount of withholding for the employee. The employee notice will indicate the process by which the employee can provide additional information to the IRS for purposes of determining the appropriate withholding allowance and/or modifying the specified filing status. The IRS will also mail a similar notice to the employee's last known address. For further guidance regarding the definition of last known address, see

§ 301.6212-2 of this chapter. If the IRS is unable to determine a last known address for the employee, the IRS will use other available information as appropriate to mail the notice to the employee.

(iii) *Requirement to furnish*. If the employee is employed by the employer as of the date of the notice, the employer must furnish the employee notice to the employee within 10 business days of receipt. The employer may follow any reasonable business practice to furnish the copy of the notice to the employee. For purposes of this paragraph (g)(2)(iii), the determination of whether an employee is employed as of the date of the notice is based on all the facts and circumstances, including whether the employer has treated the employment relationship as terminated for other purposes. An employee who is not performing services for the employer as of the date of the notice is employed by the employer as of the date of the notice for purposes of this paragraph (g)(2)(iii) if—

(A) The employer pays wages with respect to prior employment to the employee subject to income tax withholding on or after the date specified in the notice;

(B) The employer reasonably expects the employee to resume the performance of services for the employer within twelve months of the date of the notice; or

(C) The employee is on a bona fide leave of absence and either the period of such leave does not exceed twelve months or the employee retains a right to reemployment with the employer under an applicable statute or by contract.

(iv) *Requirement to withhold based on the notice*. If the employer is required to furnish the employee notice to the employee under paragraph (g)(2)(iii) of this section, then the employer must withhold tax on the basis of the maximum withholding allowance and the filing status specified in the notice for any wages paid after the date specified in the notice, except as provided in paragraphs (g)(2)(v) through (ix) of this section. The employer must withhold tax in accordance with the notice as of the date specified in the notice, which shall be no earlier than 45 calendar

days after the date of the notice. If the notice was provided to the employer based on computational procedures applicable to a withholding allowance certificate that was in effect on December 31, 2019 or earlier, the employer may comply with the requirement in this paragraph (g)(2)(iv) to withhold on the basis of the notice by implementing the maximum withholding allowance and filing status permitted by using the computational bridge entries as set forth in forms, instructions, publications, and other guidance prescribed by the Commissioner to calculate withholding for a withholding allowance certificate that was in effect on December 31, 2019 or earlier.

(v) *Employment resumes after twelve months.* If the employer is required to furnish the employee notice to the employee only pursuant to paragraph (g)(2)(iii)(B) of this section and the employee resumes the performance of services for the employer more than 12 months after the date of the notice, then the employer is not required to withhold based on the notice.

(vi) *Requirement to withhold based on an existing Form W-4.* If a withholding allowance certificate is in effect with respect to the employee before the employer receives a notice of the maximum withholding allowance permitted under this paragraph (g)(2), the employer must continue to withhold tax in accordance with the existing withholding allowance certificate, rather than on the basis of the notice, if the existing withholding allowance certificate does not claim complete exemption from withholding and claims a filing status, a withholding allowance, and any additional amount under § 31.3402(i)-1(a)(1) and (2) that results in more withholding than would result from applying the filing status and withholding allowance specified in the notice.

(vii) *Modification notice.* After issuing the notice specifying the maximum withholding allowance permitted and the filing status, the IRS may issue a subsequent notice to the employer and the employee that modifies the original notice (modification notice). The modification notice may change the filing status and/or the withholding allowance permitted. The employer must

withhold based on the modification notice as of the date specified in the modification notice. If the modification notice was provided to the employer based on computational procedures applicable to a withholding allowance certificate that was in effect on December 31, 2019 or earlier, the employer may comply with the requirement in this paragraph (g)(2)(vii) to withhold on the basis of the modification notice by implementing the maximum withholding allowance and filing status permitted by using the optional computational bridge entries as set forth in forms, instructions, publications, and other guidance prescribed by the Commissioner to calculate withholding for a withholding allowance certificate that was in effect on December 31, 2019 or earlier.

