

usual common law rules applicable in determining the employer-employee relationship, as an employee or as an independent contractor (or other individual who is not an employee).

“(d) EXCEPTION.—This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.”

[Section 1706(b) of Pub. L. 99-514 provided that: “The amendment made by this section [amending note above] shall apply to remuneration paid and services rendered after December 31, 1986.”]

CROSS REFERENCES

Effective date of this subtitle, see section 7851 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 41, 275, 3402, 3507, 3509, 4999, 6014, 6051, 6053, 6103, 6331 of this title.

§ 3402. Income tax collected at source

(a) Requirement of withholding

(1) In general

Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures prescribed under this paragraph shall—

(A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and

(B) be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter 1 applicable to such periods.

(2) Amount of wages

For purposes of applying tables or procedures prescribed under paragraph (1), the term “the amount of wages” means the amount by which the wages exceed the number of withholding exemptions claimed multiplied by the amount of one such exemption. The amount of each withholding exemption shall be equal to the amount of one personal exemption provided in section 151(b), prorated to the payroll period. The maximum number of withholding exemptions permitted shall be calculated in accordance with regulations prescribed by the Secretary under this section, taking into account any reduction in withholding to which an employee is entitled under this section.

(b) Percentage method of withholding

(1) If wages are paid with respect to a period which is not a payroll period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(2) In any case in which wages are paid by an employer without regard to any payroll period

or other period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(3) In any case in which the period, or the time described in paragraph (2), in respect of any wages is less than one week, the Secretary, under regulations prescribed by him, may authorize an employer to compute the tax to be deducted and withheld as if the aggregate of the wages paid to the employee during the calendar week were paid for a weekly payroll period.

(4) In determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

(c) Wage bracket withholding

(1) At the election of the employer with respect to any employee, the employer shall deduct and withhold upon the wages paid to such employee a tax (in lieu of the tax required to be deducted and withheld under subsection (a)) determined in accordance with tables prescribed by the Secretary in accordance with paragraph (6).

(2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(4) In any case in which the period, or the time described in paragraph (3), in respect of any wages is less than one week, the Secretary, under regulations prescribed by him, may authorize an employer to determine the amount to be deducted and withheld under the tables applicable in the case of a weekly payroll period, in which case the aggregate of the wages paid to the employee during the calendar week shall be considered the weekly wages.

(5) If the wages exceed the highest wage bracket, in determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

(6) In the case of wages paid after December 31, 1969, the amount deducted and withheld under

paragraph (1) shall be determined in accordance with tables prescribed by the Secretary. In the tables so prescribed, the amounts set forth as amounts of wages and amounts of income tax to be deducted and withheld shall be computed on the basis of the table for an annual payroll period prescribed pursuant to subsection (a).

(d) Tax paid by recipient

If the employer, in violation of the provisions of this chapter, fails to deduct and withhold the tax under this chapter, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(e) Included and excluded wages

If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

(f) Withholding exemptions

(1) In general

An employee receiving wages shall on any day be entitled to the following withholding exemptions:

(A) an exemption for himself unless he is an individual described in section 151(d)(2);

(B) if the employee is married, any exemption to which his spouse is entitled, or would be entitled if such spouse were an employee receiving wages, under subparagraph (A) or (D), but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption;

(C) an exemption for each individual with respect to whom, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(c) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(D) any allowance to which he is entitled under subsection (m), but only if his spouse does not have in effect a withholding exemption certificate claiming such allowance; and

(E) a standard deduction allowance which shall be an amount equal to one exemption (or more than one exemption if so prescribed by the Secretary) unless (i) he is married (as determined under section 7703) and his spouse is an employee receiving wages subject to withholding or (ii) he has withholding exemption certificates in effect with respect to more than one employer.

For purposes of this title, any standard deduction allowance under subparagraph (E) shall be treated as if it were denominated a withholding exemption.

(2) Exemption certificates

(A) On commencement of employment

On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled.

(B) Change of status

If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall within 10 days thereafter furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day. If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is greater than the number of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day.

(C) Change of status which affects next calendar year

If on any day during the calendar year the number of withholding exemptions to which the employee will be, or may reasonably be expected to be, entitled at the beginning of his next taxable year under subtitle A is different from the number to which the employee is entitled on such day, the employee shall, in such cases and at such times as the Secretary may by regulations prescribe, furnish the employer with a withholding exemption certificate relating to the number of withholding exemptions which he claims with respect to such next taxable year, which shall in no event exceed the number to which he will be, or may reasonably be expected to be, so entitled.

(3) When certificate takes effect

(A) First certificate furnished

A withholding exemption certificate furnished the employer in cases in which no previous such certificate is in effect shall take 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) Furnished to take place of existing certificate**(i) In general**

Except as provided in clauses (ii) and (iii), a withholding exemption certificate furnished to the employer in cases in which a previous such certificate is in effect shall take effect as of the beginning of the 1st payroll period ending (or the 1st 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.

(ii) Employer may elect earlier effective date

At the election of the employer, a certificate described in clause (i) may be made effective beginning with any payment of wages made on or after the day on which the certificate is so furnished and before the 30th day referred to in clause (i).

(iii) Change of status which affects next year

Any certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished.

(4) Period during which certificate remains in effect

A withholding exemption certificate which takes effect under this subsection, or which on December 31, 1954, was in effect under the corresponding subsection of prior law, shall continue in effect with respect to the employer until another such certificate takes effect under this subsection.

(5) Form and contents of certificate

Withholding exemption certificates shall be in such form and contain such information as the Secretary may by regulations prescribe.

(6) Exemption of certain nonresident aliens

Notwithstanding the provisions of paragraph (1), a nonresident alien individual (other than an individual described in section 3401(a)(6)(A) or (B)) shall be entitled to only one withholding exemption.

(7) Exemption where certificate with another employer is in effect

If a withholding exemption certificate is in effect with respect to one employer, an employee shall not be entitled under a certificate in effect with any other employer to any withholding exemption which he has claimed under such first certificate.

(g) Overlapping pay periods, and payment by agent or fiduciary

If a payment of wages is made to an employee by an employer—

(1) with respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(2) without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(3) with respect to a period beginning in one and ending in another calendar year, or

(4) through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to such employee,

the manner of withholding and the amount to be deducted and withheld under this chapter shall be determined in accordance with regulations prescribed by the Secretary under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

(h) Alternative methods of computing amount to be withheld

The Secretary may, under regulations prescribed by him, authorize—

(1) Withholding on basis of average wages

An employer—

(A) to estimate the wages which will be paid to any employee in any quarter of the calendar year,

(B) to determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid, and

(C) to deduct and withhold upon any payment of wages to such employee during such quarter (and, in the case of tips referred to in subsection (k), within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount required to be deducted and withheld during such quarter without regard to this subsection.

(2) Withholding on basis of annualized wages

An employer to determine the amount of tax to be deducted and withheld upon a payment of wages to an employee for a payroll period by—

(A) multiplying the amount of an employee's wages for a payroll period by the number of such payroll periods in the calendar year,

(B) determining the amount of tax which would be required to be deducted and withheld upon the amount determined under subparagraph (A) if such amount constituted the actual wages for the calendar year and the payroll period of the employee were an annual payroll period, and

(C) dividing the amount of tax determined under subparagraph (B) by the number of payroll periods (described in subparagraph (A)) in the calendar year.

(3) Withholding on basis of cumulative wages

An employer, in the case of any employee who requests to have the amount of tax to be withheld from his wages computed on the basis of his cumulative wages, to—

(A) add the amount of the wages to be paid to the employee for the payroll period to the total amount of wages paid by the employer to the employee during the calendar year,

(B) divide the aggregate amount of wages computed under subparagraph (A) by the number of payroll periods to which such aggregate amount of wages relates,

(C) compute the total amount of tax that would have been required to be deducted and withheld under subsection (a) if the average amount of wages (as computed under subparagraph (B)) had been paid to the employee for the number of payroll periods to which the aggregate amount of wages (computed under subparagraph (A)) relates,

(D) determine the excess, if any, of the amount of tax computed under subparagraph (C) over the total amount of tax deducted and withheld by the employer from wages paid to the employee during the calendar year, and

(E) deduct and withhold upon the payment of wages (referred to in subparagraph (A)) to the employee an amount equal to the excess (if any) computed under subparagraph (D).

