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credit against the tax imposed by chapter 1 of the Code for the taxable year which begins in, or with, such calendar year. Thus, in order for an employee to be able to claim for a calendar year a withholding exemption with respect to a particular individual as a dependent there must be a reasonable expectation that the employee will be allowed an exemption with respect to such individual under section 151(e) for his taxable year which begins in, or with, such calendar year.

(3) For the employee to be entitled on any day of the calendar year to a withholding exemption for an individual as a dependent, such individual must on such day—

(i) Be an individual referred to in one of the numbered paragraphs in section 152(a),

(ii) Reasonably be expected to receive over one-half of his support, within the meaning of section 152, from the employee in the calendar year, and

(iii) Either (*a*) reasonably be expected to have gross income of less than the amount determined pursuant to § 1.151–2 of this chapter (Income Tax Regulations) applicable to the calendar year in which the taxable year of the taxpayer begins, or (*b*) be a child (son, stepson, daughter, stepdaughter, adopted son, or adopted daughter) of the employee who (*1*) will not have attained the age of 19 at the close of the calendar year or (*2*) is a student as defined in section 151.

(4) An employee is not entitled to claim a withholding exemption for an individual otherwise reasonably expected to be a dependent of the employee if such individual is not a citizen of the United States, unless such individual (i) is at any time during the calendar year a resident of the United States (including, in regard to wages paid after February 28, 1979, and individual treated as a resident under section 6013 (g) or (h)) Canada, Mexico, the Canal Zone, or the Republic of Panama, or (ii) is a child of the employee born to him, or legally adopted by him, in the Philippine Islands before January 1, 1956, and the child is a resident of the Republic of the Philippines, and the employee was a member of the Armed Forces of the United States at the time the child was born to him or legally adopted by him.

(e) *Additional withholding exemption to which an employee is entitled in respect of the standard deduction.* After November 30, 1986, an employee is entitled to one additional withholding exemption unless:

(1) The employee is married (as determined under section 143) and the employee's spouse is an employee receiving wages subject to withholding, or

(2) The employee has withholding exemption certificates in effect with respect to more than one employer.

These restrictions do not apply if the combined wages of the employee and the spouse (if any) from other than one employer is less than the amount specified in the instructions to Form W–4 or W–4A (Employee's Withholding Allowance Certificate).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6654, 28 FR 5252, May 28, 1963; T.D. 7065, 35 FR 16539, Oct. 23, 1970; T.D. 7114, 36 FR 9020, May 18, 1971; T.D. 7115, 36 FR 9234, May 21, 1971; T.D. 7670, 45 FR 6932, Jan. 31, 1980; T.D. 7915, 48 FR 44073, Sept. 27, 1983; T.D. 8164, 52 FR 45633, Dec. 1, 1987]

§ 31.3402(f)(2)–1 Withholding exemption certificates.

(a) *On commencement of employment.* On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed withholding exemption certificate relating to his marital status and the number of withholding exemptions which he claims, which number shall in no event exceed the number to which he is entitled, or, if the statements described in § 31.3402(n)–1 are true with respect to an individual, he may furnish his employer with a signed withholding exemption certificate which contains such statements. For form and contents of such certificates, see § 31.3402(f)(5)–1. The employer is required to request a withholding exemption certificate from each employee, but if the employee fails to furnish such certificate, such employee shall be considered as a single person claiming no withholding exemptions.

(b) *Change in status which affects calendar year.* (1) 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 him on the withholding exemption certificate then in effect, the employee must within 10 days after the change occurs furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which must in no event exceed the number to which he is entitled on such day. The number of withholding exemptions to which an employee is entitled decreases, for example, for any one of the following reasons:

(i) The employee's wife (or husband) for whom the employee has been claiming a withholding exemption (*a*) is divorced or legally separated from the employee, or (*b*) claims her (or his) own withholding exemption on a separate certificate.

(ii) In the case of an employee whose taxable year is not a calendar year, the employee's wife (or husband) for whom the employee has been claiming a withholding exemption dies in that portion of the calendar year which precedes the first day of the taxable year of the employee which begins in the calendar year in which the spouse dies.

