

Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe.

(iii) Employer may deduct the expenses for lodging the players and coaches at the hotel as ordinary and necessary business expenses under section 162(a).

**Example 4.** (i) Employer hires Employee, who currently resides 500 miles from Employer's business premises. Employer pays for temporary lodging for Employee near Employer's business premises while Employee searches for a residence.

(ii) Employer is paying the temporary lodging expense primarily to provide a personal benefit to Employee by providing housing while Employee searches for a residence. Employer incurs the expense only as additional compensation and not for a noncompensatory business purpose. If Employee paid the temporary lodging expense, the expense would not be an ordinary and necessary employee business expense under section 162(a) because the lodging primarily provides a personal benefit to Employee. Therefore, the value of the lodging is includible in Employee's gross income as additional compensation.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a) and § 1.162-25T.

**Example 5.** (i) Employee normally travels two hours each way between her home and her office. Employee is working on a project that requires Employee to work late hours. In order to maximize Employee's availability to work on the project, Employer provides Employee with lodging at a hotel near the office.

(ii) Employer is paying the temporary lodging expense primarily to provide a personal benefit to Employee by relieving her of the daily commute to her residence. Employer incurs the expense only as additional compensation and not for a noncompensatory business purpose. If Employee paid the temporary lodging expense, the expense would not be an ordinary and necessary business expense under section 162(a) because the lodging primarily provides a personal benefit to Employee. Therefore, the value of the lodging is includible in Employee's gross income as additional compensation.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a) and § 1.162-25T.

**Example 6.** (i) Employer requires an employee to be "on duty" each night to respond quickly to emergencies that may occur outside of normal working hours. Employees who work daytime hours each serve a "duty shift" once each month in addition to their normal work schedule. Emergencies that require the duty shift employee to respond occur regularly. Employer has no sleeping facilities on its business premises and pays for a hotel room nearby where the duty shift employee stays until called to respond to an emergency.

(ii) Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not providing the lodging to duty shift employees primarily to

provide a social or personal benefit to the employees. If the employees had paid for their lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a).

(d) *Effective/applicability date.* This section applies to expenses paid or incurred on or after the date these regulations are published as final regulations in the **Federal Register**. However, until these proposed regulations are published as final regulations in the **Federal Register**, taxpayers may apply the proposed regulations to local lodging expenses that are paid or incurred in taxable years for which the period of limitation on credit or refund under section 6511 has not expired.

**Par. 3.** In § 1.262-1, paragraph (b)(5) is amended to read as follows:

**§ 1.262-1 Personal, living, and family expenses.**

\* \* \* \* \*

(b) \* \* \*

(5) Expenses incurred in traveling away from home (which include transportation expenses, meals, and lodging) and any other transportation expenses are not deductible unless they qualify as expenses deductible under section 162 (relating to trade or business expenses), section 170 (relating to charitable contributions), section 212 (relating to expenses for production of income), section 213 (relating to medical expenses), or section 217 (relating to moving expenses), and the regulations under those sections. The taxpayer's costs of commuting to his place of business or employment are personal expenses and do not qualify as deductible expenses. For expenses paid or incurred before the date these regulations are published as final regulations in the **Federal Register**, a taxpayer's expenses for lodging when not traveling away from home (local lodging) are nondeductible personal expenses. For expenses paid or incurred on or after the date these regulations are published as final regulations in the **Federal Register**, a taxpayer's expenses for local lodging are personal expenses and are not deductible unless they qualify as deductible expenses under section 162. However, until these regulations are published as final regulations in the **Federal Register**, taxpayers may deduct local lodging expenses that qualify under section 162 and are paid or incurred in taxable years for which the period of limitation on credit or refund under section 6511 has not expired. Except as permitted under section 162 or 212, the costs of a

taxpayer's meals not incurred in traveling away from home are nondeductible personal expenses.