(4) Other methods

An employer to determine the amount of tax to be deducted and withheld upon the wages paid to an employee by any other method which will require the employer to deduct and withhold upon such wages substantially the same amount as would be required to be deducted and withheld by applying subsection (a) or (c), either with respect to a payroll period or with respect to the entire taxable year.

(i) Changes in withholding

(1) In general

The Secretary may by regulations provide for increases in the amount of withholding otherwise required under this section in cases where the employee requests such changes.

(2) Treatment as tax

Any increased withholding under paragraph (1) shall for all purposes be considered tax required to be deducted and withheld under this chapter.

(j) Noncash remuneration to retail commission salesman

In the case of remuneration paid in any medium other than cash for services performed by an individual as a retail salesman for a person, where the service performed by such individual for such person is ordinarily performed for remuneration solely by way of cash commission an employer shall not be required to deduct or withhold any tax under this subchapter with respect to such remuneration, provided that such employer files with the Secretary such information with respect to such remuneration as the Secretary may by regulation prescribe.

(k) Tips

In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that the tax can

be deducted and withheld by the employer, at or after the time such statement is so furnished and before the close of the calendar year in which such statement is furnished, from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer for the purpose of such deduction and withholding) as are under the control of the employer; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (16)(B) of section 3401(a) is applicable may deduct and withhold the tax with respect to such tips from any wages of the employee (excluding tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than \$20. Such tax shall not at any time be deducted and withheld in an amount which exceeds the aggregate of such wages and funds (including funds turned over under section 3102(c)(2) or section 3202(c)(2)) minus any tax required by section 3102(a) or section 3202(a) to be collected from such wages and funds.

(l) Determination and disclosure of marital status

(1) Determination of status by employer

For purposes of applying the tables in subsections (a) and (c) to a payment of wages, the employer shall treat the employee as a single person unless there is in effect with respect to such payment of wages a withholding exemption certificate furnished to the employer by the employee after the date of the enactment of this subsection indicating that the employee is married.

(2) Disclosure of status by employee

An employee shall be entitled to furnish the employer with a withholding exemption certificate indicating he is married only if, on the day of such furnishing, he is married (determined with the application of the rules in paragraph (3)). An employee whose marital status changes from married to single shall, at such time as the Secretary may by regulations prescribe, furnish the employer with a new withholding exemption certificate.

(3) Determination of marital status

For purposes of paragraph (2), an employee shall on any day be considered—

(A) as not married, if (i) he is legally separated from his spouse under a decree of divorce or separate maintenance, or (ii) either he or his spouse is, or on any preceding day within the calendar year was, a nonresident alien; or

(B) as married, if (i) his spouse (other than a spouse referred to in subparagraph (A)) died within the portion of his taxable year which precedes such day, or (ii) his spouse died during one of the two taxable years immediately preceding the current taxable year and, on the basis of facts existing at the beginning of such day, the employee reasonably expects, at the close of his taxable year,

to be a surviving spouse (as defined in section 2(a)).

(m) Withholding allowances

Under regulations prescribed by the Secretary, an employee shall be entitled to additional withholding allowances or additional reductions in withholding under this subsection. In determining the number of additional withholding allowances or the amount of additional reductions in withholding under this subsection, the employee may take into account (to the extent and in the manner provided by such regulations)—

(1) estimated itemized deductions allowable under chapter 1 (other than the deductions referred to in section 151 and other than the deductions required to be taken into account in determining adjusted gross income under section 62(a) (other than paragraph (10) thereof)),

(2) estimated tax credits allowable under chapter 1, and

(3) such additional deductions (including the additional standard deduction under section 63(c)(3) for the aged and blind) and other items as may be specified by the Secretary in regulations.

(n) Employees incurring no income tax liability

Notwithstanding any other provision of this section, an employer shall not be required to deduct and withhold any tax under this chapter upon a payment of wages to an employee if there is in effect with respect to such payment a withholding exemption certificate (in such form and containing such other information as the Secretary may prescribe) furnished to the employer by the employee certifying that the employee—

(1) incurred no liability for income tax imposed under subtitle A for his preceding taxable year, and

(2) anticipates that he will incur no liability for income tax imposed under subtitle A for his current taxable year.

The Secretary shall by regulations provide for the coordination of the provisions of this subsection with the provisions of subsection (f).

(o) Extension of withholding to certain payments other than wages

(1) General rule

For purposes of this chapter (and so much of subtitle F as relates to this chapter)—

(A) any supplemental unemployment compensation benefit paid to an individual,

(B) any payment of an annuity to an individual, if at the time the payment is made a request that such annuity be subject to withholding under this chapter is in effect, and

(C) any payment to an individual of sick pay which does not constitute wages (determined without regard to this subsection), if at the time the payment is made a request that such sick pay be subject to withholding under this chapter is in effect,

shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(2) Definitions

(A) Supplemental unemployment compensation benefits

For purposes of paragraph (1), the term “supplemental unemployment compensation benefits” means amounts which are paid to an employee, pursuant to a plan to which the employer is a party, because of an employee’s involuntary separation from employment (whether or not such separation is temporary), resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includible in the employee’s gross income.

(B) Annuity

For purposes of this subsection, the term “annuity” means any amount paid to an individual as a pension or annuity.

(C) Sick pay

For purposes of this subsection, the term “sick pay” means any amount which—

(i) is paid to an employee pursuant to a plan to which the employer is a party, and

(ii) constitutes remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries.

(3) Amount withheld from annuity payments or sick pay

If a payee makes a request that an annuity or any sick pay be subject to withholding under this chapter, the amount to be deducted and withheld under this chapter from any payment to which such request applies shall be an amount (not less than a minimum amount determined under regulations prescribed by the Secretary) specified by the payee in such request. The amount deducted and withheld with respect to a payment which is greater or less than a full payment shall bear the same relation to the specified amount as such payment bears to a full payment.

(4) Request for withholding

A request that an annuity or any sick pay be subject to withholding under this chapter—

(A) shall be made by the payee in writing to the person making the payments and shall contain the social security number of the payee,

(B) shall specify the amount to be deducted and withheld from each full payment, and

(C) shall take effect—

(i) in the case of sick pay, with respect to payments made more than 7 days after the date on which such request is furnished to the payor, or

(ii) in the case of an annuity, at such time (after the date on which such request is furnished to the payor) as the Secretary shall by regulations prescribe.

Such a request may be changed or terminated by furnishing to the person making the payments a written statement of change or termination which shall take effect in the same

manner as provided in subparagraph (C). At the election of the payor, any such request (or statement of change or revocation) may take effect earlier than as provided in subparagraph (C).

(5) Special rule for sick pay paid pursuant to certain collective-bargaining agreements

In the case of any sick pay paid pursuant to a collective-bargaining agreement between employee representatives and one or more employers which contains a provision specifying that this paragraph is to apply to sick pay paid pursuant to such agreement and contains a provision for determining the amount to be deducted and withheld from each payment of such sick pay—

(A) the requirement of paragraph (1)(C) that a request for withholding be in effect shall not apply, and

(B) except as provided in subsection (n), the amounts to be deducted and withheld under this chapter shall be determined in accordance with such agreement.

The preceding sentence shall not apply with respect to sick pay paid pursuant to any agreement to any individual unless the social security number of such individual is furnished to the payor and the payor is furnished with such information as is necessary to determine whether the payment is pursuant to the agreement and to determine the amount to be deducted and withheld.

(6) Coordination with withholding on designated distributions under section 3405

This subsection shall not apply to any amount which is a designated distribution (within the meaning of section 3405(e)(1)).