(iii) The employee finds that no exemption for his taxable year which begins in, or with, the current calendar year will be allowable to him under section 151(e) in respect of an individual claimed as a dependent on the employee's withholding exemption certificate.

(iv) It becomes unreasonable for the employee to believe that his wages for an estimation year will not be more, or that the determinable additional amounts for each item under § 31.3402(m)–1 for an estimation year will not be less, than the corresponding figure used in connection with a claim by him under section 3402 (m) of a withholding allowance to such an extent that the employee would no longer be entitled to such withholding allowance.

(v) It becomes unreasonable for an employee who has in effect a withholding exemption certificate on which he claims a withholding allowance under section 3402(m), computed on the basis of the preceding taxable year, to believe that his wages and the determinable additional amounts for each item under § 31.3402(m)–1 in such preceding taxable year or in his present taxable year will entitle him to such withholding allowance in the present taxable year.

(2) If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is more than the number of withholding exemptions claimed by him on the withholding exemption certificate then in effect, the employee may furnish the employer with a new withholding exemption certificate on which the employee must in no event claim more than the number of withholding exemptions to which he is entitled on such day.

(3) If, on any day during the calendar year, the statements described in § 31.3402(n)–1 are true with respect to an employee, such employee may furnish his employer with a withholding exemption certificate which contains such statements.

(4) If, on any day during the calendar year, it is not reasonable for an employee, who has furnished his employer with a withholding exemption certificate which contains the statements described in § 31.3402(n)–1, to anticipate that he will incur no liability for income tax imposed under subtitle A (as defined in § 31.3402(n)–1) for his current taxable year, the employee must within 10 days after such day furnish the employer with a new withholding exemption certificate which does not contain such statements. If, on any day during the calendar year, it is not reasonable for such an employee whose liability for income tax imposed under subtitle A is determined on a basis other than the calendar year to so anticipate with respect to his taxable year following his current taxable year, the employee must furnish the employer with a new withholding exemption certificate which does not contain such statements within 10 days after such day or on or before the first day of the last month of his current taxable year, whichever is later.

(c) *Change in status which affects next calendar year.* (1) If, on any day during

the calendar year, the number of exemptions to which the employee will be, or may reasonably be expected to be, entitled under sections 151 and 3402(m) for his taxable year which begins in, or with, the next calendar year is different from the number to which the employee is entitled on such day, the following rules shall be applicable:

(i) If such number is less than the number of withholding exemptions claimed by the employee on a withholding exemption certificate in effect in such day, the employee must, on or before December 1 of the year in which the change occurs, unless such change occurs in December, furnish his employer with a new withholding exemption certificate reflecting the decrease in the number of withholding exemptions. If the change occurs in December, the new certificate must be furnished within 10 days after the change occurs. The number of exemptions to which an employee is entitled for his taxable year which begins in, or with, the next calendar year decreases, for example, for any of the following reasons:

(*a*) The spouse or a dependent of the employee dies.

(*b*) The employee finds that is not reasonable to expect that an individual claimed as a dependent on the employee's withholding exemption certificate will qualify as a dependent of the employee for such taxable year.

(*c*) It becomes unreasonable for an employee who has in effect a withholding exemption certificate on which he claims a withholding allowance under section 3402(m) to believe that his wages and the determinable additional amounts for each item under § 31.3402(m)–1 for his taxable year which begins in, or with, the next calendar year will entitle him to such withholding allowance for such taxable year.

(ii) If such number is greater than the number of withholding exemptions claimed by the employee on a withholding exemption certificate in effect on such day, the employee may, on or before December 1 of the year in which such change occurs, unless such change occurs in December, furnish his employer with a new withholding exemption certificate reflecting the increase in the number of withholding exemptions. If the change occurs in December, the certificate may be furnished on or after the date on which the change occurs.

