

## 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."

## 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 sections 407, 659.

## § 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; Pub. L. 97-248, title III, §§307(a)(2), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 98-67, title I, §102(a), Aug. 5, 1983, 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.

## 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; Pub. L. 94-455, title XIX, §1903(c), Oct. 4, 1976, 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-

tion 401(a)(31)(A) to have such distribution paid directly to an eligible retirement plan.

**(3) Eligible rollover distribution**

For purposes of this subsection, the term “eligible rollover distribution” has the meaning given such term by section 402(f)(2)(A).

**(d) Liability for withholding**

**(1) In general**

Except as provided in paragraph (2), the payor of a designated distribution (as defined in subsection (e)(1)) shall withhold, and be liable for, payment of the tax required to be withheld under this section.

**(2) Plan administrator liable in certain cases**

**(A) In general**

In the case of any plan to which this paragraph applies, paragraph (1) shall not apply and the plan administrator shall withhold, and be liable for, payment of the tax unless the plan administrator—

(i) directs the payor to withhold such tax, and

(ii) provides the payor with such information as the Secretary may require by regulations.

**(B) Plans to which paragraph applies**

This paragraph applies to any plan described in, or which at any time has been determined to be described in—

(i) section 401(a),

(ii) section 403(a),

(iii) section 301(d) of the Tax Reduction Act of 1975, or

(iv) section 457(b) and which is maintained by an eligible employer described in section 457(e)(1)(A).

**(e) Definitions and special rules**

For purposes of this section—

**(1) Designated distribution**

**(A) In general**

Except as provided in subparagraph (B), the term “designated distribution” means any distribution or payment from or under—

(i) an employer deferred compensation plan,

(ii) an individual retirement plan (as defined in section 7701(a)(37)), or

(iii) a commercial annuity.

**(B) Exceptions**

The term “designated distribution” shall not include—

(i) any amount which is wages without regard to this section,

(ii) the portion of a distribution or payment which it is reasonable to believe is not includible in gross income, and

(iii) any amount which is subject to withholding under subchapter A of chapter 3 (relating to withholding of tax on non-resident aliens and foreign corporations) by the person paying such amount or which would be so subject but for a tax treaty, or

(iv) any distribution described in section 404(k)(2).