(p) Voluntary withholding agreements

The Secretary is authorized by regulations to provide for withholding—

(1) from remuneration for services performed by an employee for his employer which (without regard to this subsection) does not constitute wages, and

(2) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter,

if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to such withholding. Such agreement shall be made in such form and manner as the Secretary may by regulations provide. For purposes of this chapter (and so much of subtitle F as relates to this chapter) remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

(q) Extension of withholding to certain gambling winnings

(1) General rule

Every person, including the Government of the United States, a State, or a political sub-

division thereof, or any instrumentalities of the foregoing, making any payment of winnings which are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to 28 percent of such payment.

(2) Exemption where tax otherwise withheld

In the case of any payment of winnings which are subject to withholding made to a nonresident alien individual or a foreign corporation, the tax imposed under paragraph (1) shall not apply to any such payment subject to tax under section 1441(a) (relating to withholding on nonresident aliens) or tax under section 1442(a) (relating to withholding on foreign corporations).

(3) Winnings which are subject to withholding

For purposes of this subsection, the term “winnings which are subject to withholding” means proceeds from a wager determined in accordance with the following:

(A) In general

Except as provided in subparagraphs (B) and (C), proceeds of more than \$5,000 from a wagering transaction, if the amount of such proceeds is at least 300 times as large as the amount wagered.

(B) State-conducted lotteries

Proceeds of more than \$5,000 from a wager placed in a lottery conducted by an agency of a State acting under authority of State law, but only if such wager is placed with the State agency conducting such lottery, or with its authorized employees or agents.

(C) Sweepstakes, wagering pools, certain parimutuel pools, jai alai, and lotteries

Proceeds of more than \$5,000 from—

(i) a wager placed in a sweepstakes, wagering pool, or lottery (other than a wager described in subparagraph (B)), or

(ii) a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai if the amount of such proceeds is at least 300 times as large as the amount wagered.

(4) Rules for determining proceeds from a wager

For purposes of this subsection—

(A) proceeds from a wager shall be determined by reducing the amount received by the amount of the wager, and

(B) proceeds which are not money shall be taken into account at their fair market value.

(5) Exception for bingo, keno, and slot machines

The tax imposed under paragraph (1) shall not apply to winnings from a slot machine, keno, and bingo.

(6) Statement by recipient

Every person who is to receive a payment of winnings which are subject to withholding shall furnish the person making such payment a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the person re-

ceiving the payment and of each person entitled to any portion of such payment.

(7) Coordination with other sections

For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of winnings which are subject to withholding shall be treated as if they were wages paid by an employer to an employee.

(r) Extension of withholding to certain taxable payments of Indian casino profits

(1) In general

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 conducted or licensed by such tribe shall deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax.

(2) Exception

The tax imposed by paragraph (1) shall not apply to any payment to the extent that the payment, when annualized, does not exceed an amount equal to the sum of—

(A) the basic standard deduction (as defined in section 63(c)) for an individual to whom section 63(c)(2)(C) applies, and

(B) the exemption amount (as defined in section 151(d)).

(3) Annualized tax

For purposes of paragraph (1), the term “annualized tax” means, with respect to any payment, the amount of tax which would be imposed by section 1(c) (determined without regard to any rate of tax in excess of 31 percent) on an amount of taxable income equal to the excess of—

(A) the annualized amount of such payment, over

(B) the amount determined under paragraph (2).

(4) Classes of gaming activities, etc.

For purposes of this subsection, terms used in paragraph (1) which are defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), as in effect on the date of the enactment of this subsection, shall have the respective meanings given such terms by such section.

(5) Annualization

Payments shall be placed on an annualized basis under regulations prescribed by the Secretary.

(6) Alternate withholding procedures

At the election of an Indian tribe, the tax imposed by this subsection on any payment made by such tribe shall be determined in accordance with such tables or computational procedures as may be specified in regulations prescribed by the Secretary (in lieu of in accordance with paragraphs (2) and (3)).

(7) Coordination with other sections

For purposes of this chapter and so much of subtitle F as relates to this chapter, payments

to any person which are subject to withholding under this subsection shall be treated as if they were wages paid by an employer to an employee.

(s) Exemption from withholding for any vehicle fringe benefit

(1) Employer election not to withhold

The employer may elect not to deduct and withhold any tax under this chapter with respect to any vehicle fringe benefit provided to any employee if such employee is notified by the employer of such election (at such time and in such manner as the Secretary shall by regulations prescribe). The preceding sentence shall not apply to any vehicle fringe benefit unless the amount of such benefit is included by the employer on a statement timely furnished under section 6051.

(2) Employer must furnish W-2

Any vehicle fringe benefit shall be treated as wages from which amounts are required to be deducted and withheld under this chapter for purposes of section 6051.

(3) Vehicle fringe benefit

For purposes of this subsection, the term “vehicle fringe benefit” means any fringe benefit—

(A) which constitutes wages (as defined in section 3401), and

(B) which consists of providing a highway motor vehicle for the use of the employee.

(Aug. 16, 1954, ch. 736, 68A Stat. 457; Aug. 9, 1955, ch. 666, § 2, 69 Stat. 605; Sept. 21, 1961, Pub. L. 87-256, § 110(g)(2), 75 Stat. 537; Feb. 26, 1964, Pub. L. 88-272, title III, § 302(a), (b), 78 Stat. 140; July 30, 1965, Pub. L. 89-97, title III, § 313(d)(3)-(5), 79 Stat. 384; Sept. 29, 1965, Pub. L. 89-212, § 2(c), 79 Stat. 859; Mar. 15, 1966, Pub. L. 89-368, title I, § 101(a)-(e)(3), 80 Stat. 38-61; June 28, 1968, Pub. L. 90-364, title I, § 102(c), 82 Stat. 256; June 30, 1969, Pub. L. 91-36, § 2(a), 83 Stat. 42; Aug. 7, 1969, Pub. L. 91-53, § 6(a), 83 Stat. 96; Dec. 30, 1969, Pub. L. 91-172, title VIII, § 805(a)-(e), (f)(1), (g), 83 Stat. 686, 704-708; Dec. 10, 1971, Pub. L. 92-178, title II, § 208(a), (b)(1), (c)-(h)(1), 85 Stat. 512-517; Mar. 29, 1975, Pub. L. 94-12, title II, § 202(b), 205, 89 Stat. 29, 32; Dec. 23, 1975, Pub. L. 94-164, § 2(b)(2), 5(a)(1), 89 Stat. 971, 975; June 30, 1976, Pub. L. 94-331, § 3(a)(1), 90 Stat. 782; Sept. 3, 1976, Pub. L. 94-396, § 2(a)(1), 90 Stat. 1201; Sept. 17, 1976, Pub. L. 94-414, § 3(a)(1), 90 Stat. 1273; Oct. 4, 1976, Pub. L. 94-455, title IV, § 401(d), title V, §§ 502(b), 504(c)(3), title XII, § 1207(d), title XIX, §§ 1903(a)(17), 1906(b)(13)(A), 90 Stat. 1557, 1559, 1566, 1705, 1810, 1834; May 23, 1977, Pub. L. 95-30, title I, § 105, title IV, § 405(a), 91 Stat. 140, 156; Nov. 6, 1978, Pub. L. 95-600, title I, §§ 101(e), 102(c), title VI, § 601(b)(2), 92 Stat. 2770, 2771, 2896; Dec. 24, 1980, Pub. L. 96-601, § 4(a)-(d), 94 Stat. 3496, 3497; Aug. 13, 1981, Pub. L. 97-34, title I, § 101(e), 95 Stat. 184; Sept. 3, 1982, Pub. L. 97-248, title III, §§ 317(a), 334(d), 96 Stat. 607, 627; Aug. 5, 1983, Pub. L. 98-67, title I, § 104(d)(3), 97 Stat. 380; May 24, 1985, Pub. L. 99-44, § 3, 99 Stat. 77; Oct. 22, 1986, Pub. L. 99-514, title I, § 104(b)(15), title XIII, §§ 1301(j)(8), 1303(b)(4), title XV, § 1581(b), 100 Stat. 2106, 2658, 2766; Dec. 22, 1987, Pub. L. 100-203, title X, § 10302(a), 101 Stat. 1330-429; Nov.

