

Pub. L. 100-647, set out as a note under section 3321 of this title.

**EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS**

For purposes of this chapter, the term “rail wages” shall not include the amount of any refund required under section 421 of Pub. L. 100-360, 42 U.S.C. 1395b note, see section 10202 of Pub. L. 101-239, set out as a note under section 1395b of Title 42, The Public Health and Welfare.

**[§ 3323. Omitted]**

Section, added Pub. L. 98-76, title II, §231(a), Aug. 12, 1983, 97 Stat. 427; amended Pub. L. 99-272, title XIII, §13301(b), Apr. 7, 1986, 100 Stat. 326, contained definitions, prior to the general amendment of this chapter by Pub. L. 100-647, §7106(a). See section 3322 of this title.

**CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES**

Sec.	
3401.	Definitions.
3402.	Income tax collected at source.
3403.	Liability for tax.
3404.	Return and payment by governmental employer.
3405.	Special rules for pensions, annuities, and certain other deferred income. <sup>1</sup>
3406.	Backup withholding.
	[3451 to 3456. Repealed.]

**AMENDMENTS**

1983—Pub. L. 98-67, title I, §§102(a), 104(d)(4), Aug. 5, 1983, 97 Stat. 369, 380, added item 3406 and repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1982—Pub. L. 97-248, title III, §§307(b)(4), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the caption of chapter 24 is amended by striking out “ON WAGES”, items for subchapters A and B are added in analysis, and heading “Subchapter A—Withholding From Wages” is added. 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 L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub.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.

**§ 3401. Definitions**

**(a) Wages**

For purposes of this chapter, the term “wages” means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) for active service performed in a month for which such employee is entitled to the benefits of section 112 (relating to certain combat zone compensation of members of the Armed Forces of the United States) to the extent remuneration for such service is excludable from gross income under such section; or

(2) for agricultural labor (as defined in section 3121(g)) unless the remuneration paid for such labor is wages (as defined in section 3121(a)); or

(3) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

(4) for service not in the course of the employer’s trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer’s trade or business; or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter; or

(5) for services by a citizen or resident of the United States for a foreign government or an international organization; or

(6) for such services, performed by a non-resident alien individual, as may be designated by regulations prescribed by the Secretary; or

[(7) Repealed. Pub. L. 89-809, title I, §103(k), Nov. 13, 1966, 80 Stat. 1554]

(8)(A) for services for an employer (other than the United States or any agency thereof)—

(i) performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911; or

(ii) performed in a foreign country or in a possession of the United States by such a citizen if, at the time of the payment of such remuneration, the employer is required by the law of any foreign country or possession of the United States to withhold income tax upon such remuneration; or

(B) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services; or

(C) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico; or

(D) for services for the United States (or any agency thereof) performed by a citizen of the United States within a possession of the United States to the extent the United States

<sup>1</sup> Editorially supplied. Section 3405 added by Pub. L. 97-248 without corresponding amendment of analysis.

(or such agency) withholds taxes on such remuneration pursuant to an agreement with such possession; or

(9) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(10)(A) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(B) for services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back; or

(11) for services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or

(12) to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a); or

(C) for a payment described in section 402(h)(1) and (2) if, at the time of such payment, it is reasonable to believe that the employee will be entitled to an exclusion under such section for payment; or

(D) under an arrangement to which section 408(p) applies; or

(E) under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A),<sup>1</sup> or

(13) pursuant to any provision of law other than section 5(c) or 6(1) of the Peace Corps Act, for service performed as a volunteer or volunteer leader within the meaning of such Act; or

(14) in the form of group-term life insurance on the life of an employee; or

(15) to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 (determined without regard to section 274(n)); or

(16)(A) as tips in any medium other than cash;

(B) as cash tips to an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is \$20 or more;<sup>2</sup>

(17) for service described in section 3121(b)(20);<sup>2</sup>

(18) for any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127, 129, 134(b)(4), or 134(b)(5);<sup>2</sup>

(19) for any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 108(f)(4), 117, or 132;<sup>2</sup>

(20) for any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan (within the meaning of section 105(h)(6));<sup>2</sup>

(21) for any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b);<sup>2</sup>

(22) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d); or

(23) for any benefit or payment which is excludable from the gross income of the employee under section 139B(b).

The term “wages” includes any amount includible in gross income of an employee under section 409A and payment of such amount shall be treated as having been made in the taxable year in which the amount is so includible.

#### **(b) Payroll period**

For purposes of this chapter, the term “payroll period” means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term “miscellaneous payroll period” means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual or annual payroll period.

#### **(c) Employee**

For purposes of this chapter, the term “employee” includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term “employee” also includes an officer of a corporation.

#### **(d) Employer**

For purposes of this chapter, the term “employer” means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that—

(1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such

<sup>1</sup> So in original. The comma probably should be a semicolon.

<sup>2</sup> So in original. Probably should be followed by “or”.

services, the term “employer” (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

(2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term “employer” (except for purposes of subsection (a)) means such person.

**(e) Number of withholding exemptions claimed**

For purposes of this chapter, the term “number of withholding exemptions claimed” means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402(f), or in effect under the corresponding section of prior law, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

**(f) Tips**

For purposes of subsection (a), the term “wages” includes tips received by an employee in the course of his employment. Such wages shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received.

**(g) Crew leader rules to apply**

Rules similar to the rules of section 3121(o) shall apply for purposes of this chapter.

**(h) Differential wage payments to active duty members of the uniformed services**

**(1) In general**

For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

**(2) Differential wage payment**

For purposes of paragraph (1), the term “differential wage payment” means any payment which—

(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days, and

(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.

(Aug. 16, 1954, ch. 736, 68A Stat. 455; Aug. 9, 1955, ch. 681, 69 Stat. 616; Pub. L. 87-256, §110(g)(1), Sept. 21, 1961, 75 Stat. 537; Pub. L. 87-293, title II, §201(c), Sept. 22, 1961, 75 Stat. 625; Pub. L. 87-792, §7(l), Oct. 10, 1962, 76 Stat. 830; Pub. L. 88-272, title II, §§204(b), 213(c), Feb. 26, 1964, 78 Stat. 36, 52; Pub. L. 89-97, title III, §313(d)(1), (2), July 30, 1965, 79 Stat. 383, 384; Pub. L. 89-809, title I, §103(k), Nov. 13, 1966, 80 Stat. 1554; Pub. L. 92-279, §2, Apr. 26, 1972, 86 Stat. 125; Pub. L. 93-406, title II, §2002(g)(7), Sept. 2, 1974, 88 Stat. 970; Pub. L. 94-455, title XII, §1207(e)(1)(C), title XV, §1501(b)(7), title XIX, §§1903(c), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1707, 1736, 1810, 1834; Pub. L.

95-600, title I, §164(b)(1), Nov. 6, 1978, 92 Stat. 2813; Pub. L. 95-615, §207(a), Nov. 8, 1978, 92 Stat. 3108; Pub. L. 96-222, title I, §103(a)(13)(A), Apr. 1, 1980, 94 Stat. 213; Pub. L. 97-34, title I, §§112(b)(5), 124(e)(2)(A), title III, §311(h)(6), Aug. 13, 1981, 95 Stat. 195, 200, 282; Pub. L. 97-448, title I, §103(c)(12)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98-369, div. A, title IV, §491(d)(38), title V, §531(d)(4), July 18, 1984, 98 Stat. 851, 885; Pub. L. 99-514, title I, §122(e)(4), title XII, §1272(c), Oct. 22, 1986, 100 Stat. 2112, 2594; Pub. L. 100-647, title I, §§1001(g)(4)(B)(iii), 1011(f)(9), 1011B(a)(22)(D), (33), Nov. 10, 1988, 102 Stat. 3352, 3463, 3486, 3488; Pub. L. 101-140, title II, §203(a)(2), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101-239, title VII, §7631(a), (b), Dec. 19, 1989, 103 Stat. 2378; Pub. L. 101-508, title XI, §11703(f)(1), Nov. 5, 1990, 104 Stat. 1388-517; Pub. L. 104-117, §1(c), Mar. 20, 1996, 110 Stat. 828; Pub. L. 104-188, title I, §§1421(b)(8)(D), 1704(t)(4)(C), Aug. 20, 1996, 110 Stat. 1798, 1887; Pub. L. 104-191, title III, §301(c)(2)(C), Aug. 21, 1996, 110 Stat. 2049; Pub. L. 105-206, title VI, §6023(14), (15), July 22, 1998, 112 Stat. 825; Pub. L. 107-16, title VI, §641(a)(1)(D)(i), June 7, 2001, 115 Stat. 119; Pub. L. 108-121, title I, §106(b)(4), Nov. 11, 2003, 117 Stat. 1339; Pub. L. 108-173, title XII, §1201(d)(2)(C), Dec. 8, 2003, 117 Stat. 2477; Pub. L. 108-357, title III, §320(b)(4), title VIII, §885(b)(2), Oct. 22, 2004, 118 Stat. 1473, 1639; Pub. L. 108-375, div. A, title V, §585(b)(2)(D), Oct. 28, 2004, 118 Stat. 1932; Pub. L. 109-135, title IV, §412(tt), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110-245, title I, §§105(a)(1), 115(c), June 17, 2008, 122 Stat. 1628, 1637.)

REFERENCES IN TEXT

Sections 5(c) and 6(1) of the Peace Corps Act, referred to in subsec. (a)(13), are classified to sections 2504(c) and 2505(1), respectively, of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2008—Subsec. (a)(23). Pub. L. 110-245, §115(c), added par. (23).

Subsec. (h). Pub. L. 110-245, §105(a)(1), added subsec. (h).

2005—Subsecs. (g), (h). Pub. L. 109-135 redesignated subsec. (h) as (g).

2004—Subsec. (a). Pub. L. 108-357, §885(b)(2), inserted concluding provisions.

Subsec. (a)(18). Pub. L. 108-375 substituted “134(b)(4), or 134(b)(5)” for “or 134(b)(4)”.

Subsec. (a)(19). Pub. L. 108-357, §320(b)(4), inserted “108(f)(4),” after “74(c),”.