(viii) *Requirement to withhold after termination of employment.* If the employee is employed as of the date of the notice under paragraph (g)(2)(iii) of this section but the employer or employee terminates the employment relationship after the date of the notice, the employer must continue to withhold based on the maximum withholding allowance and the filing status specified in the notice or a modification notice if any wages subject to income tax withholding are paid with respect to the prior employment after such date. Furthermore, the employer must withhold based on the notice or modification notice if the employee resumes an employment relationship with the employer within 12 months after the termination of the employment relationship. Whether the employment relationship is terminated is based on all the facts and circumstances.

(ix) *Requirement to withhold based on new Form W-4.* The employee may furnish a new withholding allowance certificate after the employer receives a notice or modification notice from the IRS of the maximum withholding allowance permitted under this paragraph (g)(2).

(A) *Employee requests more withholding.* If the employee furnishes a new withholding allowance certificate after the employer receives the notice or modification notice, the employer must withhold tax on the basis of that

new certificate only if the new certificate does not claim complete exemption from withholding and claims a filing status, a withholding allowance, and any additional amount under § 31.3402(i)-1(a)(1) and (2) that results in more withholding than would result under the notice or modification notice.

(B) *Employee requests less withholding.* If the employee furnishes a new withholding allowance certificate after the employer receives the notice or modification notice, the employer must disregard the new certificate and withhold on the basis of the notice or modification notice if the employee claims complete exemption from withholding or claims a filing status, a withholding allowance, and any additional amount under § 31.3402(i)-1(a)(1) and (2) that results in less withholding than would result under the notice or modification notice. If the employee wants to put a new certificate into effect that results in less withholding than that required under the notice or modification notice, the employee must contact the IRS. The employer must withhold on the basis of the notice or modification notice unless the IRS subsequently notifies the employer to withhold based on the new certificate.

(3) *Definition of employer.* For purposes of this paragraph (g), the term “employer” includes any person authorized by the employer to receive withholding allowance certificates, to make withholding computations, or to make payroll distributions.

(4) *Examples.* The following examples illustrate the rules of this section.

(i) *Example 1.* Employer U receives a notice from the IRS that identifies the maximum withholding allowance permitted and specifies the filing status for Employee A. Employee A is not currently performing any services for Employer U. However, Employer U is continuing to make certain wage payments to Employee A. Employer U must furnish the employee notice to Employee A within 10 business days of receipt and must withhold based on the notice on any wages paid to Employee A on or after the date specified in the notice.

(ii) *Example 2.* Employer V receives a notice in October of Year 1 from the IRS that identifies the maximum withholding allowance permitted and specifies the filing status for Employee B. Employee B has not performed services for Employer V since August

of Year 1. However, since Employee B has performed services for Employer V for several years on a seasonal basis, Employer V reasonably expects Employee B to resume the performance of services for Employer V in June of Year 2, a date that is within 12 months of the date of the notice. Employer V is required to furnish the notice to Employee B within 10 business days of receipt. Employee B does not resume the performance of services with Employer V until June of Year 3. Employer V is not required to withhold based on the notice.

(iii) *Example 3.* Employer W receives a notice from the IRS that identifies the maximum withholding allowance permitted and specifies the filing status for Employee C. Employee C began a 4-month unpaid maternity leave of absence three weeks before Employer W received the notice. Employer W must furnish the employee notice to Employee C within 10 business days of receipt. When her maternity leave ends and Employee C resumes performing services for Employer W, Employer W must withhold based on the notice.

(iv) *Example 4.* Employer X receives a notice from the IRS in Year 1 that identifies the maximum withholding allowance permitted and specifies the filing status for Employee D. Employer X must furnish the employee notice to Employee D within 10 business days of receipt and withhold based on the notice. In Year 2, Employee D terminates the employment relationship. Employee D applies for a different position with Employer X and resumes employment 10 months after having left her previous position with Employer X. Since Employer X rehired Employee D within 12 months after the termination of employment, Employer X must withhold based on the notice.

(v) *Example 5.* Employer Y receives a notice from the IRS that identifies the maximum withholding allowance permitted and specifies the filing status for Employee E. Employer Y must furnish the employee notice to Employee E within 10 business days of receipt. After receipt of this notice, Employee E contacts the IRS and establishes that the employee is entitled to claim a modified filing status and withholding allowance. Employer Y receives a modification notice from the IRS that changes the maximum withholding allowance permitted for Employee E. Employer Y must withhold tax based on the modification notice as of the date specified in such notice.