10, 1988, Pub. L. 100-647, title I, §1003(a)(2), 102 Stat. 3382; Nov. 5, 1990, Pub. L. 101-508, title XI, §11801(a)(41), 104 Stat. 1388-521; July 3, 1992, Pub. L. 102-318, title V, §522(b)(2)(D), 106 Stat. 314; Oct. 24, 1992, Pub. L. 102-486, title XIX, §§1934(a), 1942(a), 106 Stat. 3031, 3036; Dec. 8, 1994, Pub. L. 103-465, title VII, §§701(a), 702(a), 108 Stat. 4995, 4996.)

AMENDMENT OF SUBSECTION (p)

Pub. L. 103-465, title VII, §702(a), (d), Dec. 8, 1994, 108 Stat. 4996, 4997, provided that, applicable to payments made after Dec. 31, 1996, subsection (p) of this section is amended to read as follows:

(p) Voluntary withholding agreements

(1) Certain Federal payments

(A) In general

If, at the time a specified Federal payment is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee.

(B) Amount withheld

The amount to be deducted and withheld under this chapter from any payment to which any request under subparagraph (A) applies shall be an amount equal to the percentage of such payment specified in such request. Such a request shall apply to any payment only if the percentage specified is 7, 15, 28, or 31 percent or such other percentage as is permitted under regulations prescribed by the Secretary.

(C) Specified Federal payments

For purposes of this paragraph, the term "specified Federal payment" means—

- (i) any payment of a social security benefit (as defined in section 86(d)),*
- (ii) any payment referred to in the second sentence of section 451(d) which is treated as insurance proceeds,*
- (iii) any amount which is includible in gross income under section 77(a), and*
- (iv) any other payment made pursuant to Federal law which is specified by the Secretary for purposes of this paragraph.*

(D) Requests for withholding

Rules similar to the rules that apply to annuities under subsection (o)(4) shall apply to requests under this paragraph and paragraph (2).

(2) Voluntary withholding on unemployment benefits

If, at the time a payment of unemployment compensation (as defined in section 85(b)) is made to any person, a request by such person is in effect that such payment be subject to withholding under this chapter, then for purposes of this chapter and so much of subtitle F as relates to this chapter, such payment shall be treated as if it were a payment of wages by an employer to an employee. The amount to be deducted and withheld under this chapter from any payment to

which any request under this paragraph applies shall be an amount equal to 15 percent of such payment.

(3) Authority for other voluntary withholding

The Secretary is authorized by regulations to provide for withholding—

(A) from remuneration for services performed by an employee for the employee's employer which (without regard to this paragraph) does not constitute wages, and

(B) from any other type of payment with respect to which the Secretary finds that withholding would be appropriate under the provisions of this chapter,

if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Such agreement shall be in such form and manner as the Secretary may by regulations prescribe. For purposes of this chapter (and so much of subtitle F as relates to this chapter), remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (l)(1), is the date of enactment of Pub. L. 89-368, which was approved Mar. 15, 1966.

Section 4 of the Indian Gaming Regulatory Act, referred to in subsec. (r)(4), is classified to section 2703 of Title 25, Indians.

The date of the enactment of this subsection, referred to in subsec. (r)(4), is the date of enactment of Pub. L. 103-465, which was approved Dec. 8, 1994.

AMENDMENTS

1994—Subsec. (r). Pub. L. 103-465, §701(a), added subsec. (r).

1992—Subsec. (o)(6). Pub. L. 102-318 substituted "3405(e)(1)" for "3405(d)(1)".

Subsec. (q)(1). Pub. L. 102-486, §1934(a), substituted "28 percent" for "20 percent".

Subsec. (q)(3)(A), (C). Pub. L. 102-486, §1942(a), substituted "\$5,000" for "\$1,000".

1990—Subsec. (a)(3). Pub. L. 101-508 struck out par. (3) which read as follows: "Notwithstanding the provisions of this subsection, the Secretary shall modify the tables and procedures under paragraph (1) to reflect—

"(A) the amendments made by section 101(b) of the Economic Recovery Tax Act of 1981, and such modification shall take effect on October 1, 1981, as if such amendments made a 5-percent reduction effective on such date, and

"(B) the amendments made by section 101(a) of such Act, and such modifications shall take effect—

"(i) on July 1, 1982, as if the reductions in the rate of tax under section 1 (as amended by such section) were attributable to a 10-percent reduction effective on such date, and

"(ii) on July 1, 1983, as if such reductions were attributable to a 10-percent reduction effective on such date."

1988—Subsec. (m)(1). Pub. L. 100-647 substituted "section 62(a) (other than paragraph (10) thereof)" for "section 62) (other than paragraph (13) thereof)".

1987—Subsec. (f)(3)(B). Pub. L. 100-203 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "A withholding exemption certificate furnished the employer in cases in which a previous such certificate is in effect shall take effect with respect to the first payment of wages made on or after

the first status determination date which occurs at least 30 days from the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished; but a certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished. For purposes of this subparagraph the term 'status determination date' means January 1, May 1, July 1, and October 1 of each year."

1986—Subsec. (f)(1). Pub. L. 99-514, §104(b)(15)(F), substituted "standard deduction" for "zero bracket" and "subparagraph (E)" for "subparagraph (G)" in last sentence.

Subsec. (f)(1)(A). Pub. L. 99-514, §104(b)(15)(B), inserted "unless he is an individual described in section 151(d)(2)" after "himself".

Subsec. (f)(1)(B). Pub. L. 99-514, §104(b)(15)(A), redesignated subpar. (D) as (B) and struck out former subpar. (B) which read as follows: "one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(c)(1) (relating to old age) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;".

Pub. L. 99-514, §104(b)(15)(C), which directed that "subparagraph (A) or (D)" be substituted for "subparagraph (A), (B), (C), or (F)" was executed by making the substitution for "subparagraph (A), (B), or (C)", as the probable intent of Congress.

Subsec. (f)(1)(C). Pub. L. 99-514, §104(b)(15)(A), (D), redesignated subpar. (E) as (C), substituted "section 151(c)" for "section 151(e)", and struck out former subpar. (C) which read as follows: "one additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151(d)(1) (relating to the blind) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;".

Subsec. (f)(1)(D). Pub. L. 99-514, §104(b)(15)(A), redesignated subpar. (F) as (D). Former subpar. (D) redesignated (B).

Subsec. (f)(1)(E). Pub. L. 99-514, §104(b)(15)(A), (E), redesignated subpar. (G) as (E) and substituted "standard deduction" for "zero bracket". Former subpar. (E) redesignated (C).

Pub. L. 99-514, §1301(j)(8), substituted "section 7703" for "section 143".

Subsec. (f)(1)(F), (G). Pub. L. 99-514, §104(b)(15)(A), redesignated subpars. (F) and (G) as (D) and (E), respectively.

Subsec. (i)(1). Pub. L. 99-514, §1581(b), struck out "or decreases" after "increases".

Subsec. (m)(3). Pub. L. 99-514, §104(b)(15)(G), inserted "(including the additional standard deduction under section 63(c)(3) for the aged and blind)".

Subsec. (r). Pub. L. 99-514, §1303(b)(4), struck out subsec. (r) which provided for extension of withholding to GSOC distributions.

1985—Subsec. (s). Pub. L. 99-44 added subsec. (s).

1983—Subsec. (s). Pub. L. 98-67 struck out subsec. (s) which related to extension of withholding to certain payments where identifying number was not furnished or was inaccurate. See section 3406 of this title.

1982—Subsec. (o)(6). Pub. L. 97-248, §334(d), added par. (6).

Subsec. (s). Pub. L. 97-248, §317(a), added subsec. (s).

1981—Subsec. (a). Pub. L. 97-34, §101(e)(1), revised subsec. (a) generally to provide for a 5-percent reduction in income tax withholding rates on Oct. 1, 1981, a further 10-percent reduction on July 1, 1982, and a final 10-percent reduction on July 1, 1983.