2003—Subsec. (a)(18). Pub. L. 108-121 substituted “, 129, or 134(b)(4)” for “or 129”.

Subsec. (a)(22). Pub. L. 108-173 added par. (22).

2001—Subsec. (a)(12)(E). Pub. L. 107-16 added subpar. (E).

1998—Subsec. (a)(19), (21). Pub. L. 105-206 inserted “for” after par. designation.

1996—Subsec. (a)(1). Pub. L. 104-188, §1704(t)(4)(C), substituted “combat zone compensation” for “combat pay”.

Pub. L. 104-117 inserted before semicolon “to the extent remuneration for such service is excludable from gross income under such section”.

Subsec. (a)(12)(D). Pub. L. 104-188, §1421(b)(8)(D), added subpar. (D).

Subsec. (a)(21). Pub. L. 104-191 added par. (21).

1990—Subsec. (a)(20). Pub. L. 101-508 added par. (20).

1989—Subsec. (a)(2). Pub. L. 101-239, §7631(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “for agricultural labor (as defined in section 3121(g)); or”.

Subsec. (g). Pub. L. 101-140 amended this section to read as if amendments by Pub. L. 100-647, §1011B(a)(22)(D), had not been enacted, see 1988 Amendment note below.

Subsec. (h). Pub. L. 101-239, §7631(b), added subsec. (h).

1988—Subsec. (a)(12)(C). Pub. L. 100-647, §1011(f)(9), substituted “section 402(h)(1) and (2)” for “section 219” and “an exclusion” for “a deduction”.

Subsec. (a)(15). Pub. L. 100-647, §1001(g)(4)(B)(iii), inserted “(determined without regard to section 274(n))” after “section 217”.

Subsec. (a)(19), (20). Pub. L. 100-647, §1011B(a)(33), redesignated par. (20) as (19) and struck out former par. (19) which excluded medical care reimbursement made to or for benefit of employee under self-insured medical reimbursement plan.

Subsec. (g). Pub. L. 100-647, §1011B(a)(22)(D), added subsec. (g) relating to benefits provided under certain employee benefit plans.

1986—Subsec. (a)(8)(D). Pub. L. 99-514, §1272(c), added subpar. (D).

Subsec. (a)(20). Pub. L. 99-514, §122(e)(4), inserted reference to section 74(c).

1984—Subsec. (a). Pub. L. 98-369, §531(d)(4)(A), inserted “(including benefits)” in introductory provisions.

Subsec. (a)(12). Pub. L. 98-369, §491(d)(38), struck out subpar. (C) which provided: “under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a);” and redesignated subpar. (D) as (C).

Subsec. (a)(20). Pub. L. 98-369, §531(d)(4)(B), added par. (20).

1983—Subsec. (a)(12)(D). Pub. L. 97-448 substituted “section 219” for “section 219(a)”.

1981—Subsec. (a)(12)(D). Pub. L. 97-34, §311(h)(6), substituted “section 219(a)” for “section 219(a) or 220(a)”.

Subsec. (a)(18). Pub. L. 97-34, §124(e)(2)(A), substituted “section 127 or 129” for “section 127”.

Pub. L. 97-34, §112(b)(5), redesignated par. (19) as (18). Former par. (18), relating to remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it was reasonable to believe that a corresponding deduction was allowable under section 913 (relating to deduction for certain expenses of living abroad), was struck out.

Subsec. (a)(19), (20). Pub. L. 97-34, §112(b)(5), redesignated par. (20) as (19). Former par. (19) redesignated (18).

1980—Subsec. (a)(18) to (20). Pub. L. 96-222 redesignated par. (18), added by Pub. L. 95-600, as (19), in par. (19) as so redesignated, substituted “section 127; or” for “section 124.”, and added par. (20).

1978—Subsec. (a)(18). Pub. L. 95-615 added par. (18) relating to payments or benefits excludable from income under section 124.

Pub. L. 95-600 added par. (18) relating to remuneration for which a corresponding deduction is allowable under section 913.

1976—Subsec. (a)(6). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (a)(12)(D). Pub. L. 94-455, §1501(b)(7), inserted “or 220(a)” after “section 219(a)”.

Subsec. (a)(17). Pub. L. 94-455, §1207(e)(1)(C), added par. (17).

Subsec. (c). Pub. L. 94-455, §1903(c), struck out “Territory” after “a State”.

1974—Subsec. (a)(12)(D). Pub. L. 93-406 added subpar. (D).

1972—Subsec. (a)(1). Pub. L. 92-279 struck out “as a member of the Armed Forces of the United States” after “active service”, substituted “employee” for “member”, and parenthetical text “(relating to certain combat pay of members of the Armed Forces of the United States)”.

1966—Subsec. (a)(6), (7). Pub. L. 89-809, §103(k), struck out par. (6) dealing with services performed by non-resident alien individuals other than residents of contiguous countries who enter and leave the United

States at frequent intervals, residents of Puerto Rico if such services are performed as an employee of the United States or any agency thereof, or individuals temporarily present in the United States as nonimmigrants under certain conditions, redesignated par. (7) as (6), and in par. (6) as so redesignated, struck out “who is a resident of a contiguous country and who enters and leaves the United States at frequent intervals” after “nonresident alien individual”.

1965—Subsec. (a)(16). Pub. L. 89-97, §313(d)(2), added par. (16).

Subsec. (f). Pub. L. 89-97, §313(d)(1), added subsec. (f).

1964—Subsec. (a)(14). Pub. L. 88-272, §204(b), added par. (14).

Subsec. (a)(15). Pub. L. 88-272, §213(c), added par. (15).

1962—Subsec. (a)(12)(B), (C). Pub. L. 87-792 substituted “is a plan described in section 403(a)” for “meets the requirements of section 401(a)(3), (4), (5), and (6)”, in subpar. (B), and added subpar. (C).

1961—Subsec. (a)(6)(C). Pub. L. 87-256 added subpar. (C).

Subsec. (a)(13). Pub. L. 87-293 added par. (13).

1955—Subsec. (a). Act Aug. 9, 1955, excluded from definition of wages, remuneration paid for services performed in a possession of the United States by a United States citizen if the employer is required by the law of the possession to withhold income tax on the remuneration.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-245, title I, §105(a)(2), June 17, 2008, 122 Stat. 1628, provided that: “The amendment made by this subsection [amending this section] shall apply to remuneration paid after December 31, 2008.”

Amendment by section 115(c) of Pub. L. 110-245 effective as if included in section 5 of Pub. L. 110-142, see section 115(d) of Pub. L. 110-245, set out as a note under section 3121 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by Pub. L. 108-375 applicable to travel benefits provided after Oct. 28, 2004, see section 585(b)(3) of Pub. L. 108-375, set out as a note under section 134 of this title.

Amendment by section 320(b)(4) of Pub. L. 108-357 applicable to amounts received by an individual in taxable years beginning after Dec. 31, 2003, see section 320(c) of Pub. L. 108-357, set out as a note under section 108 of this title.

Amendment by section 885(b)(2) of Pub. L. 108-357 applicable to amounts deferred after Dec. 31, 2004, with special rules relating to earnings and material modifications and exception for nonelective deferred compensation, see section 885(d) of Pub. L. 108-357, set out as an Effective Date note under section 409A of this title.

#### EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108-173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108-173, set out as a note under section 62 of this title.

Amendment by Pub. L. 108-121 applicable to taxable years beginning after Dec. 31, 2002, see section 106(c) of Pub. L. 108-121, set out as a note under section 134 of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107-16, set out as a note under section 402 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104-191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104-191, set out as a note under section 62 of this title.

Amendment by section 1421(b)(8)(D) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31,

1996, see section 1421(e) of Pub. L. 104-188, set out as a note under section 72 of this title.

Amendment by Pub. L. 104-117 applicable to remuneration paid after Mar. 20, 1996, see section 1(e) of Pub. L. 104-117, set out in a Treatment of Certain Individuals Performing Services in Certain Hazardous Duty Areas; Effective Date note under section 112 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11703(f)(2), Nov. 5, 1990, 104 Stat. 1388-518, provided that: "The amendment made by paragraph (1) [amending this section] shall apply as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99-514, see Effective Date of 1986 Amendment note set out under section 79 of this title] but shall not apply to any amount paid before the date of the enactment of this Act [Nov. 5, 1990] which the employer treated as wages for purposes of chapter 24 of the Internal Revenue Code of 1986 when paid."

#### EFFECTIVE DATE OF 1989 AMENDMENTS

Pub. L. 101-239, title VII, §7631(c), Dec. 19, 1989, 103 Stat. 2378, provided that: "The amendments made by this section [amending this section] shall apply to remuneration paid after December 31, 1989."

Amendment by Pub. L. 101-140 effective as if included in section 1151 of Pub. L. 99-514, see section 203(c) of Pub. L. 101-140, set out as a note under section 79 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1001(g)(4)(B)(iii), 1011(f)(9), and 1011B(a)(33) of 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.

Amendment by section 1011B(a)(22)(D) of Pub. L. 100-647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(22)(F) of Pub. L. 100-647, set out as a note under section 3121 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 122(e)(4) of Pub. L. 99-514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1272(c) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(38) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

Amendment by section 531(d)(4) of Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 112(b)(5) of Pub. L. 97-34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97-34, set out as a note under section 911 of this title.

Amendment by section 124(e)(2)(A) of Pub. L. 97-34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f)(2) of Pub. L. 97-34, set out as a note under section 21 of this title.

Amendment by section 311(h)(6) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97-34, set out as a note under section 219 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-615 applicable to remuneration paid after Nov. 8, 1978, but with taxpayers allowed to elect not to have the amendment apply with respect to any taxable year beginning after Dec. 31, 1977, and before Jan. 1, 1979, see section 209(b), (c) of Pub. L. 95-615, set out as a note under section 911 of this title.

Amendment by Pub. L. 95-600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95-600, set out as a note under section 127 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(7) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94-455, set out as a note under section 62 of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93-406, set out as an Effective Date note under section 4973 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-279, §3(b), Apr. 26, 1972, 86 Stat. 125, provided that: "The amendments made by section 2 [amending this section] shall apply to wages paid on or after the first day of the first calendar month which begins more than 30 days after the date of the enactment of this Act [Apr. 26, 1972]."

