

basis. In January employer Y makes his first payment to employee B in the amount of \$20 for work performed in 1957 on each of 5 days. Y deducts 45 cents (2¼ percent of \$20) as an amount equivalent to employee tax. In April Y makes his second payment of cash remuneration to B in the amount of \$40 for work performed in 1957 on each of 10 days. Y deducts 90 cents (2¼ percent of \$40) as an amount equivalent to employee tax. In May B works for Y on each of 5 days and on the last of such days Y makes his third payment of cash remuneration to B in the amount of \$20 for such work. This period of work brings to 20 the number of days in the calendar year 1957 on which B has performed agricultural labor for Y for cash remuneration computed on a time basis, and Y is required to collect employee tax from B even though the amount of remuneration paid is less than \$150. The amount of employee tax applicable to the \$80 paid by Y to B is \$1.80 (2¼ percent of \$80). Inasmuch as Y previously deducted \$1.35 in 1957 (45 cents in January and 90 cents in April), Y is required to deduct 45 cents (\$1.80 minus \$1.35) from the \$20 paid in May 1957.

(c) In collecting employee tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. The employer is liable for the employee tax with respect to all wages paid by him to each of his employees whether or not it is collected from the employee. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. Until collected from him the employee also is liable for the employee tax with respect to all the wages received by him. Any employee tax collected by or on behalf of an employer is a special fund in trust for the United States. See section 7501. The employer is indemnified against the claims and demands of any person for the amount of any payment of such tax made by the employer to the district director.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8305, July 2, 1964; T.D. 7001, 34 FR 998, Jan. 23, 1969]

§ 31.3102-2 Manner and time of payment of employee tax.

The employee tax is payable to the district director in the manner and at the time prescribed in Subpart G of the regulations in this part. For provisions

relating to the payment by an employee of employee tax in respect of tips, see paragraph (d) of § 31.3102-3.

[T.D. 7001, 34 FR 998, Jan. 23, 1969]

§ 31.3102-3 Collection of, and liability for, employee tax on tips.

(a) *Collection of tax from employee*— (1) *In general.* Subject to the limitations set forth in subparagraph (2) of this paragraph, the employer shall collect from each of his employees the employee tax on those tips received by the employee which constitute wages for purposes of the tax imposed by section 3101. (For provisions relating to the treatment of tips as wages, see 3121(a)(12) and 3121(q).) The employer shall make the collection by deducting or causing to be deducted the amount of the employee tax from wages (exclusive of tips) which are under the control of the employer or other funds turned over by the employee to the employer (see subparagraph (3) of this paragraph). For purposes of this section the term “wages (exclusive of tips) which are under the control of the employer” means, with respect to a payment of wages, an amount equal to wages as defined in section 3121(a) except that tips and noncash remuneration which are wages are not included, less the sum of—

(i) The tax under section 3101 required to be collected by the employer in respect of wages as defined in section 3121(a) (exclusive of tips);

(ii) The tax under section 3402 required to be collected by the employer in respect of wages as defined in section 3401(a) (exclusive of tips); and

(iii) The amount of taxes imposed on the remuneration of an employee withheld by the employer pursuant to State and local law (including amounts withheld under an agreement between the employer and the employee pursuant to such law) except that the amount of taxes taken into account in this subdivision shall not include any amount attributable to tips.

(2) *Limitations.* An employer is required to collect employee tax on tips which constitute wages only in respect of those tips which are reported by the employee to the employer in a written statement furnished to the employer