Subsec. (b)(1). Pub. L. 97-34, §101(e)(2)(A), redesignated par. (2) as (1). Former par. (1), which set out a

table for determining amount of one withholding exemption for each of the various payroll periods, was struck out.

Subsec. (b)(2). Pub. L. 97-34, §101(e)(2)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 97-34, §101(e)(2)(A), (B), redesignated par. (4) as (3) and substituted provisions relating to an employer's computation of the tax to be deducted and withheld as if the aggregate of the wages paid to the employee during the calendar week were paid for a weekly payroll period, for provisions relating to an employer's computation of the tax to be deducted and withheld using the excess of the aggregate of the wages paid to the employee during the calendar week over the withholding exemption allowed by this subsection for a weekly payroll period. Former par. (3) redesignated (2).

Subsec. (b)(4), (5). Pub. L. 97-34, §101(e)(2)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (f)(1)(G). Pub. L. 97-34, §101(e)(3), inserted "(or more than one exemption if so prescribed by the Secretary)" after "an amount equal to one exemption".

Subsec. (i). Pub. L. 97-34, §101(e)(4), substituted provisions authorizing the Secretary by regulations to provide for increases or decreases in the amount of withholding otherwise required under this section in cases where the employee requests the changes, for provisions under which the Secretary was authorized to provide withholding in addition to that otherwise required under this section in cases in which the employer and the employee agreed to such additional withholding.

Subsec. (m). Pub. L. 97-34, §101(e)(5), revised provisions respecting additional withholding allowances for anticipated excess itemized deductions and tax credits claimed in accordance with Treasury regulations and Treasury statutory authority to provide additional withholding allowances for any additional items specified in Treasury regulations.

1980—Subsec. (o)(1)(C). Pub. L. 96-601, §4(a), added subpar. (C).

Subsec. (o)(2)(B). Pub. L. 96-601, §4(d), struck out "but only to the extent that the amount is includible in the gross income of such individual" after "pension or annuity".

Subsec. (o)(2)(C). Pub. L. 96-601, §4(c), added subpar. (C).

Subsec. (o)(3). Pub. L. 96-601, §4(b), substituted provision authorizing amount to be withheld from annuity payments or sick pay for provision relating to request for withholding. See subsec. (o)(4) of this section.

Subsec. (o)(4), (5). Pub. L. 96-601, §4(b), added pars. (4) and (5).

1978—Subsec. (a). Pub. L. 95-600, §101(e)(1), substituted "With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977 and the amendments made by section 101 of the Revenue Act of 1978." for "With respect to wages paid after May 31, 1977, and before January 1, 1979, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976; except that such tables shall be modified to the extent necessary so that, had they been in effect for all of 1977, they would reflect the full year effect of the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977."

Subsec. (b)(1). Pub. L. 95-600, §102(c)(1), increased the amounts set out in the table for one withholding exemption for each of the payroll period categories from \$14.40, \$28.80, \$31.30, \$62.50, \$187.50, \$375.00, \$750.00 and

\$2.10 to \$19.23, \$38.46, \$41.66, \$83.33, \$250.00, \$500.00, \$1,000.00 and \$2.74, respectively.

Subsec. (m)(1). Pub. L. 95-600, §§101(e)(2), 102(c)(2), substituted “\$1,000” for “\$750”, “\$3,400” for “\$3,200” and “\$2,300” for “\$2,200”.

Subsec. (r). Pub. L. 95-600, §601(b)(2), added subsec. (r).

1977—Subsec. (a). Pub. L. 95-30, §105(a), substituted “With respect to wages paid after May 31, 1977, and before January 1, 1979, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976; except that such tables shall be modified to the extent necessary so that, had they been in effect for all of 1977, they would reflect the full year effect of the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977” for “With respect to wages paid prior to January 1, 1978, the tables so prescribed shall be the same as the tables prescribed under this section which were in effect on January 1, 1976. With respect to wages paid after December 31, 1977, the Secretary shall prescribe new tables which shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made to subsections (b) and (c) of section 141 by the Tax Reform Act of 1976”.

Subsec. (f)(1). Pub. L. 95-30, §105(b)(1), substituted “zero bracket” for “standard deduction” in subpar. (G) and in provisions following subpar. (G).

Subsec. (m)(1)(B). Pub. L. 95-30, §105(b)(2), substituted “an amount equal to \$3,200 (\$2,200)” for “an amount equal to the lesser of (i) 16 percent of his estimated wages, or (ii) \$2,800 (\$2,400)”.

Subsec. (m)(2)(A). Pub. L. 95-30, §105(b)(3)(A), (B), substituted “section 151” for “sections 141 and 151” and “(or the zero bracket amount (within the meaning of section 63(d)))” for “(or the amount of the standard deduction)”.

Subsec. (m)(2)(C). Pub. L. 95-30, §105(b)(3)(C), substituted “(or the zero bracket amount)” for “(or the standard deduction)”.

Subsec. (q)(3)(C). Pub. L. 95-30, §405(a), inserted reference to certain parimutuel pools and jai alai in heading and, in text, designated existing provisions as cl. (i) and added cl. (ii).

1976—Subsec. (a). Pub. L. 94-455, §§401(d)(1), 1906(b)(13)(A), struck out “or his delegate” after “Secretary”, inserted “With respect to wages paid prior to January 1, 1978” after “by the Secretary”, as amended, and substituted “prescribed under this section which were” for “contained in this subsection as” after “same as the tables”, “1976” for “1975” after “January 1”, and “With respect to wages paid after December 31, 1977, the Secretary shall prescribe new tables which shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made to subsections (b) and (c) of section 141 by the Tax Reform Act of 1976” for “except that the amounts set forth as amounts of income tax to be withheld with respect to wages paid after April 30, 1975, and before January 1, 1976, shall reflect the full calendar year effect for 1975 of the amendments made by sections 201, 202, 203, and 204 of the Tax Reduction Act of 1975” after “effect on January 1, 1976”, as amended.

Pub. L. 94-414 substituted “October 1, 1976” for “September 15, 1976”.

Pub. L. 94-396 substituted “September 15, 1976” for “September 1, 1976”.

Pub. L. 94-331 substituted “September 1, 1976” for “July 1, 1976”.

Subsec. (c)(4). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c)(6). Pub. L. 94-455, §§401(d)(2), 1906(b)(13)(A), substituted “the table for an annual payroll period prescribed pursuant to subsection (a)” for “table 7 contained in subsection (a)” after “basis of the”, as subsec. (c)(6) was in effect on the day before the date of enactment of the Tax Reduction Act of 1975, Pub. L. 94-12, which was approved on Mar. 29, 1975, and struck out “or his delegate” after “Secretary”.

Subsecs. (f), (h), (i), (j). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (l). Pub. L. 94-455, §1903(a)(17), substituted “section 2(a)” for “section 2(b)” after “as defined in”.

Subsec. (m)(1)(B). Pub. L. 94-455, §401(d)(3), reenacted subpar. (B) without change.

Subsec. (m)(2)(A). Pub. L. 94-455, §502(b), inserted “(other than paragraph (13) thereof)” after “under section 62”.

Subsec. (m)(2)(D), (3)(B). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (m)(4). Pub. L. 94-455, §504(c)(3), added subpar. (C). §1906(b)(13)(A) struck out “or his delegate” after “Secretary”.

Subsecs. (n), (p). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

Subsec. (q). Pub. L. 94-455, §1207(d), added subsec. (q).

1975—Subsec. (a). Pub. L. 94-164, §5(a)(1), inserted provision that the tables prescribed with respect to wages paid after Dec. 31, 1975, and before July 1, 1976, shall be the same as the tables prescribed under this subsection which were in effect on Dec. 10, 1975.

Pub. L. 94-12, §205(a), substituted provisions directing the Secretary to prescribe new withholding tables setting changed withholding rates for wages paid during the period May 1, 1975, to Dec. 31, 1975, so as to reflect the full calendar year effect for 1975 of the amendments to the minimum standard deduction, the percentage standard deduction, the earned income credit, and the additional tax credit by sections 201, 202, 203, and 204 of the Tax Reduction Act of 1975, Pub. L. 94-12, for provisions setting out 8 tables to be followed by employers in withholding taxes on wages paid.