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to remuneration paid after Dec. 31, 1966, see section 103(n)(4) of Pub. L. 89-809, set out as a note under section 871 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 313(d)(1), (2) of 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 a note under section 6053 of this title.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 204(b) of Pub. L. 88-272 applicable to remuneration paid after Dec. 31, 1963, in the form of group-term life insurance provided after such date, see section 204(d) of Pub. L. 88-272, set out as an Effective Date note under section 79 of this title.

Amendment by section 213(c) of Pub. L. 88-272 applicable to remuneration paid after the seventh day following Feb. 26, 1964, see section 213(d) of Pub. L. 88-272, set out as a note under section 62 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 22 of this title.

#### EFFECTIVE DATE OF 1961 AMENDMENTS

Amendment by Pub. L. 87-293 applicable with respect to remuneration paid after Sept. 22, 1961, see section

201(d) of Pub. L. 87-293, set out as a note under section 912 of this title.

Pub. L. 87-256, §110(h)(4), Sept. 21, 1961, 75 Stat. 538, provided that: "The amendments made by subsection (g) of this section [amending this section and section 3402 of this title] shall apply with respect to wages paid after December 31, 1961."

#### SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89-368, §1, Mar. 15, 1966, 80 Stat. 38, provided that: "This Act [enacting sections 276 and 6682 of this title and section 428 of Title 42, The Public Health and Welfare, amending sections 1402, 1403, 3402, 4061, 4251, 4253, 6015, 6154, 6211, 6412, 6654, 7205, and 7701 of this title and section 1202 of Title 19, Customs Duties, and enacting provisions set out as notes under sections 276, 3402, 4061, 4251, 6154, and 6654 of this title and section 428 of Title 42] may be cited as the 'Tax Adjustment Act of 1966'."

#### REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 201(c) of Pub. L. 87-293, cited as a credit to this section, was repealed by Pub. L. 89-572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89-572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

#### NO INFERENCE TO BE DRAWN FROM AMENDMENT BY PUB. L. 108-121

No inference to be drawn from amendment to subsec. (a)(18) of this section by section 106 of Pub. L. 108-121 with respect to tax treatment of any amounts under program described in section 134(b)(4) of this title for any taxable year beginning before Jan. 1, 2003, see section 106(d) of Pub. L. 108-121, set out as a note under section 134 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

#### CONTROVERSIES INVOLVING WHETHER INDIVIDUALS ARE EMPLOYEES FOR PURPOSES OF EMPLOYMENT TAXES

Pub. L. 95-600, title V, §530, Nov. 6, 1978, 92 Stat. 2885, as amended by Pub. L. 96-167, §9(d), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 96-541, §1, Dec. 17, 1980, 94 Stat. 3204; Pub. L. 97-248, title II, §269(c)(1), (2), 96 Stat. 552; Pub. L. 99-514, §2, title XVII, §1706(a), Oct. 22, 1986, 100 Stat. 2095, 2781; Pub. L. 104-188, title I, §1122(a), Aug. 20, 1996, 110 Stat. 1766; Pub. L. 109-280, title VIII, §864(a), Aug. 17, 2006, 120 Stat. 1024; Pub. L. 110-458, title I, §108(m), Dec. 23, 2008, 122 Stat. 5110, provided that:

"(a) TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY.—

"(1) IN GENERAL.—If—

"(A) for purposes of employment taxes, the taxpayer did not treat an individual as an employee for any period, and

"(B) in the case of periods after December 31, 1978, all Federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee, then, for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall

be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

"(2) STATUTORY STANDARDS PROVIDING ONE METHOD OF SATISFYING THE REQUIREMENTS OF PARAGRAPH (1).—For purposes of paragraph (1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer's treatment of such individual for such period was in reasonable reliance on any of the following:

"(A) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer;

"(B) a past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding positions substantially similar to the position held by this individual; or

"(C) long-standing recognized practice of a significant segment of the industry in which such individual was engaged.

"(3) CONSISTENCY REQUIRED IN THE CASE OF PRIOR TAX TREATMENT.—Paragraph (1) shall not apply with respect to the treatment of any individual for employment tax purposes for any period ending after December 31, 1978, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for purposes of the employment taxes for any period beginning after December 31, 1977.

"(4) REFUND OR CREDIT OF OVERPAYMENT.—If refund or credit of any overpayment of an employment tax resulting from the application of paragraph (1) is not barred on the date of the enactment of this Act [Nov. 6, 1978] by any law or rule of law, the period for filing a claim for refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) shall not expire before the date 1 year after the date of the enactment of this Act.

"(b) PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.—No regulation or Revenue Ruling shall be published on or after the date of the enactment of this Act [Nov. 6, 1978] and before the effective date of any law hereafter enacted clarifying the employment status of individuals for purposes of the employment taxes by the Department of the Treasury (including the Internal Revenue Service) with respect to the employment status of any individual for purposes of the employment taxes.

"(c) DEFINITIONS.—For purposes of this section—

"(1) EMPLOYMENT TAX.—The term 'employment tax' means any tax imposed by subtitle C of the Internal Revenue Code of 1986 [formerly I.R.C. 1954, section 3101 et seq. of this title].

"(2) EMPLOYMENT STATUS.—The term 'employment status' means the status of an individual, under the 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.

"(e) SPECIAL RULES FOR APPLICATION OF SECTION.—

"(1) NOTICE OF AVAILABILITY OF SECTION.—An officer or employee of the Internal Revenue Service shall, before or at the commencement of any audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer, provide the taxpayer with a written notice of the provisions of this section.

"(2) RULES RELATING TO STATUTORY STANDARDS.—For purposes of subsection (a)(2)—

"(A) a taxpayer may not rely on an audit commenced after December 31, 1996, for purposes of sub-

paragraph (B) thereof unless such audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer.

“(B) in no event shall the significant segment requirement of subparagraph (C) thereof be construed to require a reasonable showing of the practice of more than 25 percent of the industry (determined by not taking into account the taxpayer), and

“(C) in applying the long-standing recognized practice requirement of subparagraph (C) thereof—

“(i) such requirement shall not be construed as requiring the practice to have continued for more than 10 years, and

“(ii) a practice shall not fail to be treated as long-standing merely because such practice began after 1978.

“(3) AVAILABILITY OF SAFE HARBORS.—Nothing in this section shall be construed to provide that subsection (a) only applies where the individual involved is otherwise an employee of the taxpayer.

“(4) BURDEN OF PROOF.—

“(A) IN GENERAL.—If—

“(i) a taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee for purposes of this section, and

“(ii) the taxpayer has fully cooperated with reasonable requests from the Secretary of the Treasury or his delegate,

then the burden of proof with respect to such treatment shall be on the Secretary.

“(B) EXCEPTION FOR OTHER REASONABLE BASIS.—In the case of any issue involving whether the taxpayer had a reasonable basis not to treat an individual as an employee for purposes of this section, subparagraph (A) shall only apply for purposes of determining whether the taxpayer meets the requirements of subparagraph (A), (B), or (C) of subsection (a)(2).

“(5) PRESERVATION OF PRIOR PERIOD SAFE HARBOR.—

If—

“(A) an individual would (but for the treatment referred to in subparagraph (B)) be deemed not to be an employee of the taxpayer under subsection (a) for any prior period, and

“(B) such individual is treated by the taxpayer as an employee for employment tax purposes for any subsequent period,

then, for purposes of applying such taxes for such prior period with respect to the taxpayer, the individual shall be deemed not to be an employee.

“(6) SUBSTANTIALLY SIMILAR POSITION.—For purposes of this section, the determination as to whether an individual holds a position substantially similar to a position held by another individual shall include consideration of the relationship between the taxpayer and such individuals.

“(f) TREATMENT OF TEST ROOM SUPERVISORS AND PROCTORS WHO ASSIST IN THE ADMINISTRATION OF COLLEGE ENTRANCE AND PLACEMENT EXAMS.—

“(1) IN GENERAL.—In the case of an individual described in paragraph (2) who is providing services as a test proctor or room supervisor by assisting in the administration of college entrance or placement examinations, this section shall be applied to such services performed after December 31, 2006 (and remuneration paid for such services) without regard to subsection (a)(3) thereof.

“(2) APPLICABILITY.—An individual is described in this paragraph if the individual—

“(A) is providing the services described in subsection (a) to an organization described in section 501(c), and exempt from tax under section 501(a), of the Internal Revenue Code of 1986, and

“(B) is not otherwise treated as an employee of such organization for purposes of subtitle C of such Code (relating to employment taxes).”

[Pub. L. 109-280, title VIII, §864(b), Aug. 17, 2006, 120 Stat. 1024, provided that: “The amendment made by

this section [amending section 530 of Pub. L. 95-600, set out above] shall apply to remuneration for services performed after December 31, 2006.”]

[Pub. L. 104-188, title I, §1122(b), Aug. 20, 1996, 110 Stat. 1767, provided that:

[“(1) IN GENERAL.—The amendment made by this section [amending section 530 of Pub. L. 95-600, set out above] shall apply to periods after December 31, 1996.

[“(2) NOTICE BY INTERNAL REVENUE SERVICE.—Section 530(e)(1) of the Revenue Act of 1978 [Pub. L. 95-600] (as added by subsection (a)) shall apply to audits which commence after December 31, 1996.

[“(3) BURDEN OF PROOF.—

[“(A) IN GENERAL.—Section 530(e)(4) of the Revenue Act of 1978 (as added by subsection (a)) shall apply to disputes involving periods after December 31, 1996.

[“(B) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to infer the proper treatment of the burden of proof with respect to disputes involving periods before January 1, 1997.”]

[Pub. L. 99-514, title XVII, §1706(b), Oct. 22, 1986, 100 Stat. 2781, provided that: “The amendment made by this section [amending section 530 of Pub. L. 95-600, set out above] shall apply to remuneration paid and services rendered after December 31, 1986.”]

## § 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 withhold-



ing 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****(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 percent, any percentage applicable to any of the 3 lowest income brackets in the table under section 1(c), 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 10 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.