(2) If, on any day during the calendar year, it is not reasonable for an employee, who has furnished his employer with a withholding exemption certificate which contains the statements described in § 31.3402(n)–1 and whose liability for such tax is determined on a calendar-year basis, to anticipate that he will incur no liability for income tax imposed under subtitle A (as defined in § 31.3402(n)–1) for his taxable year which begins with the next calendar year, the employee must furnish his employer with a new withholding exemption certificate which does not contain such statements, on or before December 1 of the first-mentioned calendar year. If it first becomes unreasonable for the employee to so anticipate in December, the new certificate must be furnished within 10 days after the day on which it first becomes unreasonable for the employee to so anticipate.

(3) Before December 1 of each year, every employer should request each of his employees to file a new withholding exemption certificate for the ensuing calendar year, in the event of change in the employee's exemption status since the filing of his latest certificate.

(d) *Inclusion of account number on withholding exemption certificate.* Every individual to whom an account number has been assigned shall include such number of any withholding exemption certificate filed with an employer. For provisions relating to the obtaining of an account number, see § 31.6011 (b)–2.

(e) *Invalid withholding exemption certificates.* Any alteration of or unauthorized addition to a withholding exemption certificate shall cause such certificate to be invalid; see paragraph (b) of § 31.3402(f)(5)–1 for the definitions of alteration and unauthorized addition. Any withholding exemption certificate which the employee clearly indicates to be false by an oral statement or by a written statement (other than one made on the withholding exemption certificate itself) made by him to the employer on or before the date on

which the employee furnishes such certificate is also invalid. For purposes of the preceding sentence, the term ''employer'' includes any individual authorized by the employer either to receive withholding exemption certificates, to make withholding computations, or to make payroll distributions. If an employer receives an invalid withholding exemption certificate, he shall consider it a nullity for purposes of computing withholding; he shall inform the employee who submitted the certificate that it is invalid, and shall request another withholding exemption certificate from the employee. If the employee who submitted the invalid certificate fails to comply with the employer's request, the employer shall withhold from the employee as from a single person claiming no exemptions (see § 31.3402 (f)(2)–1(a)); if, however, a prior certificate is in effect with respect to the employee, the employer shall continue to withhold in accordance with the prior certificate.

(f) *Applicability of withholding exemption certificate to qualified State individual income taxes.* The withholding exemption certificate shall be use for purposes of withholding with respect to qualified State individual income taxes as well as Federal tax. For provisions relating to the withholding exemption certificate with respect to such State taxes, see paragraph (d)(3)(i) of § 301.6361–1 of this chapter (Regulation on Procedure and Administration).

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

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

(B) *Published guidance.* Employers may also be required to submit copies of withholding exemption certificates under certain specified criteria when directed to do so by the IRS in published guidance. For purposes of the preceding sentence, the term published guidance means a revenue procedure or notice published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(ii) *Withholding after submission of withholding exemption certificate.* After a copy of a withholding exemption certificate has been submitted to the IRS under this paragraph (g)(1), the employer must withhold tax on the basis of the withholding exemption certificate, if the withholding exemption certificate meets the requirements of § 31.3402(f)(5)–1. However, the employer may not withhold on the basis of the withholding exemption certificate if the certificate must be disregarded based on a notice of the maximum number of withholding exemptions permitted under the provisions of paragraph (g)(2) of this section.

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

(A) The IRS determines that a copy of a withholding exemption certificate

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

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

(ii) *Notice to employee.* If the IRS provides a notice to the employer under this paragraph (g)(2), the IRS will also provide the employer with a similar notice for the employee (employee notice) that identifies the maximum number of withholding exemptions permitted and specifies the marital status to be used for calculating the required amount of withholding. The employee notice will also indicate the process by which the employee can provide additional information to the IRS for purposes of determining the appropriate number of withholding exemptions and/or modifying the specified marital status. The IRS will also mail a similar notice to the employee's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter. If the IRS is unable to determine a last known address for the employee, the IRS will use other available information as appropriate to mail the notice to the employee.

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

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

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

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

(iv) *Requirement to notify the IRS.* If the employer is not required to furnish the notice to the employee under paragraph (g)(2)(iii) of this section, the employer must send a written response to the IRS office designated in the notice indicating that the employee is not employed by the employer.