(vi) *Example 6.* Employer Z pays remuneration to Employee F, a United States citizen, for services performed in Country M. Employer Z receives a notice from the IRS in Year 1 that identifies the maximum withholding allowance permitted and specifies the filing status for Employee F. Employer Z must furnish the employee notice to Employee F within 10 business days of receipt.

Employer Z reasonably believes all the remuneration paid to Employee F in Year 1 is excluded from Employee F's gross income under section 911. Since section 3401(a)(8)(B) excludes such remuneration from wages for income tax withholding purposes, Employer X does not have to withhold on such remuneration, notwithstanding the maximum withholding allowance permitted and filing status specified in the notice. In Year 2, Employee F returns to the United States to perform services. Employer Z does not reasonably believe any part of Employee F's remuneration paid in Year 2 is excluded from Employee F's gross income under section 911. Rather, Employer Z reasonably believes that remuneration paid to Employee F in Year 2 is subject to income tax withholding. Employer Z must withhold on the remuneration paid to Employee F in Year 2 based on the notice.

(h) *Applicability date.* The provisions of paragraph (g) of this section apply on February 13, 2020. Taxpayers may choose to apply paragraph (g) of this section on or after January 1, 2020 and before February 13, 2020. For rules that apply under paragraph (g) of this section before February 13, 2020, see 26 CFR part 31, revised as of April 1, 2020. The provisions of paragraphs (a) through (f) of this section apply on and after October 6, 2020. Taxpayers may choose to apply the provisions of paragraph (a) through (f) of this section on or after January 1, 2020 and before October 6, 2020. For rules that apply before October 6, 2020, see 26 CFR part 31, revised as of April 1, 2020.

[T.D. 9924, 85 FR 63028, Oct. 6, 2020]

§ 31.3402(f)(3)-1 When withholding allowance certificate takes effect.

(a) *No withholding allowance certificate on file.* A withholding allowance certificate furnished to the employer in any case in which no previous withholding allowance certificate is in effect with such employer, takes effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

(b) *Withholding allowance certificate on file.* Except as provided in paragraph (c) of this section, a withholding allowance certificate furnished to the employer in any case in which a previous withholding allowance certificate is in effect with such employer takes effect

as of the beginning of the first payroll period ending (or the first payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such certificate is so furnished. However, the employer may elect to put a withholding allowance certificate into effect earlier, beginning with any payment of wages on or after the day on which the certificate is so furnished.

(c) *Withholding allowance certificate furnished to take effect in next calendar year.* A withholding allowance certificate furnished to the employer pursuant to section 3402(f)(2)(C) (see § 31.3402(f)(2)-1(e) or § 31.3402(1)-1(c)) which effects a change for the next calendar year, does not take effect, and may not be made effective, with respect to the calendar year in which the certificate is furnished.

(d) *Applicability date.* The provisions of this section apply on and after October 6, 2020. Taxpayers may choose to apply this section on or after January 1, 2020 and before October 6, 2020. For rules that apply before October 6, 2020, see 26 CFR part 31, revised as of April 1, 2020.

[T.D. 9924, 85 FR 63031, Oct. 6, 2020]

§ 31.3402(f)(4)-1 Effective period of a withholding allowance certificate.

(a) *In general.* Except as provided in paragraph (b) of this section and § 31.3402(f)(2)-1(g)(2), a withholding allowance certificate that takes effect under section 3402(f) of the Internal Revenue Code of 1986 continues in effect with respect to the employee until another withholding allowance certificate takes effect under section 3402(f). An employer's use of computational bridge entries as set forth in forms, instructions, publications, and other guidance prescribed by the Commissioner to calculate withholding for a withholding allowance certificate that was in effect on December 31, 2019 or earlier continues in effect an employee's withholding allowance certificate under this paragraph (a).

(b) *Certifications under section 3402(n) eliminating requirement of withholding.* The certifications described in § 31.3402(n)-1(a) made by an employee