**(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 subdivision 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 the product of the third lowest rate of tax applicable under section 1(c) and 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 cor-

poration, 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 receiving 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)<sup>1</sup> 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 the fourth lowest rate of tax applicable under section 1(c)) 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 re-

spect 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; Pub. L. 87-256, § 110(g)(2), Sept. 21, 1961, 75 Stat. 537; Pub. L. 88-272, title III, § 302(a), (b), Feb. 26, 1964, 78 Stat. 140; Pub. L. 89-97, title III, § 313(d)(3)-(5), July 30, 1965, 79 Stat. 384; Pub. L. 89-212, § 2(c), Sept. 29, 1965, 79 Stat. 859; Pub. L. 89-368, title I, § 101(a)-(e)(3), Mar. 15, 1966, 80 Stat. 38-61; Pub. L. 90-364, title I, § 102(c), June 28, 1968, 82 Stat. 256; Pub. L. 91-36, § 2(a), June 30, 1969, 83 Stat. 42; Pub. L. 91-53, § 6(a), Aug. 7, 1969, 83 Stat. 96; Pub. L. 91-172, title VIII, § 805(a)-(e), (f)(1), (g), Dec. 30, 1969, 83 Stat. 686, 704-708; Pub. L. 92-178, title II, § 208(a), (b)(1), (c)-(h)(1), Dec. 10, 1971, 85 Stat. 512-517; Pub. L. 94-12, title II, §§ 202(b), 205, Mar. 29, 1975, 89 Stat. 29, 32; Pub. L. 94-164, §§ 2(b)(2), 5(a)(1), Dec. 23, 1975, 89 Stat. 971, 975; Pub. L. 94-331, § 3(a)(1), June 30, 1976, 90 Stat. 782; Pub. L. 94-396, § 2(a)(1), Sept. 3, 1976, 90 Stat. 1201; Pub. L. 94-414, § 3(a)(1), Sept. 17, 1976, 90 Stat. 1273; 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), Oct. 4, 1976, 90 Stat. 1557, 1559, 1566, 1705, 1810, 1834; Pub. L. 95-30, title I, § 105, title IV, § 405(a), May 23, 1977, 91 Stat. 140, 156; Pub. L. 95-600, title I, §§ 101(e), 102(c), title VI, § 601(b)(2), Nov. 6, 1978, 92 Stat. 2770, 2771, 2896; Pub. L. 96-601, § 4(a)-(d), Dec. 24, 1980, 94 Stat. 3496, 3497; Pub. L. 97-34, title I, § 101(e), Aug. 13, 1981, 95 Stat. 184; Pub. L. 97-248, title III, §§ 317(a), 334(d), Sept. 3, 1982, 96 Stat. 607, 627; Pub. L. 98-67, title I, § 104(d)(3), Aug. 5, 1983, 97 Stat. 380; Pub. L. 99-44, § 3, May 24, 1985, 99 Stat. 77; Pub. L. 99-514, title I, § 104(b)(15), title XIII, §§ 1301(j)(8), 1303(b)(4), title XV, § 1581(b), Oct. 22, 1986, 100 Stat. 2106, 2658, 2766; Pub. L. 100-203, title X, § 10302(a), Dec. 22, 1987, 101 Stat. 1330-429; Pub. L. 100-647, title I, § 1003(a)(2), Nov. 10, 1988, 102 Stat. 3382; Pub. L. 101-508, title XI, § 11801(a)(41), Nov. 5, 1990, 104 Stat. 1388-521; Pub. L. 102-318, title V, § 522(b)(2)(D), July 3, 1992, 106 Stat. 314; Pub. L. 102-486, title XIX, §§ 1934(a), 1942(a), Oct. 24, 1992, 106 Stat. 3031, 3036; Pub. L. 103-465, title VII, §§ 701(a), 702(a), Dec. 8, 1994, 108 Stat. 4995, 4996; Pub. L. 107-16, title I, § 101(c)(6)-(9), June 7, 2001, 115 Stat. 43, 44; Pub. L. 109-222, title V, § 511(a), May 17, 2006, 120 Stat.

<sup>1</sup> See References in Text note below.

364; Pub. L. 112-56, title I, §102(a), Nov. 21, 2011, 125 Stat. 712.)

## 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 63(c)(2)(C), referred to in subsec. (r)(2)(A), was redesignated section 63(c)(2)(D), and a new section 63(c)(2)(C) was added, by Pub. L. 107-147, title IV, §411(e)(1)(C), (D), Mar. 9, 2002, 116 Stat. 46.

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

2011—Subsec. (t). Pub. L. 112-56 struck out subsec. (t) which related to extension of 3 percent withholding to certain payments made by Government entities for property or services.

2006—Subsec. (t). Pub. L. 109-222 added subsec. (t).

2001—Subsec. (p)(1)(B). Pub. L. 107-16, §101(c)(6), substituted “7 percent, any percentage applicable to any of the 3 lowest income brackets in the table under section 1(c),” for “7, 15, 28, or 31 percent”.

Subsec. (p)(2). Pub. L. 107-16, §101(c)(7), substituted “10 percent” for “15 percent”.

Subsec. (q)(1). Pub. L. 107-16, §101(c)(8), substituted “equal to the product of the third lowest rate of tax applicable under section 1(c) and such payment” for “equal to 28 percent of such payment”.

Subsec. (r)(3). Pub. L. 107-16, §101(c)(9), substituted “the fourth lowest rate of tax applicable under section 1(c)” for “31 percent” in introductory provisions.

1994—Subsec. (p). Pub. L. 103-465, §702(a), reenacted heading without change and amended text of subsec. (p) generally. Prior to amendment, text read as follows: “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.”

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. (D). 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 2011 AMENDMENT

Pub. L. 112-56, title I, §102(b), Nov. 21, 2011, 125 Stat. 712, provided that: “The amendment made by this section [amending this section] shall apply to payments made after December 31, 2011.”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-222, title V, §511(b), May 17, 2006, 120 Stat. 365, as amended by Pub. L. 111-5, div. B, title I, §1511, Feb. 17, 2009, 123 Stat. 355, provided that: “The amendment made by this section [amending this section] shall apply to payments made after December 31, 2011.”

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to amounts paid after the 60th day after June 7, 2001, and references to income brackets and rates of tax in such amendment to be applied without regard to section 1(i)(1)(D) of this title, see section 101(d)(2) of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-465, title VII, §701(b), Dec. 8, 1994, 108 Stat. 4996, 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

Pub. L. 102-486, title XIX, §1934(b), Oct. 24, 1992, 106 Stat. 3032, provided that: “The amendment made by this section [amending this section] applies to payments received after December 31, 1992.”

Pub. L. 102-486, title XIX, §1942(b), Oct. 24, 1992, 106 Stat. 3036, 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

Pub. L. 100-203, title X, §10302(b), Dec. 22, 1987, 101 Stat. 1330-429, 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

Pub. L. 99-44, §6(d), May 24, 1985, 99 Stat. 79, 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

Pub. L. 97-248, title III, §317(b), Sept. 3, 1982, 96 Stat. 610, provided that: "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

Pub. L. 97-34, title I, §101(f)(2), Aug. 13, 1981, 95 Stat. 185, 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

Pub. L. 96-601, §4(f), Dec. 24, 1980, 94 Stat. 3498, 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 calendar month beginning more than 120 days after the date of the enactment of this Act [Dec. 24, 1980]."

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title I, §101(f)(2), Nov. 6, 1978, 92 Stat. 2771, provided that: "The amendments made by subsection (e) [amending this section] shall apply to remuneration paid after December 31, 1978."

Pub. L. 95-600, title I, §102(d)(2), Nov. 6, 1978, 92 Stat. 2771, 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

Pub. L. 95-30, title I, §106(b), May 23, 1977, 91 Stat. 141, provided that: "The amendments made by section 105 [amending this section] shall apply to wages paid after April 30, 1977."

Pub. L. 95-30, title IV, §405(b), May 23, 1977, 91 Stat. 156, 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.

Pub. L. 94-455, title XII, §1207(f)(3), Oct. 4, 1976, 90 Stat. 1708, 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.

Pub. L. 94-12, title II, §209(c), Mar. 29, 1975, 89 Stat. 35, 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

Pub. L. 92-178, title II, §208(i), Dec. 10, 1971, 85 Stat. 517, 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

Pub. L. 91-172, title VIII, §805(h), Dec. 30, 1969, 83 Stat. 709, 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."

Pub. L. 91-53, §6(b), Aug. 7, 1969, 83 Stat. 96, provided that: "The amendments made by this section [amending this section] shall apply with respect to wages paid after July 31, 1969, and before January 1, 1970."

Pub. L. 91-36, §2(b), June 30, 1969, 83 Stat. 42, 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

Pub. L. 89-368, title I, §101(e)(6), Mar. 15, 1966, 80 Stat. 62, 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."

Pub. L. 89-368, title I, §101(g), Mar. 15, 1966, 80 Stat. 62, 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

Pub. L. 88-272, title III, §302(d), Feb. 26, 1964, 78 Stat. 146, provided that: "The amendments made by sub-

sections (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

Act Aug. 9, 1955, ch. 666, § 3, 69 Stat. 605, 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 45K 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

Pub. L. 99-514, title XV, § 1581(a), Oct. 22, 1986, 100 Stat. 2765, 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

Pub. L. 99-514, title XV, § 1581(c), Oct. 22, 1986, 100 Stat. 2766, 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

Pub. L. 95-30, title III, § 304, May 23, 1977, 91 Stat. 152, 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

Pub. L. 91-172, title VIII, § 805(b)(3), (4), 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 Pub. L. 92-178, title II, § 208(b)(2), Dec. 10, 1971, 85 Stat. 516.

#### TRANSITIONAL DETERMINATION STATUS DATE

Pub. L. 89-368, title I, § 101(f), Mar. 15, 1966, 80 Stat. 62, 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

Act Aug. 9, 1955, ch. 666, § 1, 69 Stat. 605, 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.”

### § 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.

### § 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”.

### § 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 section 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).

For purposes of clause (ii), any distribution or payment from or under an individual retirement plan (other than a Roth IRA) shall be treated as includible in gross income.