Subsec. (c)(6). Pub. L. 94-12, §205(b), substituted “the table for an annual payroll period prescribed pursuant to subsection (a)” for “table 7 contained in subsection (a)”. See 1976 Amendment note set out above.

Subsec. (m)(1)(B). Pub. L. 94-164, §2(b)(2), substituted “\$2,800” and “\$2,400” for “\$2,600” and “\$2,300” respectively in cl. (ii).

Pub. L. 94-12, §202(b), substituted “the lesser of (i) 16 percent of his estimated wages, or (ii) \$2,600 (\$2,300 in the case of an individual who is not married (within the meaning of section 143) and who is not a surviving spouse (as defined in section 2(a)))” for “the lesser of (i) \$2,000 or (ii) 15 percent of his estimated wages”.

1971—Subsec. (a). Pub. L. 92-178, §208(a), substituted new sets of tables 1 to 8 applicable (under §208(i)(1)) with respect to wages paid after Jan. 15, 1972, for the tables applicable in the case of wages paid as provided in former: par. (1) after Dec. 31, 1969, and before July 1, 1970; par. (2) after June 30, 1970, and before Jan. 1, 1971; par. (3) after Dec. 31, 1970, and before Jan. 1, 1972; par. (4) after Dec. 31, 1971, and before Jan. 1, 1973; and par. (5) after Dec. 31, 1972. Pub. L. 92-178, §208(h)(1), made provisions of par. (3) applicable (under section 208(i)(2)) with respect to wages paid after Dec. 31, 1971, and before Jan. 16, 1972.

Subsec. (b)(1). Pub. L. 92-178, §208(b)(1), revised withholding rates upwards, substituting 14.40; 28.80; 31.30; 62.50; 187.50; 375.00; 750.00; and 2.10 for 12.50; 25.00 27.10; 54.20; 162.50; 325.00; 650.00; and 1.80, respectively, to be effective with respect to wages paid after Jan. 15, 1972. Pub. L. 92-178, §208(h)(2), in amending Pub. L. 91-172, §805(b)(1), extended application of such former withholding rates to wages paid after June 30, 1970, and before Jan. 16, 1972, previously applicable to wages paid before Jan. 1, 1972.

Subsec. (c)(6). Pub. L. 92-178, §208(g), substituted “table 7 contained in subsection (a)” for “table 7 contained in paragraph (1), (2), (3), (4), or (5) (whichever is applicable) of subsection (a)”.

Subsec. (f)(1)(G). Pub. L. 92-178, §208(c), added subpar. (G).

Subsec. (f)(7). Pub. L. 92-178, §208(d), added par. (7).

Subsec. (m)(1)(B). Pub. L. 92-178, §208(e), substituted “an amount equal to the lesser of (i) \$2,000 or (ii) 15 percent of his estimated wages” for “an amount equal to 15 percent of his estimated wages”.

Subsec. (m)(2)(A). Pub. L. 92-178, §208(f)(1), inserted “or (if such a return has not been filed for such preceding taxable year at the time the withholding exemption certificate is furnished the employer) the second taxable year preceding the estimation year” after “for the taxable year preceding the estimation year”.

Subsec. (m)(2)(D). Pub. L. 92-178, §208(f)(2), substituted as definition of “estimation year” the calendar year in which the wages are paid for prior provision defining term as meaning “(i) with respect to payments of wages after April 30 and on or before December 31 of any calendar year, such calendar year, and (ii) with respect to payments of wages on or after January 1 and before May 1 of any calendar year, the preceding calendar year (except that with respect to an exemption certificate furnished by an employee after he has filed his return for the preceding calendar year, such term means the current calendar year).”

Subsec. (m)(3)(B) to (E). Pub. L. 92-178, §208(f)(3), struck out subpars. (B) and (C) providing that only one certificate be in effect and for termination of effectiveness of certificate and redesignated subpars. (D) and (E) as (B) and (C), respectively.

1969—Subsec. (a)(1). Pub. L. 91-172, §805(a), (b)(2), substituted new sets of tables 1 to 8 for application to wages paid after Dec. 31, 1969, and before July 1, 1970, and after June 30, 1970, and before January 1, 1972, for the tables applicable to wages paid before July 13, 1968, and after Dec. 31, 1969.

Pub. L. 91-53, §6(a)(1), substituted “December 31, 1969” for “July 31, 1969”.

Pub. L. 91-36, §2(a)(1), substituted “July 31, 1969” for “June 30, 1969”.

Subsec. (a)(2). Pub. L. 91-172, §805(a), substituted a set of tables 1 to 8 for application to wages paid after June 30, 1970, and before Jan. 1, 1971, for the tables applicable to wages paid after June 30, 1970, and before Jan. 1, 1970.

Pub. L. 91-53, §6(a)(2), substituted “January 1, 1970” for “August 1, 1969”.

Pub. L. 91-36, §2(a)(2), substituted “August 1, 1969” for “July 1, 1969”.

Subsec. (a)(3) to (5). Pub. L. 91-172, §805(a), added sets of tables applicable, respectively, to wages paid after Dec. 31, 1970, and before Jan. 1, 1972, after Dec. 31, 1971, and before Jan. 1, 1973, and after Dec. 31, 1972.

Subsec. (b)(1). Pub. L. 91-172, §805(b)(1)–(4), revised withholding rates effective with respect to wages paid after Dec. 31, 1969, and before July 1, 1970, for the period after June 30, 1970, and before Jan. 1, 1972, during 1972, and after 1972.

Subsec. (c)(1). Pub. L. 91-172, §805(c)(1), substituted provisions authorizing employer to deduct and withhold tax determinable according to tables prescribed by the Secretary or his delegate for provisions under which the employer was authorized to deduct and withhold tax only according to tables set out.

Subsec. (c)(6). Pub. L. 91-172, §805(c)(2), substituted provisions for determination of amount deductible according to tables prescribed by the Secretary or his delegate and for computation of wages and amounts of income tax after Dec. 31, 1969, for provisions for determination of such wages and amounts of income tax after July 13, 1968, and before Jan. 1, 1970.

Pub. L. 91-53, §6(a)(3), substituted “January 1, 1970” for “August 1, 1969”.

Pub. L. 91-36, §2(a)(3), substituted “August 1, 1969” for “July 1, 1969”.

Subsec. (h). Pub. L. 91-172, §805(d), redesignated existing pars. (1) to (3) as subpars. (A) to (C) of par. (1), and added pars. (2) to (4).

Subsec. (m)(1). Pub. L. 91-172, §805(e)(2), substituted \$750 for \$700 in the material preceding subpar. (A) and in subpar. (B) substituted 15 per cent for 10 per cent of the first \$7,500 and 17 per cent of remainder of the estimated wages.

Subsec. (m)(2)(A). Pub. L. 91-172, §805(e)(2), inserted amount of standard deduction as an alternative limit in cl. (i), and substituted the determinable additional deductions for provisions referring to an employee who did not show such deductions on his return.

Subsec. (m)(2)(B). Pub. L. 91-172, §805(e)(2), struck out limit on aggregate amount.

Subsec. (m)(2)(C), (D). Pub. L. 91-172, §805(e)(1), (2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (n). Pub. L. 91-172, §805(f)(1), added subsec. (n).

Subsecs. (o), (p). Pub. L. 91-172, §805(g), added subsecs. (o) and (p).

1968—Subsec. (a). Pub. L. 90-364, §102(c)(1), designated existing Tables 1 to 8 as constituting par. (1), inserted provisions preceding existing Table 1-8 so as to limit their application to the case of wages paid on or before the 15th day after the date of the enactment of the Revenue and Expenditure Control Act of 1968 or after June 30, 1969, and added par. (2).

Subsec. (c)(6). Pub. L. 90-364, §102(c)(2), added par. (6).