\* \* \* \* \*

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2012-9885 Filed 4-24-12; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 31

[REG-151687-10]

RIN 1545-BJ98

#### Withholding on Payments by Government Entities to Persons Providing Property or Services

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** This document withdraws a notice of proposed rulemaking relating to withholding by government entities on payments to persons providing property or services. The proposed regulations are withdrawn because Public Law 112-56, "The 3% Withholding Repeal and Job Creation Act," repealed the provision of the Internal Revenue Code underlying the proposed rules. The guidance affects government entities that would have been required to withhold and report tax from payments to persons providing property or services and also affects the persons receiving payments for property or services from these government entities.

**FOR FURTHER INFORMATION CONTACT:** A.G. Kelley, (202) 622-6040 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 3402(t) of the Internal Revenue Code (Code) was added by section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109-222 (TIPRA), 120 Stat. 345, which was enacted on May 17, 2006.

Section 102 of the 3% Withholding Repeal and Job Creation Act (Pub. L. 112-56, 125 Stat. 711), which was enacted on November 21, 2011, repealed section 3402(t) of the Code.

The Treasury Department and the IRS issued proposed regulations under section 3402(t), published in the

**Federal Register** on May 9, 2011 (REG-151687-10, 76 FR 26678, 2011-23 IRB 867). This document withdraws those proposed regulations in light of the repeal of section 3402(t).

At the same time as the issuance of the proposed regulations, the Treasury Department and the IRS issued final regulations under sections 3402(t), 3406, 6011, 6051, 6071, and 6302 of the Code that were published in the **Federal Register** on May 9, 2011 (TD 9524, 76 FR 26583, 2011-23 IRB 843). A related document (TD 9586, REG-148417-11) removes the final regulations under section 3402(t) and makes conforming amendments to the regulations under other sections reflecting that removal.

#### List of Subjects in 26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

#### Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-151687-10) that was published in the **Federal Register** on May 9, 2011 (76 FR 26678) is withdrawn.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

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BILLING CODE 4830-01-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 934

[SATS No. ND-053-FOR; Docket ID OSM-2012-0006]

#### North Dakota Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the “North Dakota program”) under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA” or “the Act”). North Dakota proposes changes to the North Dakota Administrative Code to address letter of credit provisions in the collateral bond

rule under Administrative Code Section 69-5.2-12-04. The changes involve the financial information and notices that banks issuing a letter of credit must provide to the North Dakota Public Service Commission (hereinafter, the “Commission”).

This document gives the times and locations that the North Dakota program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., m.d.t. May 25, 2012. If requested, we will hold a public hearing on the amendment on May 21, 2012. We will accept requests to speak until 4 p.m., m.d.t. on May 10, 2012.

**ADDRESSES:** You may submit comments by either of the following two methods:

Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). This proposed rule has been assigned Docket ID: OSM-2012-0006. If you would like to submit comments through the Federal eRulemaking Portal, go to [www.regulations.gov](http://www.regulations.gov) and follow the instructions.

• Mail/Hand Delivery/Courier: Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601-1018.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the “III. Public Comment Procedures” in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at [www.regulations.gov](http://www.regulations.gov), you may review copies of the North Dakota program, this amendment, a listing of any public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM’s Casper Field Office.

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, PO Box 11018, 150 East B Street, Casper, Wyoming 82601-1018, (307) 261-6555, [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov).

James Deutsch, Director, Reclamation Division, North Dakota Public Service

Commission, 600 East Boulevard, Dept. 408, Bismarck, North Dakota 58505-0480, (701) 328-2251, [jdeutsch@nd.gov](mailto:jdeutsch@nd.gov).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Fleischman, Telephone: (307) 261-6555. Internet: [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov).

#### SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program  
II. Description of the Proposed Amendment  
III. Public Comment Procedures  
IV. Procedural Determinations

#### I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary’s findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980 **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota’s program and program amendments at 30 CFR 934.15 and 934.30.

#### II. Description of the Proposed Amendment

By letter dated February 2, 2012, North Dakota sent us a proposed amendment to its program (Administrative Record Document ID No. OSM-2012-0006-0002) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment to include changes made at its own initiative to the North Dakota Administrative Code (NDAC). The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, North Dakota proposes to change letter of credit provisions in the collateral bond rule under NDAC 69-5.2-12-04. The financial information that banks issuing a letter of credit must provide to the Commission is specifically addressed. An option is being added to let banks provide a certified copy of financial reports that