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

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

(vii) *Requirement to withhold based on an existing Form W–4.* If a withholding exemption certificate is in effect with

respect to the employee before the employer receives a notice of the maximum number of withholding exemptions permitted under this paragraph (g)(2), the employer must continue to withhold tax in accordance with the existing withholding exemption certificate, rather than on the basis of the notice, if the existing withholding exemption certificate does not claim complete exemption from withholding and claims a marital status, a number of withholding exemptions, and any additional withholding that results in more withholding than would result from applying the marital status and number of withholding exemptions specified in the notice.

(viii) *Modification notice*. After issuing the notice specifying the maximum number of withholding exemptions permitted and the marital status, the IRS may issue a subsequent notice that modifies the original notice (modification notice). The modification notice may change the marital status and/or the number of withholding exemptions permitted. The employer must withhold based on the modification notice as of the date specified in the modification notice.

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

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

(A) *Employee requests more withholding*. If the employee furnishes a new withholding exemption certificate after the employer receives the notice or modification notice, the employer must withhold tax on the basis of that new certificate only if the new certificate does not claim complete exemption from withholding and claims a marital status, a number of withholding exemptions, and any additional withholding that results in more withholding than would result under the notice or modification notice.

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

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

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

Example 1. Employer U receives a notice from the IRS that identifies the maximum number of withholding exemptions permitted and specifies the marital status for Employee A. Employee A is not currently performing any services for Employer U. However, Employer U is continuing to make certain wage payments to Employee A. Employer U must furnish the employee notice

to Employee A within 10 business days of receipt and must withhold based on the notice on any wages paid to Employee A on or after the date specified in the notice.

Example 2. Employer V receives a notice in October of Year 1 from the IRS that identifies the maximum number of withholding exemptions permitted and specifies the marital status for Employee B. Employee B has not performed services for Employer V since August of Year 1. However, since Employee B has performed services for Employer V for several years on a seasonal basis, Employer V reasonably expects Employee B to resume the performance of services for Employer V in June of Year 2, a date that is within 12 months of the date of the notice. Employer V is required to furnish the notice to Employee B within 10 business days of receipt. Employee B does not resume the performance of services until June of Year 3. Employer V is not required to withhold based on the notice.

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

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

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

Example 6. Employer Z pays remuneration to Employee F, a United States citizen, for services performed in Country M. Employer Z receives a notice from the IRS in Year 1 that identifies the maximum number of withholding exemptions permitted and specifies the marital status for Employee F. Employer Z must furnish the employee notice to Employee F within 10 business days of receipt. Employer Z reasonably believes all the remuneration paid to Employee F in Year 1 is excluded from Employee F's gross income under section 911 of the Internal Revenue Code. Since section 3401(a)(8)(B) excludes such remuneration from wages for income tax withholding purposes, Employer X does not have to withhold on such remuneration, notwithstanding the maximum number of exemptions permitted and marital status specified in the notice. In Year 2, Employee F returns to the United States to perform services. Employer Z does not reasonably believe any part of Employee F's remuneration paid in Year 2 is excluded from Employee F's gross income under section 911. Rather, Employer Z reasonably believes that remuneration paid to Employee F in Year 2 is subject to income tax withholding. Employer Z must withhold on the remuneration paid to Employee F based on the notice.

(5) *Effective/applicability date.* Except as provided in this paragraph (g)(5), paragraph (g) applies on April 14, 2005. Paragraphs (g)(2)(iii)(A), (B), and (C) and paragraph (g)(2)(ix) apply on October 11, 2007, except taxpayers may rely on such paragraphs for notices issued prior to such date.

(68A Stat. 731 (26 U.S.C. 6001); 68A Stat. 732 (26 U.S.C. 6011); 68A Stat. 917 (26 U.S.C. 7805))

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§ 31.3402(f)(3)–1 When withholding exemption certificate takes effect.

(a) A withholding exemption certificate furnished the employer in any case in which no previous withholding exemption certificate is in effect with such employer, shall take effect as of the beginning of the first payroll period ending, or the first payment of