

§ 31.3402(f)(6)-1

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exemption certificates filed electronically by employees on or after January 2, 1997.

(ii) *Special rule for certain Forms W-4.* In the case of an electronic system that precludes the filing of Forms W-4 required on commencement of employment and Forms W-4 claiming more than 10 withholding exemptions or exemption from withholding, the requirements of paragraph (c)(2)(iii) of this section will be treated as satisfied if the Form W-4 is filed electronically before January 1, 1999.

[T.D. 7423, 41 FR 26217, June 25, 1976, as amended by T.D. 7915, 48 FR 44074, Sept. 27, 1983; T.D. 8706, 62 FR 24, Jan. 2, 1997; T.D. 9196, 70 FR 19696, Apr. 14, 2005; T.D. 9337, 72 FR 38483, July 13, 2007]

§ 31.3402(f)(6)-1 Withholding exemptions for nonresident alien individuals.

A nonresident alien individual (other than, in regard to wages paid after February 28, 1979, a nonresident alien individual treated as a resident under section 6013(g) or (h)) subject to withholding under section 3402 is on any 1 day entitled under section 3402(f)(1) and § 31.3402(f)(1)-1 to the number of withholding exemptions corresponding to the number of personal exemptions to which he is entitled on such day by reason of the application of section 873(b)(3) or section 876, whichever applies. Thus, a nonresident alien individual who is not a resident of Canada or Mexico and who is not a resident of Puerto Rico during the entire taxable year, is allowed under section 3402(f)(1) only one withholding exemption.

[T.D. 6908, 31 FR 16776, Dec. 31, 1966, as amended by T.D. 7670, 45 FR 6932, Jan. 31, 1980]

§ 31.3402(g)-1 Supplemental wage payments.

(a) *In general and withholding on supplemental wages in excess of \$1,000,000—*(1) *Determination of supplemental wages and regular wages—*(i) *Supplemental wages.* An employee's remuneration may consist of regular wages and supplemental wages. Supplemental wages are all wages paid by an employer that are not regular wages. Supplemental wages include wage payments made without regard to an employee's pay-

roll period, but also may include payments made for a payroll period. Examples of wage payments that are included in supplemental wages include reported tips (except as provided in paragraph (a)(1)(v) of this section), overtime pay (except as provided in paragraph (a)(1)(iv) of this section), bonuses, back pay, commissions, wages paid under reimbursement or other expense allowance arrangements, non-qualified deferred compensation includible in wages, wages paid as noncash fringe benefits, sick pay paid by a third party as an agent of the employer, amounts that are includible in gross income under section 409A, income recognized on the exercise of a nonstatutory stock option, wages from imputed income for health coverage for a nondependent, and wage income recognized on the lapse of a restriction on restricted property transferred from an employer to an employee. Amounts that are described as supplemental wages in this definition are supplemental wages regardless of whether the employer has paid the employee any regular wages during either the calendar year of the payment or any prior calendar year. Thus, for example, if the only wages that an employer has ever paid an employee are payments of noncash fringe benefits and income recognized on the exercise of a nonstatutory stock option, such payments are classified as supplemental wages.

(ii) *Regular wages.* As distinguished from supplemental wages, regular wages are amounts that are paid at a regular hourly, daily, or similar periodic rate (and not an overtime rate) for the current payroll period or at a predetermined fixed determinable amount for the current payroll period. Thus, among other things, wages that vary from payroll period to payroll period (such as commissions, reported tips, bonuses, or overtime pay) are not regular wages, except that an employer may treat tips as regular wages under paragraph (a)(1)(v) of this section and an employer may treat overtime pay as regular wages under paragraph (a)(1)(iv) of this section.

(iii) *Amounts that are not wages subject to income tax withholding.* If an amount of remuneration is not wages subject to income tax withholding, it is neither