**(2) Periodic payment**

The term “periodic payment” means a designated distribution which is an annuity or similar periodic payment.

**(3) Nonperiodic distribution**

The term “nonperiodic distribution” means any designated distribution which is not a periodic payment.

**[ (4) Repealed. Pub. L. 102-318, title V, § 521(b)(38), July 3, 1992, 106 Stat. 312 ]**

**(5) Employer deferred compensation plan**

The term “employer deferred compensation plan” means any pension, annuity, profit-sharing, or stock bonus plan or other plan deferring the receipt of compensation.

**(6) Commercial annuity**

The term “commercial annuity” means an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any State.

**(7) Plan administrator**

The term “plan administrator” has the meaning given such term by section 414(g).

**(8) Maximum amount withheld**

The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property (other than securities of the employer corporation) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of securities of the employer corporation and cash (not in excess of \$200) in lieu of financial shares. For purposes of this paragraph, the term “securities of the employer corporation” has the meaning given such term by section 402(e)(4)(E).

**(9) Separate arrangements to be treated separately**

If the payor has more than 1 arrangement under which designated distributions may be made to any individual, each such arrangement shall be treated separately.

**(10) Time and manner of election**

**(A) In general**

Any election and any revocation under this section shall be made at such time and in such manner as the Secretary shall prescribe.

**(B) Payor required to notify payee of rights to elect**

**(i) Periodic payments**

The payor of any periodic payment—

(I) shall transmit to the payee notice of the right to make an election under subsection (a) not earlier than 6 months before the first of such payments and not later than when making the first of such payments,

(II) if such a notice is not transmitted under subclause (I) when making such first payment, shall transmit such a notice when making such first payment, and

(III) shall transmit to payees, not less frequently than once each calendar year, notice of their rights to make elections under subsection (a) and to revoke such elections.

**(ii) Nonperiodic distributions**

The payor of any nonperiodic distribution shall transmit to the payee notice of the right to make any election provided in subsection (b) at the time of the distribution (or at such earlier time as may be provided in regulations).

**(iii) Notice**

Any notice transmitted pursuant to this subparagraph shall be in such form and contain such information as the Secretary shall prescribe.

**(11) Withholding includes deduction**

The terms “withholding”, “withhold”, and “withheld” include “deducting”, “deduct”, and “deducted”.

**(12) Failure to provide correct TIN**

If—

(A) a payee fails to furnish his TIN to the payor in the manner required by the Secretary, or

(B) the Secretary notifies the payor before any payment or distribution that the TIN furnished by the payee is incorrect,

no election under subsection (a)(2) or (b)(2) shall be treated as in effect and subsection (a)(4) shall not apply to such payee.

**(13) Election may not be made with respect to certain payments outside the United States or its possessions**

**(A) In general**

Except as provided in subparagraph (B), in the case of any periodic payment or nonperiodic distribution which is to be delivered outside of the United States and any possession of the United States, no election may be made under subsection (a)(2) or (b)(2) with respect to such payment.

**(B) Exception**

Subparagraph (A) shall not apply if the recipient certifies to the payor, in such manner as the Secretary may prescribe, that such person is not—

(i) a United States citizen or a resident alien of the United States, or

(ii) an individual to whom section 877 applies.

**(f) Withholding to be treated as wage withholding under section 3402 for other purposes**

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

(1) any designated distribution (whether or not an election under this section applies to such distribution) shall be treated as if it were wages paid by an employer to an employee with respect to which there has been withholding under section 3402, and

(2) in the case of any designated distribution not subject to withholding under this section by reason of an election under this section, the amount withheld shall be treated as zero.

(Added Pub. L. 97-248, title III, §334(a), Sept. 3, 1982, 96 Stat. 623; amended Pub. L. 98-369, div. A, title V, §542(c), title VII, §§714(j)(1), (4), (5), 722(h)(4)(A), July 18, 1984, 98 Stat. 891, 962, 963, 976; Pub. L. 99-514, title XI, §1102(e)(1), title XII, §1234(b)(1), title XVIII, §1875(c)(10), Oct. 22, 1986, 100 Stat. 2416, 2566, 2895; Pub. L. 100-647, title I, §1012(bb)(2)(A)-(C), Nov. 10, 1988, 102 Stat. 3534; Pub. L. 102-318, title V, §§521(b)(36)-(40), 522(b)(1)-(2)(C), July 3, 1992, 106 Stat. 312-314; Pub. L. 104-188, title I, §1704(t)(71), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 106-554, §1(a)(7) [title III, §314(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-643; Pub. L. 107-16, title VI, §641(a)(1)(D)(ii), (iii), June 7, 2001, 115 Stat. 119.)

#### REFERENCES IN TEXT

Section 301(d) of the Tax Reduction Act of 1975, referred to in subsec. (d)(2)(B)(iii), is section 301(d) of Pub. L. 94-12, Mar. 29, 1975, 89 Stat. 26, relating to plan requirements for taxpayers electing additional credits, which was set out as a note under section 46 of this title and was repealed by Pub. L. 95-600, title I, §141(f)(1), Nov. 6, 1978, 92 Stat. 2795.

#### AMENDMENTS

2001—Subsec. (c)(3). Pub. L. 107-16, §641(a)(1)(D)(ii), reenacted heading without change and amended text of par. (3) generally. Prior to amendment, text read as follows: “For purposes of this subsection, the term ‘eligible rollover distribution’ has the meaning given such term by section 402(f)(2)(A) (or in the case of an annuity contract under section 403(b), a distribution from such contract described in section 402(f)(2)(A)).”

Subsec. (d)(2)(B)(iv). Pub. L. 107-16, §641(a)(1)(D)(iii), added cl. (iv).

2000—Subsec. (e)(1)(B). Pub. L. 106-554 inserted “(other than a Roth IRA)” after “individual retirement plan” in concluding provisions.

1996—Subsec. (e)(12). Pub. L. 104-188 substituted “(b)(2)” for “(b)(3)” in closing provisions.

1992—Subsec. (a). Pub. L. 102-318, §521(b)(36), substituted “Periodic payments” for “Pensions, annuities, etc.” in heading.

Subsec. (a)(1). Pub. L. 102-318, §522(b)(2)(A), substituted “subsection (e)(2)” for “subsection (d)(2)”.

Subsec. (b)(1). Pub. L. 102-318, §§521(b)(37)(A), 522(b)(2)(B), substituted “subsection (e)(3)” for “subsection (d)(3)” and “an amount equal to 10 percent of such distribution” for “the amount determined under paragraph (2)”.

Subsec. (b)(2), (3). Pub. L. 102-318, §521(b)(37)(B), redesignated par. (3) as (2) and struck out former par. (2) which related to amount of withholding.

Subsec. (c). Pub. L. 102-318, §522(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102-318, §522(b)(1), (2)(C), redesignated subsec. (c) as (d) and substituted “subsection (e)(1)” for “subsection (d)(1)” in par. (1). Former subsec. (d) redesignated (e).

Pub. L. 102-318, §521(b)(40), substituted “(b)(2)” for “(b)(3)” in par. (13)(A).

Pub. L. 102-318, §521(b)(39), amended par. (8) generally. Prior to amendment, par. (8) read as follows: “The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of

the amount of money and the fair market value of other property (other than employer securities of the employer corporation (within the meaning of section 402(a)(3))) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of \$200) in lieu of fractional shares.”

Pub. L. 102-318, §521(b)(38), struck out par. (4) which defined “qualified total distribution” and provided special rule for accumulated deductible employee contributions in determining qualified total distribution.

Subsecs. (e), (f). Pub. L. 102-318, §522(b)(1), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

1988—Subsec. (d)(13). Pub. L. 100-647, §1012(bb)(2)(C), substituted “United States or its possessions” for “United States” in heading.

Subsec. (d)(13)(A). Pub. L. 100-647, §1012(bb)(2)(A), substituted “the United States and any possession of the United States” for “the United States”.

Subsec. (d)(13)(B)(i). Pub. L. 100-647, §1012(bb)(2)(B), amended cl. (i) generally, substituting “or a resident alien of the United States” for “who is a bona fide resident of a foreign country”.

1986—Subsec. (d)(1)(B). Pub. L. 99-514, §1102(e)(1), inserted last sentence for “For purposes of clause (ii), any distribution or payment from or under an individual retirement plan shall be treated as includible in gross income.”

Subsec. (d)(1)(B)(iii), (iv). Pub. L. 99-514, §1875(c)(10), reenacted cl. (iii) relating to amounts subject to withholding under subchapter A of chapter 3 as cl. (iii) and reenacted cl. (iii) relating to distribution described in section 404(k)(2) as cl. (iv).

Subsec. (d)(13). Pub. L. 99-514, §1234(b)(1), added par. (13).

1984—Subsec. (b)(2)(C). Pub. L. 98-369, §714(j)(1), substituted “nonperiodic distribution” for “distribution described in subparagraph (B)” and “subparagraph (A) or (B) (as the case may be) shall be applied by taking into account” for “the Secretary, in prescribing tables or procedures under paragraph (1), shall take into account”, designated phrase “which is made by reason of a participant’s death” as cl. (i) and added cl. (ii).

Subsec. (d)(1)(B)(iii). Pub. L. 98-369, §714(j)(4), added cl. (iii) relating to amounts subject to withholding under subchapter A of chapter 3.

Pub. L. 98-369, §542(c), added cl. (iii) relating to distributions described in section 404(k)(2). Directory language that section (d)(1)(B) be amended by striking out “and” at end of cl. (i) and substituting “, or” for the period at end of cl. (ii) could not be executed in view of prior amendment by section 714(j)(4) of Pub. L. 98-369, which struck out “and” at end of cl. (i) and substituted “, and” for the period at end of cl. (ii).

Subsec. (d)(8). Pub. L. 98-369, §714(j)(5), freed from withholding requirement any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of \$200) in lieu of fractional shares.

Subsec. (d)(12). Pub. L. 98-369, §722(h)(4), added par. (12).