1966—Subsec. (a). Pub. L. 89-368, §101(a), struck out reference to subsections (j) and (k) and substituted provisions establishing separate tables for single persons and for married persons in each of eight payroll period categories each containing six graduated withholding rates ranging from 14 to 30 percent for provisions placing the rate at a fixed 14 percent.

Subsec. (b)(1). Pub. L. 89-368, §101(b), increased amounts set out for one withholding exemption for each of the payroll period categories from “\$13.00”, “\$26.00”, “\$28.00”, “\$56.00”, “\$167.00”, “\$333.00”, “\$667.00”, and “\$1.80” to “\$13.50”, “\$26.90”, “\$29.20”, “\$58.30”, “\$175.00”, “\$350.00”, “\$700.00”, and “\$1.90” respectively.

Subsec. (c)(1). Pub. L. 89-368, §101(c), replaced existing tables with separate tables for employees who are married and for employees who are not married covering weekly, biweekly, semimonthly, monthly, and daily or miscellaneous pay periods and reflecting increased and graduated withholding rates.

Subsec. (f)(1)(F), (3)(B). Pub. L. 89-368, §101(e)(1), (3), added par. (1)(F) and, in par. (3)(B), changed definition of “status determination date” from January 1 and July 1 of each year to January 1, May 1, July 1, and October 1 of each year.

Subsec. (l). Pub. L. 89-368, §101(d), added subsec. (l).

Subsec. (m). Pub. L. 89-368, §101(e)(2), added subsec. (m).

1965—Subsec. (a). Pub. L. 89-97, §313(d)(3), substituted “subsections (j) and (k)” for “subsection (j)”.

Subsec. (h)(3). Pub. L. 89-97, §313(d)(4), inserted “(and, in the case of tips referred to in subsection (k), within 30 days thereafter)” after “quarter” first place it appears.

Subsec. (k). Pub. L. 89-212 inserted “or section 3202 (c)(2)” and “or section 3202(a)”.

Pub. L. 89-97, §313(d)(5), added subsec. (k).

1964—Subsec. (a). Pub. L. 88-272, §302(a), reduced tax from 18% to 14%.

Subsec. (c)(1). Pub. L. 88-272, §302(b), substituted new tables reflecting lowered withholding rates.

1961—Subsec. (f)(6). Pub. L. 87-256 added par. (6).

1955—Subsec. (a). Act Aug. 9, 1955, §2(a), inserted “(except as provided in subsection (j))” after “upon such wages”.

Subsec. (j). Act Aug. 9, 1955, §2(b), added subsec. (j).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 701(b) of Pub. L. 103-465 provided that: “The amendment made by this section [amending this section] shall apply to payments made after December 31, 1994.”

Amendment by section 702(a) of Pub. L. 103-465 applicable to payments made after Dec. 31, 1996, see section 702(d) of Pub. L. 103-465, set out as a note under section 3304 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Section 1934(b) of Pub. L. 102-486 provided that: "The amendment made by this section [amending this section] applies to payments received after December 31, 1992."

Section 1942(b) of Pub. L. 102-486 provided that: "The amendments made by subsection (a) [amending this section] shall apply to payments of winnings after December 31, 1992."

Amendment by Pub. L. 102-318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102-318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10302(b) of Pub. L. 100-203 provided that: "The amendment made by subsection (a) [amending this section] shall apply to certificates furnished after the day 30 days after the date of the enactment of this Act [Dec. 22, 1987]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(15) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1303(b)(4) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1311(f) of Pub. L. 99-514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 6(d) of Pub. L. 99-44 provided that: "The amendment made by section 3 [amending this section] shall take effect on January 1, 1985."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 317(b) of Pub. L. 97-248 provided: "The amendments made by subsection (a) [amending this section] shall apply to payments made after December 31, 1983."

Amendment by section 334(d) of Pub. L. 97-248 applicable to payments or other distributions made after Dec. 31, 1982, see section 334(e) of Pub. L. 97-248, set out as an Effective Date note under section 3405 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 101(f)(2) of Pub. L. 97-34 provided that: "The amendments made by subsection (e) [amending this section] shall apply to remuneration paid after September 30, 1981; except that the amendment made by subsection (e)(5) [amending this section] shall apply to remuneration paid after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENT

Section 4(f) of Pub. L. 96-601 provided that: "The amendments made by this section [amending this section and section 6051 of this title] shall apply to payments made on or after the first day of the first cal-

endar month beginning more than 120 days after the date of the enactment of this Act [Dec. 24, 1980]."

EFFECTIVE DATE OF 1978 AMENDMENT

Section 101(f)(2) of Pub. L. 95-600 provided that: "The amendments made by subsection (e) [amending this section] shall apply to remuneration paid after December 31, 1978."

Section 102(d)(2) of Pub. L. 95-600 provided that: "The amendments made by subsection (c) [amending this section] shall apply with respect to remuneration paid after December 31, 1978."

Amendment by section 601(b)(2) of Pub. L. 95-600 applicable with respect to corporations chartered after Dec. 31, 1978, and before Jan. 1, 1984, see section 601(d) of Pub. L. 95-600, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 106(b) of Pub. L. 95-30 provided that: "The amendments made by section 105 [amending this section] shall apply to wages paid after April 30, 1977."

Section 405(b) of Pub. L. 95-30 provided that: "The amendments made by this section [amending this section] apply to payments made after April 30, 1977."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 401(d) of Pub. L. 94-455 applicable to wages paid after Sept. 14, 1976, see section 401(e) of Pub. L. 94-455, set out as a note under section 32 of this title.

Section 1207(f)(3) of Pub. L. 94-455 provided that: "The amendments made by subsection (d) [amending this section] shall apply to payments of winnings made after the 90th day after the date of the enactment of this Act [Oct. 4, 1976]."

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Amendment by section 2(b)(2) of Pub. L. 94-164 applicable to taxable years ending after Dec. 31, 1975 and before Jan. 1, 1977, see section 2(g) of Pub. L. 94-164, set out as an Effective Date of 1975 Amendment note under section 32 of this title.

Section 209(c) of Pub. L. 94-12, as amended by Pub. L. 94-164, §5(a)(2); Pub. L. 94-331, §3(a)(2); Pub. L. 94-396, §2(b); Pub. L. 94-414, §3(a)(2), provided that: "The amendments made by sections 202(b) and 205 [amending this section] shall apply to wages paid after April 30, 1975, and before October 1, 1976."

EFFECTIVE DATE OF 1971 AMENDMENT

Section 208(i) of Pub. L. 92-178 provided that:

"(1) The amendments made by this section [amending this section] (other than subsection (h)) shall apply with respect to wages paid after January 15, 1972.

"(2) The amendments made by subsection (h) [amending this section] shall apply with respect to wages paid after December 31, 1971, and before January 16, 1972."

EFFECTIVE DATE OF 1969 AMENDMENTS

Section 805(h) of Pub. L. 91-172, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) The amendments made by subsections (a), (b), (c), (d), and (e) [amending this section] shall apply with respect to remuneration paid after December 31, 1969.

"(2) The amendment made by subsection (f) [amending this section and section 6051 of this title] applies to wages paid after April 30, 1970.

"(3) Subsection (o) of section 3402 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], added by subsection (g) of this subsection, shall apply to payments made after December 31, 1970. Subsection (p) of such section 3402, added by subsection (g) of this section, shall apply to payments made after June 30, 1970."

Section 6(b) of Pub. L. 91-53 provided that: "The amendments made by this section [amending this sec-

tion] shall apply with respect to wages paid after July 31, 1969, and before January 1, 1970.”

Section 2(b) of Pub. L. 91-36 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to wages paid after June 30, 1969.”

EFFECTIVE DATE OF 1966 AMENDMENT

Section 101(e)(6) of Pub. L. 89-368 provided that: “The amendments made by paragraphs (1) and (2) of this subsection [amending this section] shall apply only with respect to remuneration paid after December 31, 1966, but only with respect to withholding exemptions based on estimation years beginning after such date.”

Section 101(g) of Pub. L. 89-368 provided that: “The amendments made by this section (other than subsection (e) [amending this section]) shall apply only with respect to remuneration paid after April 30, 1966.”

