

(2) *Example.* The application of this paragraph may be illustrated by the following example.

Example. Employee A rendered services to X during 1973 for which he was paid compensation at the monthly rate of \$650 which was taxable under the Railroad Retirement Tax Act. A was paid \$550 by X in January 1973 which was earned and deemed received in December 1972 and \$650 in January of 1974 which was earned and deemed received in December of 1973. A also earned and received wages in 1973 from employer Y, which were subject to the employee tax under the Federal Insurance Contributions Act, in the amount of \$6,000. A paid hospital insurance tax on \$13,800 (\$7,800 compensation from X including \$650 earned and deemed received in December 1973 but paid in January 1974 and not including \$550 paid in January 1973 but earned and deemed received in December 1972, \$6,000 compensation from Y) received or deemed received or earned in 1973. For purposes of the hospital insurance tax imposed by section 3101(b), these amounts are all wages received from an employer in 1973. Therefore, A is entitled to a special refund for 1973 under section 6413(c) and this section of \$30 (1.0%×\$13,800—1.0%×\$10,800).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6950, 33 FR 5359, Apr. 4, 1968; T.D. 6983, 33 FR 18020, Dec. 4, 1968; T.D. 7374, 40 FR 30954, July 24, 1975]

§ 31.6414-1 Credit or refund of income tax withheld from wages.

(a) *In general.* Any employer who pays to the district director more than the correct amount of—

(1) Tax under section 3402 or a corresponding provision of prior law, or

(2) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for refund of the overpayment or may claim credit for such overpayment, in the manner and subject to the conditions stated in this section and § 301.6402-2 of this chapter (Regulations on Procedure and Administration). If credit is claimed pursuant to this section, the amount thereof shall be claimed by entering such amount as a deduction on a return of tax under section 3402 filed by the employer. If credit is taken pursuant to this section, a claim on Form 843 is not required, but the return on which the credit is claimed shall have attached as a part thereof a statement, which shall constitute the claim for credit, setting

forth in detail the grounds and facts relied upon in support of the credit, and showing such other information as is required by the regulations in this subpart and by the instructions relating to the return. No refund or credit to the employer shall be allowed under this section for the amount of any overpayment of tax which the employer deducted or withheld from an employee.

(b) *Period of limitation.* For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)-1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

§ 31.6652(c)-1 Failure of employee to report tips for purposes of the Federal Insurance Contributions Act.

(a) *In general.* In the case of failure by an employee to furnish, pursuant to the provisions of section 6053(a), to his employer a report of tips received by him in the course of his employment, which constitute wages (as defined in section 3121(a)), there shall be paid by the employee, in addition to the tax imposed by section 3101 with respect to the amount of tips which he so failed to report, an amount equal to 50 percent of such tax. The additional amount imposed for such failure shall be paid in the same manner as tax upon notice and demand by the district director.

(b) *Reasonable cause.* Payment of an amount equal to 50 percent of the tax imposed by section 3101 with respect to the tips which the employee failed to report will not be required if it is established to the satisfaction of the district director or the director of the regional service center that such failure was due to reasonable cause and not due to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it is made under the penalties of perjury, setting forth all the facts alleged as a reasonable cause. An employee's reluctance to disclose to his employer the amount of tips received by him will not establish that the employee's failure to

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report tips to his employer was due to reasonable cause and not due to willful neglect.

[T.D. 7001, 34 FR 1005, Jan. 23, 1969]

§ 31.6674-1 Penalties for fraudulent statement or failure to furnish statement.

Any person required to furnish a statement to an employee under the provisions of section 6051 or 6053(b) is subject to a civil penalty for willful failure to furnish such statement in the manner, at the time, and showing the information required under such section (or § 31.6051-1 or § 31.6053-2), or for willfully furnishing a false or fraudulent statement to an employee. The penalty for each such violation is \$50, which shall be assessed and collected in the same manner as the tax imposed on employers under the Federal Insurance Contributions Act. See section 7204 for criminal penalty.

[T.D. 7001, 34 FR 1006, Jan. 23, 1969]

§ 31.6682-1 False information with respect to withholding.

(a) *Civil penalty.* If any individual makes a statement under section 3402 (relating to income tax collected at source) which results in a lesser amount of income tax actually deducted and withheld than is properly allowable under section 3402 and, at the time the statement was made, there was no reasonable basis for the statement, the individual shall pay a penalty of \$500 for the statement. There was a reasonable basis for a statement of the number of exemptions an individual claimed on a Form W-4, if the individual properly completed the Form W-4 by taking into account only allowable amounts for items which are allowable and by computing the number of exemptions in accordance with the instructions on the Form W-4. This penalty is in addition to any criminal penalty provided by law. This penalty may be assessed at any time after the statement is made, until the expiration of the applicable statute of limitations.

(b) *Deficiency procedures not to apply.* The civil penalty imposed by section 6682 may be assessed and collected without regard to the deficiency proce-

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dures provided by Subchapter B of Chapter 63 of the Code.

[T.D. 7963, 49 FR 28706, July 16, 1984]

§ 31.7805-1 Promulgation of regulations.

In pursuance of section 7805 of the Internal Revenue Code of 1954, the foregoing regulations are hereby prescribed. (See § 31.0-3 of subpart A of the regulations in this part relating to the scope of the regulations.)

PART 32—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE ACT OF DECEMBER 29, 1981 (PUB. L. 97-123)

Sec.

32.1 Social security taxes with respect to payments on account of sickness or accident disability.

32.2 Railroad retirement taxes with respect to payments on account of sickness or accident disability.

AUTHORITY: 95 Stat. 1662 and 1663, 26 U.S.C. 3121(a) and 3231(e)(4); 68A Stat. 917, 26 U.S.C. 7805.

§ 32.1 Social security taxes with respect to payments on account of sickness or accident disability.

(a) *General rule.* Notwithstanding the provisions of § 31.3121(a)(2)-1(a)(2), the amount of any payment on or after January 1, 1982, made to, or on behalf of, an employee or any of his dependents on account of sickness or accident disability is not excluded from the term "wages" as defined in section 3121(a)(2)(B) unless such payment is—

(1) Received under a workmen's compensation law, or

(2) Made by a third party pursuant to a contractual agreement between the employer and third party entered into prior to December 14, 1981, but then only if—

(i) The third party's coverage for that employee's group ceases prior to March 1, 1982,

(ii) No third party payment is made to such employee under that contract after February 28, 1982, and

(iii) The cessation of the third party's coverage for that employee's group indefinitely terminates the contractual relationship between the third party