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107-16, set out as a note under section 402 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106-554, set out as a note under section 56 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(36)-(40) of Pub. L. 102-318 applicable to distributions after Dec. 31, 1992,

see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

Amendment by section 522(b)(1)-(2)(C) of 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

Pub. L. 100-647, title I, §1012(bb)(2)(D), Nov. 10, 1988, 102 Stat. 3534, provided that: "The amendments made by this paragraph [amending this section] shall apply to distributions made after the date of the enactment of this Act [Nov. 10, 1988]."

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(e)(1) of Pub. L. 99-514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99-514, set out as a note under section 219 of this title.

Pub. L. 99-514, title XII, §1234(b)(2), Oct. 22, 1986, 100 Stat. 2566, provided that: "The amendment made by this subsection [amending this section] shall apply to payments after December 31, 1986."

Amendment by section 1875(c)(10) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 542(c) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 542(d) of Pub. L. 98-369, set out as a note under section 404 of this title.

Amendment by section 714(j)(1), (4), (5) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 722(h)(4)(A) of Pub. L. 98-369 applicable to payments or distributions after Dec. 31, 1984, unless the payor elects to have such amendment apply to payments or distributions before Jan. 1, 1985, see section 722(h)(5)(B) of Pub. L. 98-369, set out as a note under section 643 of this title.

#### EFFECTIVE DATE

Pub. L. 97-248, title III, §334(e), Sept. 3, 1982, 96 Stat. 627, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) AMENDMENT MADE BY SUBSECTIONS (a) AND (d).—Except as provided in paragraph (4), the amendment made by subsections (a) [enacting this section] and (d) [amending section 3402 of this title] shall apply to payments or other distributions made after December 31, 1982.

"(2) AMENDMENTS MADE BY SUBSECTION (b).—Except as provided in paragraph (4), the amendments made by subsection (b) [amending section 6047 of this title] shall take effect on January 1, 1983.

"(3) AMENDMENTS MADE BY SUBSECTION (c).—The amendments made by subsection (c) [enacting section 6704 of this title] shall take effect on January 1, 1985.

"(4) PERIODIC PAYMENTS BEGINNING BEFORE JANUARY 1, 1983.—For purposes of section 3405(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of periodic payments beginning before January 1, 1983, the first periodic payment after December 31, 1982, shall be treated as the first such periodic payment.

"(5) DELAY IN APPLICATION.—The Secretary of the Treasury shall prescribe such regulations which delay (but not beyond June 30, 1983) the application of some or all of the amendments made by this section with respect to any payor until such time as such payor is able to comply without undue hardship with the requirements of such provisions.

"(6) WAIVER OF PENALTY.—No penalty shall be assessed under section 6672 with respect to any failure to withhold as required by the amendments made by this section if such failure was before July 1, 1983, and if the person made a good faith effort to comply with such withholding requirements."

#### 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.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 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, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### § 3406. Backup withholding

#### (a) Requirement to deduct and withhold

##### (1) In general

In the case of any reportable payment, if—

(A) the payee fails to furnish his TIN to the payor in the manner required,

(B) the Secretary notifies the payor that the TIN furnished by the payee is incorrect,

(C) there has been a notified payee under-reporting described in subsection (c), or

(D) there has been a payee certification failure described in subsection (d),

then the payor shall deduct and withhold from such payment a tax equal to the product of the fourth lowest rate of tax applicable under section 1(c) and such payment.

##### (2) Subparagraphs (C) and (D) of paragraph (1) apply only to interest and dividend payments

Subparagraphs (C) and (D) of paragraph (1) shall apply only to reportable interest or dividend payments.

#### (b) Reportable payment, etc.

For purposes of this section—

##### (1) Reportable payment

The term "reportable payment" means—

(A) any reportable interest or dividend payment, and

(B) any other reportable payment.

##### (2) Reportable interest or dividend payment

###### (A) In general

The term "reportable interest or dividend payment" means any payment of a kind, and to a payee, required to be shown on a return required under—

(i) section 6049(a) (relating to payments of interest),

(ii) section 6042(a) (relating to payments of dividends), or

(iii) section 6044 (relating to payments of patronage dividends) but only to the extent such payment is in money.



**(B) Special rule for patronage dividends**

For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term “reportable interest or dividend payment” shall not include any payment to which section 6044 (relating to patronage dividends) applies unless 50 percent or more of such payment is in money.

**(3) Other reportable payment**

The term “other reportable payment” means any payment of a kind, and to a payee, required to be shown on a return required under—

(A) section 6041 (relating to certain information at source),

(B) section 6041A(a) (relating to payments of remuneration for services),

(C) section 6045 (relating to returns of brokers),

(D) section 6050A (relating to reporting requirements of certain fishing boat operators), but only to the extent such payment is in money and represents a share of the proceeds of the catch,

(E) section 6050N (relating to payments of royalties), or

(F) section 6050W (relating to returns relating to payments made in settlement of payment card transactions).

**(4) Whether payment is of reportable kind determined without regard to minimum amount**

The determination of whether any payment is of a kind required to be shown on a return described in paragraph (2) or (3) shall be made without regard to any minimum amount which must be paid before a return is required.

**(5) Exception for certain small payments**

To the extent provided in regulations, the term “reportable payment” shall not include any payment which—

(A) does not exceed \$10, and

(B) if determined for a 1-year period, would not exceed \$10.

**(6) Other reportable payments include payments described in section 6041(a) or 6041A(a) only where aggregate for calendar year is \$600 or more**

Any payment of a kind required to be shown on a return required under section 6041(a) or 6041A(a) which is made during any calendar year shall be treated as a reportable payment only if—

(A) the aggregate amount of such payment and all previous payments described in such sections by the payor to the payee during such calendar year equals or exceeds \$600,

(B) the payor was required under section 6041(a) or 6041A(a) to file a return for the preceding calendar year with respect to payments to the payee, or

(C) during the preceding calendar year, the payor made reportable payments to the payee with respect to which amounts were required to be deducted and withheld under subsection (a).

**(7) Exception for certain window payments of interest, etc.**

For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term “reportable inter-

est or dividend payment” shall not include any payment—

(A) in redemption of a coupon on a bearer instrument or in redemption of a United States savings bond, or

(B) to the extent provided in regulations, of interest on instruments similar to those described in subparagraph (A).

The preceding sentence shall not apply for purposes of determining whether there is payee underreporting described in subsection (c).

**(c) Notified payee underreporting with respect to interest and dividends****(1) Notified payee underreporting**

If—

(A) the Secretary determines with respect to any payee that there has been payee underreporting,

(B) at least 4 notices have been mailed by the Secretary to the payee (over a period of at least 120 days) with respect to the underreporting, and

(C) in the case of any payee who has filed a return for the taxable year, any deficiency of tax attributable to such failure has been assessed,

the Secretary may notify payors of reportable interest or dividend payments with respect to such payee of the requirement to deduct and withhold under subsection (a)(1)(C) (but not the reasons for the withholding under subsection (a)(1)(C)).

**(2) Payee underreporting defined**

For purposes of this section, there has been payee underreporting if for any taxable year the Secretary determines that—

(A) the payee failed to include in his return of tax under chapter 1 for such year any portion of a reportable interest or dividend payment required to be shown on such return, or

(B) the payee may be required to file a return for such year and to include a reportable interest or dividend payment in such return, but failed to file such return.

**(3) Determination by secretary to stop (or not to start) withholding****(A) In general**

If the Secretary determines that—

(i) there was no payee underreporting,

(ii) any payee underreporting has been corrected (and any tax, penalty, or interest with respect to the payee underreporting has been paid),

(iii) withholding under subsection (a)(1)(C) has caused (or would cause) undue hardship to the payee and it is unlikely that any payee underreporting by such payee will occur again, or

(iv) there is a bona fide dispute as to whether there has been any payee underreporting,

then the Secretary shall take the action described in subparagraph (B).

**(B) Secretary to take action to stop (or not to start) withholding**

For purposes of subparagraph (A), if at the time of the Secretary's determination under subparagraph (A)—

(i) no notice has been given under paragraph (1) to any payor with respect to the underreporting, the Secretary shall not give any such notice, or

(ii) if such notice has been given, the Secretary shall—

(I) provide the payee with a written certification that withholding under subsection (a)(1)(C) is to stop, and

(II) notify the applicable payors (and brokers) that such withholding is to stop.

**(C) Time for taking action where notice to payor has been given**

In any case where notice has been given under paragraph (1) to any payor with respect to any underreporting, if the Secretary makes a determination under subparagraph (A) during the 12-month period ending on October 15 of any calendar year—

(i) except as provided in clause (ii), the Secretary shall take the action described in subparagraph (B)(ii) to bring about the stopping of withholding no later than December 1 of such calendar year, or

(ii) in the case of—

(I) a no payee underreporting determination under clause (i) of subparagraph (A), or

(II) a hardship determination under clause (iii) of subparagraph (A),

such action shall be taken no later than the 45th day after the day on which the Secretary made the determination.

**(D) Opportunity to request determination**

The Secretary shall prescribe procedures under which—

(i) a payee may request a determination under subparagraph (A), and

(ii) the payee may provide information with respect to such request.

**(4) Payor notifies payee of withholding because of payee underreporting**

Any payor required to withhold any tax under subsection (a)(1)(C) shall, at the time such withholding begins, notify the payee of such withholding.

**(5) Payee may be required to notify Secretary who his payors and brokers are**

For purposes of this section, the Secretary may require any payee of reportable interest or dividend payments who is subject to withholding under subsection (a)(1)(C) to notify the Secretary of—

(A) all payors from whom the payee receives reportable interest or dividend payments, and

(B) all brokers with whom the payee has accounts which may involve reportable interest or dividend payments.

The Secretary may notify any such broker that such payee is subject to withholding under subsection (a)(1)(C).

**(d) Interest and dividend backup withholding applies to new accounts and instruments unless payee certifies that he is not subject to such withholding****(1) In general**

There is a payee certification failure unless the payee has certified to the payor, under penalty of perjury, that such payee is not subject to withholding under subsection (a)(1)(C).

**(2) Special rules for readily tradable instruments****(A) In general**

Subsection (a)(1)(D) shall apply to any reportable interest or dividend payment to any payee on any readily tradable instrument if (and only if) the payor was notified by a broker under subparagraph (B) or no certification was provided to the payor by the payee under paragraph (1) and—

(i) such instrument was acquired directly by the payee from the payor, or

(ii) such instrument is held by the payor as nominee for the payee.