EFFECTIVE DATE OF 1965 AMENDMENTS

Amendment by Pub. L. 89-212 effective only with respect to tips received after 1965, see section 6 of Pub. L. 89-212, set out as a note under section 3201 of this title.

Amendment by Pub. L. 89-97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89-97, set out as an Effective Date note under section 6053 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 302(d) of Pub. L. 88-272 provided that: “The amendments made by subsections (a) and (b) of this section [amending this section] shall apply with respect to remuneration paid after the seventh day following the date of the enactment of this Act [Feb. 26, 1964]. The amendment made by subsection (c) of this section [amending section 1441 of this title] shall apply with respect to payments made after the seventh day following the date of the enactment of this Act.”

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-256 applicable with respect to wages paid after Dec. 31, 1961, see section 110(h)(4) of Pub. L. 87-256, set out as a note under section 3401 of this title.

EFFECTIVE DATE OF 1955 AMENDMENT

Section 3 of act Aug. 9, 1955, provided that: “The amendment made by section 2 [amending this section] shall be applicable only with respect to remuneration paid after the date of enactment of this Act [Aug. 9, 1955].”

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 29 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

WITHHOLDING ALLOWANCES TO REFLECT NEW RATE SCHEDULES

Section 1581(a) of Pub. L. 99-514 provided that: “The Secretary of the Treasury or his delegate shall modify the withholding schedules and withholding exemption certificates under section 3402 of the Internal Revenue

Code of 1954 [now 1986] to better approximate actual tax liability under the amendments made by this Act [see Tables for classification].”

EMPLOYER'S RESPONSIBILITY UPON FAILURE OF EMPLOYEE TO FILE REVISED WITHHOLDING ALLOWANCE CERTIFICATE BEFORE OCT. 1, 1987

Section 1581(c) of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, § 1015(p), Nov. 10, 1988, 102 Stat. 3572, provided that: “If an employee has not filed a revised withholding allowance certificate before October 1, 1987, the employer shall withhold income taxes from the employee's wages—

“(1) as if the employee claimed 1 withholding allowance, if the employee checked the ‘single’ box on the employee's previous withholding allowance certificate, or

“(2) as if the employee claimed 2 withholding allowances, if the employee checked the ‘married’ box on the employee's previous withholding allowance certificate.

The preceding sentence shall not apply if its application would result in an increase in the number of withholding allowances for the employee.”

FAILURE TO DEDUCT AND WITHHOLD UNDER A DUTY CREATED OR INCREASED BY TAX REFORM ACT OF 1976

Section 304 of Pub. L. 95-30, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “No person shall be liable in respect of any failure to deduct and withhold under section 3402 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to income tax collected at source) on remuneration paid before January 1, 1977, to the extent that the duty to deduct and withhold was created or increased by any provision of the Tax Reform Act of 1976 [Pub. L. 94-455].”

WAGES PAID DURING 1972 AND AFTER 1972

Section 805(b)(3), (4) of Pub. L. 91-172, title VIII, Dec. 30, 1969, 83 Stat. 704, which provided for section 3402(b)(1) withholding rates of 13.50; 26.90; 29.20; 58.30; 175.00; 350.00; 700.00; and 1.90, effective with respect to wages during 1972, and withholding rates of 14.40; 28.80; 31.30; 62.50; 187.50; 375.00; 750.00; and 2.10, effective with respect to wages paid after 1972, was repealed by section 208(b)(2) of Pub. L. 92-178.

TRANSITIONAL DETERMINATION STATUS DATE

Section 101(f) of Pub. L. 89-368, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Notwithstanding section 3402(f)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], a withholding exemption certificate furnished the employer after the date of the enactment of this Act [Mar. 15, 1966] and before May 1, 1966, shall take effect with respect to the first payment of wages made on or after May 1, 1966, or the 10th day after the date on which such certificate is furnished to the employer, whichever is later, and at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is furnished.”

MEANING OF TERMS

Section 1 of act Aug. 9, 1955, provided that: “The terms used in this Act [amending subsecs. (a) and (j) of this section] shall have the same meaning as when used in the Internal Revenue Code.”

CROSS REFERENCES

Adjustment of tax under this section, see section 6205 of this title.

Amount and method of adjustment inapplicable to taxes under this chapter, see section 1314 of this title.

Amount withheld as special trust fund for United States, see section 7501 of this title.

Assessment for underpayment of tax imposed by this section, see section 6205 of this title.

Nondeductibility of tax deducted and withheld under this chapter as deduction from gross income, see section 3502 of this title.

Penalty for fraudulently withholding exemption certificate or failure to supply information, see section 7204 of this title.

Personal exemptions allowable as deductions from gross income, see section 151 et seq. of this title.

Receipts for employees for taxes withheld by employers, see section 6051 of this title.

Tax withheld on wages as credit against income tax, see section 31 of this title.

Time tax withheld deemed paid, see section 6513 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31, 275, 3401, 3405, 3406, 3505, 3507, 3509, 3510, 4999, 6040, 6051, 6205, 6413, 6682, 7205 of this title; title 25 section 2719; title 42 section 662.

§ 3403. Liability for tax

The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.

(Aug. 16, 1954, ch. 736, 68A Stat. 469; Sept. 3, 1982, Pub. L. 97-248, title III, §§307(a)(2), 308(a), 96 Stat. 589, 591; Aug. 5, 1983, Pub. L. 98-67, title I, § 102(a), 97 Stat. 369.)

AMENDMENTS

1983—Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1982—Pub. L. 97-248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, this section is amended by striking out “this chapter” and inserting in lieu thereof “this subchapter”. Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

CROSS REFERENCES

Refund or credit to employer for overpayment of tax imposed by this chapter, see section 6414 of this title.

Willful failure to collect or pay one's tax, punishment for, see section 7202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3505 of this title.

§ 3404. Return and payment by governmental employer

If the employer is the United States, or a State, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages may be made by any officer or employee of the United States, or of such State, or political subdivision, or of the District of Columbia, or of such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.

(Aug. 16, 1954, ch. 736, 68A Stat. 469; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1903(c), 90 Stat. 1810.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “Territory” after “or a State” and “of such State”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3402 of this title.

§ 3405. Special rules for pensions, annuities, and certain other deferred income

(a) Periodic payments

(1) Withholding as if payment were wages

The payor of any periodic payment (as defined in subsection (e)(2)) shall withhold from such payment the amount which would be required to be withheld from such payment if such payment were a payment of wages by an employer to an employee for the appropriate payroll period.

(2) Election of no withholding

An individual may elect to have paragraph (1) not apply with respect to periodic payments made to such individual. Such an election shall remain in effect until revoked by such individual.

(3) When election takes effect

Any election under this subsection (and any revocation of such an election) shall take effect as provided by subsection (f)(3) of section 3402 for withholding exemption certificates.

(4) Amount withheld where no withholding exemption certificate in effect

In the case of any payment with respect to which a withholding exemption certificate is not in effect, the amount withheld under paragraph (1) shall be determined by treating the payee as a married individual claiming 3 withholding exemptions.

(b) Nonperiodic distribution

(1) Withholding

The payor of any nonperiodic distribution (as defined in subsection (e)(3)) shall withhold from such distribution an amount equal to 10 percent of such distribution.

(2) Election of no withholding

(A) In general

An individual may elect not to have paragraph (1) apply with respect to any nonperiodic distribution.

(B) Scope of election

An election under subparagraph (A)—

(i) except as provided in clause (ii), shall be on a distribution-by-distribution basis, or

(ii) to the extent provided in regulations, may apply to subsequent nonperiodic distributions made by the payor to the payee under the same arrangement.

(c) Eligible rollover distributions

(1) In general

In the case of any designated distribution which is an eligible rollover distribution—

(A) subsections (a) and (b) shall not apply, and

(B) the payor of such distribution shall withhold from such distribution an amount equal to 20 percent of such distribution.

(2) Exception

Paragraph (1)(B) shall not apply to any distribution if the distributee elects under sec-