**(B) Broker notifies payor**

If—

(i) a payee acquires any readily tradable instrument through a broker, and

(ii) with respect to such acquisition—

(I) the payee fails to furnish his TIN to the broker in the manner required under subsection (a)(1)(A),

(II) the Secretary notifies such broker before such acquisition that the TIN furnished by the payee is incorrect,

(III) the Secretary notifies such broker before such acquisition that such payee is subject to withholding under subsection (a)(1)(C), or

(IV) the payee does not provide a certification to such broker under subparagraph (C),

such broker shall, within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C), or (D) of subsection (a)(1), respectively.

**(C) Time for payee to provide certification to broker**

In the case of any readily tradable instrument acquired by a payee through a broker, the certification described in paragraph (1) may be provided by the payee to such broker—

(i) at any time after the payee's account with the broker was established and before the acquisition of such instrument, or

(ii) in connection with the acquisition of such instrument.

**(3) Exception for existing accounts, etc.**

This subsection and subsection (a)(1)(D) shall not apply to any reportable interest or dividend payment which is paid or credited—

(A) in the case of interest or any other amount of a kind reportable under section 6049, with respect to any account (whatever

called) established before January 1, 1984, or with respect to any instrument acquired before January 1, 1984,

(B) in the case of dividends or any other amount reportable under section 6042, on any stock or other instrument acquired before January 1, 1984, or

(C) in the case of patronage dividends or other amounts of a kind reportable under section 6044, with respect to any membership acquired, or contract entered into, before January 1, 1984.

**(4) Exception for readily tradable instruments acquired through existing brokerage accounts**

Subparagraph (B) of paragraph (2) shall not apply with respect to a readily tradable instrument which was acquired through an account with a broker if—

(A) such account was established before January 1, 1984, and

(B) during 1983, such broker bought or sold instruments for the payee (or acted as a nominee for the payee) through such account.

The preceding sentence shall not apply with respect to any readily tradable instrument acquired through such account after the broker was notified by the Secretary that the payee is subject to withholding under subsection (a)(1)(C).

**(e) Period for which withholding is in effect**

**(1) Failure to furnish TIN**

In the case of any failure by a payee to furnish his TIN to a payor in the manner required, subsection (a) shall apply to any reportable payment made by such payor during the period during which the TIN has not been furnished in the manner required. The Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

**(2) Notification of incorrect number**

In any case in which the Secretary notifies the payor that the TIN furnished by the payee is incorrect, subsection (a) shall apply to any reportable payment made by such payor—

(A) after the close of the 30th day after the day on which the payor received such notification, and

(B) before the payee furnishes another TIN in the manner required.

**(3) Notified payee underreporting described in subsection (c)**

**(A) In general**

In the case of any notified payee underreporting described in subsection (c), subsection (a) shall apply to any reportable interest or dividend payment made—

(i) after the close of the 30th day after the day on which the payor received notification from the Secretary of such underreporting, and

(ii) before the stop date.

**(B) Stop date**

For purposes of this subsection, the term “stop date” means the determination effective date or, if later, the earlier of—

(i) the day on which the payor received notification from the Secretary under subsection (c)(3)(B) to stop withholding, or

(ii) the day on which the payor receives from the payee a certification provided by the Secretary under subsection (c)(3)(B).

**(C) Determination effective date**

For purposes of this subsection—

**(i) In general**

Except as provided in clause (ii), the determination effective date of any determination under subsection (c)(3)(A) which is made during the 12-month period ending on October 15 of any calendar year shall be the first January 1 following such October 15.

**(ii) Determination that there was no underreporting; hardship**

In the case of any determination under clause (i) or (iii) of subsection (c)(3)(A), the determination effective date shall be the date on which the Secretary’s determination is made.

**(4) Failure to provide certification that payee is not subject to withholding**

**(A) In general**

In the case of any payee certification failure described in subsection (d)(1), subsection (a) shall apply to any reportable interest or dividend payment made during the period during which the certification described in subsection (d)(1) has not been furnished to the payor.

**(B) Special rule for readily tradable instruments acquired through broker where notification**

In the case of any readily tradable instrument acquired by the payee through a broker, the period described in subparagraph (A) shall start with payments to the payee made after the close of the 30th day after the payor receives notification from a broker under subsection (d)(2)(B).

**(5) 30-day grace periods**

**(A) Start-up**

If the payor elects the application of this subparagraph with respect to the payee, subsection (a) shall also apply to any reportable payment made during the 30-day period described in paragraph (2)(A), (3)(A), or (4)(B).

**(B) Stopping**

Unless the payor elects not to have this subparagraph apply with respect to the payee, subsection (a) shall also apply to any reportable payment made after the close of the period described in paragraph (1), (2), or (4) (as the case may be) and before the 30th day after the close of such period. A similar rule shall also apply with respect to the period described in paragraph (3)(A) where the stop date is determined under clause (i) or (ii) of paragraph (3)(B).

**(C) Election of shorter grace period**

The payor may elect a period shorter than the grace period set forth in subparagraph (A) or (B), as the case may be.

**(f) Confidentiality of information****(1) In general**

No person may use any information obtained under this section (including any failure to certify under subsection (d)) except for purposes of meeting any requirement under this section or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103.

**(2) Cross reference**

For provision providing for civil damages for violation of paragraph (1), see section 7431.

**(g) Exceptions****(1) Payments to certain payees**

Subsection (a) shall not apply to any payment made to—

(A) any organization or governmental unit described in subparagraph (B), (C), (D), (E), or (F) of section 6049(b)(4), or

(B) any other person specified in regulations.

**(2) Amounts for which withholding otherwise required**

Subsection (a) shall not apply to any amount for which withholding is otherwise required by this title.

**(3) Exemption while waiting for TIN**

The Secretary shall prescribe regulations for exemptions from the tax imposed by subsection (a) during the period during which a person is waiting for receipt of a TIN.

**(h) Other definitions and special rules**

For purposes of this section—

**(1) Obviously incorrect number**

A person shall be treated as failing to furnish his TIN if the TIN furnished does not contain the proper number of digits.

**(2) Payee furnishes 2 incorrect TINs**

If the payee furnishes the payor 2 incorrect TINs in any 3-year period, the payor shall, after receiving notice of the second incorrect TIN, treat the payee as not having furnished another TIN under subsection (e)(2)(B) until the day on which the payor receives notification from the Secretary that a correct TIN has been furnished.

**(3) Joint payees**

Except to the extent otherwise provided in regulations, any payment to joint payees shall be treated as if all the payment were made to the first person listed in the payment.

**(4) Payor defined**

The term “payor” means, with respect to any reportable payment, a person required to file a return described in paragraph (2) or (3) of subsection (b) with respect to such payment.

**(5) Broker****(A) In general**

The term “broker” has the meaning given to such term by section 6045(c)(1).

**(B) Only 1 broker per acquisition**

If, but for this subparagraph, there would be more than 1 broker with respect to any acquisition, only the broker having the closest contact with the payee shall be treated as the broker.

**(C) Payor not treated as broker**

In the case of any instrument, such term shall not include any person who is the payor with respect to such instrument.

**(D) Real estate broker not treated as a broker**

Except as provided by regulations, such term shall not include any real estate broker (as defined in section 6045(e)(2)).

**(6) Readily tradable instrument**

The term “readily tradable instrument” means—

(A) any instrument which is part of an issue any portion of which is traded on an established securities market (within the meaning of section 453(f)(5)), and

(B) except as otherwise provided in regulations prescribed by the Secretary, any instrument which is regularly quoted by brokers or dealers making a market.

**(7) Original issue discount**

To the extent provided in regulations, rules similar to the rules of paragraph (6) of section 6049(d) shall apply.

**(8) Requirement of notice to payee**

Whenever the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect, the Secretary shall at the same time furnish a copy of such notice to the payor, and the payor shall promptly furnish such copy to the payee.

**(9) Requirement of notice to Secretary**

If the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect and such payee subsequently furnishes another TIN to the payor, the payor shall promptly notify the Secretary of the other TIN so furnished.

**(10) Coordination with other sections**

For purposes of section 31, this chapter (other than section 3402(n)), and so much of subtitle F (other than section 7205) as relates to this chapter, payments which are subject to withholding under this section shall be treated as if they were wages paid by an employer to an employee (and amounts deducted and withheld under this section shall be treated as if deducted and withheld under section 3402).

**(i) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 98-67, title I, §104(a), Aug. 5, 1983, 97 Stat. 371; amended Pub. L. 98-369, div. A, title I, §152(a), title VII, §722(h)(1), (2), July 18, 1984, 98 Stat. 691, 975; Pub. L. 99-514, title XV, §§1521(b), 1523(b)(1), title XVIII, §1899A(46), Oct. 22, 1986, 100 Stat. 2746, 2748, 2961; Pub. L. 100-647,

title I, § 1018(u)(44), Nov. 10, 1988, 102 Stat. 3592; Pub. L. 102-486, title XIX, § 1935(a), Oct. 24, 1992, 106 Stat. 3032; Pub. L. 107-16, title I, § 101(c)(10), June 7, 2001, 115 Stat. 44; Pub. L. 110-289, div. C, title III, § 3091(c), July 30, 2008, 122 Stat. 2911.)

AMENDMENTS

2008—Subsec. (b)(3)(F). Pub. L. 110-289 added subpar. (F).

2001—Subsec. (a)(1). Pub. L. 107-16 substituted “equal to the product of the fourth lowest rate of tax applicable under section 1(c) and such payment” for “equal to 31 percent of such payment” in concluding provisions.

1992—Subsec. (a)(1). Pub. L. 102-486, in closing provisions, substituted “31 percent” for “20 percent”.

1988—Subsec. (h)(5)(D). Pub. L. 100-647 inserted period at end of subpar. (D).

1986—Subsec. (b)(3)(E). Pub. L. 99-514, § 1523(b)(1), added subpar. (E).

Subsec. (b)(6). Pub. L. 99-514, § 1899A(46), substituted “6041A(a)” for “6041(A)(a)” in heading.

Subsec. (h)(5)(D). Pub. L. 99-514, § 1521(b), added subpar. (D).

1984—Subsec. (c)(1). Pub. L. 98-369, § 722(h)(2), substituted “(but not the reasons for the withholding under subsection (a)(1)(C))” for “(but not the reasons therefor)”.

Subsec. (d)(2)(A). Pub. L. 98-369, § 722(h)(1)(A), inserted “the payor was notified by a broker under subparagraph (B) or” after “if (and only if)” in provisions preceding cl. (i), struck out cl. (i) which read as follows: “the payor was notified by a broker under subparagraph (B),” and redesignated cls. (ii) and (iii) as (i) and (ii), respectively.

Subsec. (d)(2)(B). Pub. L. 98-369, § 722(h)(1)(B), in amending subpar. (B) generally, reenacted cl. (i), in cl. (ii) inserted “with respect to such acquisition—”, added subcls. (I) and (II), redesignated former subcls. (I) and (II) as (III) and (IV), respectively, and in subcl. (III) substituted “the Secretary notifies such broker” for “such broker is notified by the Secretary”, and in provisions following cl. (ii) substituted “shall within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C) or (D) of subsection (a)(1),” for “within 15 days after the date of the acquisition notify the payor that such payee is subject to withholding under subsection (a)(1)(D) (or subsection (a)(1)(C) in the case of a notification described in clause (ii)(II)).”

Subsec. (e)(1). Pub. L. 98-369, § 152(a), inserted provision that the Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-289, div. C, title III, § 3091(e), July 30, 2008, 122 Stat. 2911, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6050W of this title and amending this section and section 6724 of this title] shall apply to returns for calendar years beginning after December 31, 2010.

“(2) APPLICATION OF BACKUP WITHHOLDING.—

“(A) IN GENERAL.—The amendment made by subsection (c) [amending this section] shall apply to amounts paid after December 31, 2011.

“(B) ELIGIBILITY FOR TIN MATCHING PROGRAM.—Solely for purposes of carrying out any TIN matching program established by the Secretary under section 3406(i) of the Internal Revenue Code of 1986—

“(i) the amendments made this section shall be treated as taking effect on the date of the enactment of this Act [July 30, 2008], and

“(ii) each person responsible for setting the standards and mechanisms referred to in section

6050W(d)(2)(C) of such Code, as added by this section, for settling transactions involving payment cards shall be treated in the same manner as a payment settlement entity.”

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to amounts paid after the 60th day after June 7, 2001, and references to income brackets and rates of tax in such amendment to be applied without regard to section 1(i)(1)(D) of this title, see section 101(d)(2) of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-486, title XIX, § 1935(b), Oct. 24, 1992, 106 Stat. 3032, provided that: “The amendment made by subsection (a) [amending this section] shall apply to amounts paid after December 31, 1992.”

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 1986 AMENDMENT

Amendment by section 1521(b) of Pub. L. 99-514 applicable to real estate transactions closing after Dec. 31, 1986, see section 1521(c) of Pub. L. 99-514, set out as a note under section 6045 of this title.

Amendment by section 1523(b)(1) of Pub. L. 99-514 applicable to payments made after Dec. 31, 1986, see section 1523(d) of Pub. L. 99-514, set out as an Effective Date note under section 6050N of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, § 152(b), July 18, 1984, 98 Stat. 691, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984].”

Amendment by section 722(h)(1), (2) of Pub. L. 98-369 applicable as if included in amendments made by Interest and Dividend Tax Compliance Act of 1983, Pub. L. 98-67, see section 722(h)(5)(A) of Pub. L. 98-369, set out as a note under section 643 of this title.

EFFECTIVE DATE

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

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 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, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

**[[§ 3451 to 3456. Repealed. Pub. L. 98-67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369]**

Section 3451, Pub. L. 97-248, title III, § 301, Sept. 3, 1982, 96 Stat. 576, set forth withholding requirements respecting income tax collected at source on interest, dividends, and patronage dividends.

Section 3452, Pub. L. 97-248, title III, § 301, Sept. 3, 1982, 96 Stat. 577, related to exemptions from withholding requirements.

Section 3453, Pub. L. 97-248, title III, § 301, Sept. 3, 1982, 96 Stat. 579; Pub. L. 97-354, § 3(i)(1), Oct. 19, 1982, 96 Stat. 1690, defined “payor”.

Section 3454, Pub. L. 97-248, title III, § 301, Sept. 3, 1982, 96 Stat. 580; Pub. L. 97-354, § 3(i)(2), (3), Oct. 19, 1982, 96 Stat. 1690; Pub. L. 97-424, title V, § 547(b)(3), Jan. 6, 1983, 96 Stat. 2200, defined the terms “interest”, “dividend”, and “patronage dividend”.

Section 3455, Pub. L. 97-248, title III, § 301, Sept. 3, 1982, 96 Stat. 583, set forth definitions and other special rules.

Section 3456, Pub. L. 97-248, title III, § 301, Sept. 3, 1982, 96 Stat. 585, set forth administrative provisions.

#### EFFECTIVE DATES; SPECIAL RULES

Pub. L. 97-248, title III, § 308, Sept. 3, 1982, 96 Stat. 591, which provided that the amendments made by sections 301 to 308 [enacting subchapter B (§§ 3451-3456) of chapter 24 of this title and amending sections 31, 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title] would apply to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, provided for the delay in applications for payors unable to comply with the requirements of such provisions without undue hardship, provided a temporary rule for certain withholding exemptions, and provided for delays in making deposits, was repealed by Pub. L. 98-67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369.

#### REPEAL OF WITHHOLDING ON INTEREST AND DIVIDENDS

Pub. L. 98-67, title I, § 102(a)-(d), Aug. 5, 1983, 97 Stat. 369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) IN GENERAL.—Subtitle A of title III of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to withholding of tax from interest and dividends) [subtitle A (§§ 301-308) of title III of Pub. L. 97-248, which enacted this section and sections 3452 to 3456 of this title, amended sections 31, 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title and enacted provisions set out as a note above] is hereby repealed as of the close of June 30, 1983.

“(b) CONFORMING AMENDMENT.—Except as provided in this section, the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

“(c) REPEAL NOT TO APPLY TO AMOUNTS DEDUCTED AND WITHHELD BEFORE SEPTEMBER 2, 1983.—

“(1) IN GENERAL.—If, notwithstanding the repeal made by subsection (a) (and the provisions of subsection (b)), an amount is deducted and withheld before September 2, 1983, under subchapter B of chapter 24 of the Internal Revenue Code of 1986 (as in effect before its repeal by subsection (a)), the repeal made by subsection (a) (and the provisions of subsection (b)) shall not apply to the amount so deducted and withheld.

“(2) ELECTION TO HAVE PARAGRAPH (1) NOT APPLY.—Paragraph (1) shall not apply with respect to any payor who elects (at the time and in the manner prescribed by the Secretary of the Treasury or his delegate) to have paragraph (1) not apply.

“(d) ESTIMATED TAX PAYMENTS.—For purposes of determining the amount of any addition to tax under section 6654 of the Internal Revenue Code of 1986 with respect to any installment required to be paid before July 1, 1983, the amount of the credit allowed by section 31 of such Code for any taxable year which includes any portion of the period beginning July 1, 1983, and ending December 31, 1983, shall be increased by an amount equal to 10 percent of the aggregate amount of payments—

“(1) which are received during the portion of such taxable year after June 30, 1983, and before January 1, 1984, and

“(2) which (but for the repeal made by subsection (a)) would have been subject to withholding under subchapter B of chapter 24 of such Code (determined without regard to any exemption described in section 3452 of such subchapter B).”

## CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

Sec.	
3501.	Collection and payment of taxes.
3502.	Nondeductibility of taxes in computing taxable income.
3503.	Erroneous payments.
3504.	Acts to be performed by agents.
3505.	Liability of third parties paying or providing for wages.
3506.	Individuals providing companion sitting placement services.
[3507.	Repealed.]
3508.	Treatment of real estate agents and direct sellers.
3509.	Determination of employer's liability for certain employment taxes.
3510.	Coordination of collection of domestic service employment taxes with collection of income taxes.

#### AMENDMENTS

2010—Pub. L. 111-226, title II, § 219(b)(3), Aug. 10, 2010, 124 Stat. 2403, struck out item 3507 “Advance payment of earned income credit”.

1994—Pub. L. 103-387, § 2(b)(2), Oct. 22, 1994, 108 Stat. 4074, added item 3510.

1990—Pub. L. 101-508, title XI, § 11801(b)(16), Nov. 5, 1990, 104 Stat. 1388-522, struck out item 3510 “Credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984”.

1983—Pub. L. 98-67 repealed amendments made by section 307 of Pub. L. 97-248. See 1982 Amendment note below.

Pub. L. 98-21, title I, § 123(b)(2), Apr. 20, 1983, 97 Stat. 88, added item 3510.

1982—Pub. L. 97-248, title II, §§ 269(d), 270(b), Sept. 3, 1982, 96 Stat. 553, 554, added items 3508 and 3509.

Pub. L. 97-248, title III, §§ 307(b)(5), 308(a), Sept. 3, 1982, 96 Stat. 591, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, the caption of chapter 25 is amended by inserting “AND COLLECTION OF INCOME TAXES AT SOURCE”. 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.

1978—Pub. L. 95-600, title I, § 105(b)(2), Nov. 6, 1978, 92 Stat. 2776, added item 3507.

1977—Pub. L. 95-171, § 10(b), Nov. 12, 1977, 91 Stat. 1356, added item 3506.

1966—Pub. L. 89-719, title I, § 105(c), Nov. 2, 1966, 80 Stat. 1139, added item 3505.

### § 3501. Collection and payment of taxes

#### (a) General rule

The taxes imposed by this subtitle shall be collected by the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.

#### (b) Taxes with respect to non-cash fringe benefits

The taxes imposed by this subtitle with respect to non-cash fringe benefits shall be collected (or paid) by the employer at the time and in the manner prescribed by the Secretary by regulations.

(Aug. 16, 1954, ch. 736, 68A Stat. 471; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title V, § 531(d)(5), July 18, 1984, 98 Stat. 885.)