

\$75] within 3 banking days after March 15, 2002.

(b) *Withholding of additional tax when underwithholding occurs.* A withholding agent may withhold from future payments made to a beneficial owner the tax that should have been withheld from previous payments to such beneficial owner. In the alternative, the withholding agent may satisfy the tax from property that it holds in custody for the beneficial owner or property over which it has control. Such additional withholding or satisfaction of the tax owed may only be made before the date that the Form 1042 is required to be filed (not including extensions) for the calendar year in which the underwithholding occurred. See § 1.6302-2 for making deposits of tax or § 1.1461-1(a) for making payment of the balance due for a calendar year.

(c) *Definition.* For purposes of this section, the term *payment period* means the period for which the withholding agent is required by § 1.6302-2(a)(1) to make a deposit of tax withheld under chapter 3 of the Code.

(d) *Effective date.* This section applies to payments made after December 31, 2000.

[T.D. 8734, 62 FR 53470, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72188, Dec. 31, 1998; T.D. 8856, 64 FR 73412, Dec. 30, 1999]

#### § 1.1462-1 Withheld tax as credit to recipient of income.

(a) *Creditable tax.* The entire amount of the income from which the tax is required to be withheld (including amounts calculated under the gross-up formula in § 1.1441-3(f)(1)) shall be included in gross income in the return required to be made by the beneficial owner of the income, without deduction for the amount required to be or actually withheld, but the amount of tax actually withheld shall be allowed as a credit against the total income tax computed in the beneficial owner's return.

(b) *Amounts paid to persons who are not the beneficial owner.* Amounts withheld at source under chapter 3 of the Internal Revenue Code (Code) on payments to a fiduciary, partnership, or intermediary is deemed to have been paid by the taxpayer ultimately liable for the tax upon such income. Thus, for

example, if a beneficiary of a trust is subject to the taxes imposed by section 1, 2, 3, or 11 upon any portion of the income received from a foreign trust, the part of any amount withheld at source which is properly allocable to the income so taxed to such beneficiary shall be credited against the amount of the income tax computed upon the beneficiary's return, and any excess shall be refunded. Further, if a partnership withholds an amount under chapter 3 of the Code with respect to the distributive share of a partner that is a partnership or with respect to the distributive share of partners in an upper tier partnership, such amount is deemed to have been withheld by the upper tier partnership.

(c) *Effective date.* This section applies to payments made after December 31, 2000.

[T.D. 8734, 62 FR 53471, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72188, Dec. 31, 1998]

#### § 1.1463-1 Tax paid by recipient of income.

(a) *Tax paid.* If the tax required to be withheld under chapter 3 of the Internal Revenue Code is paid by the beneficial owner of the income or by the withholding agent, it shall not be recollectored from the other, regardless of the original liability therefor. However, this section does not relieve the person that did not withhold tax from liability for interest or any penalties or additions to tax otherwise applicable. See § 1.1441-7(b) for additional applicable rules.

(b) *Effective date.* This section applies to failures to withhold occurring after December 31, 2000.

[T.D. 8734, 62 FR 53471, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72188, Dec. 31, 1998; T.D. 8856, 64 FR 73412, Dec. 30, 1999]

#### § 1.1464-1 Refunds or credits.

(a) *In general.* The refund or credit under chapter 65 of the Code of an overpayment of tax which has actually been withheld at the source under chapter 3 of the Code shall be made to the taxpayer from whose income the amount of such tax was in fact withheld. To the extent that the overpayment under chapter 3 was not in fact withheld at the source, but was paid,

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by the withholding agent the refund or credit under chapter 65 of the overpayment shall be made to the withholding agent. Thus, where a debtor corporation assumes liability pursuant to its tax-free covenant for the tax required to be withheld under chapter 3 upon interest and pays the tax in behalf of its bondholder, and it can be shown that the bondholder is not in fact liable for any tax, the overpayment of tax shall be credited or refunded to the withholding agent in accordance with chapter 65 since the tax was not actually deducted and withheld from the interest paid to the bondholder. In further illustration, where a withholding agent who is required by chapter 3 to withhold \$300 tax from rents paid to a non-resident alien individual mistakenly withholds \$320 and mistakenly pays \$350 as internal revenue tax, the amount of \$30 shall be credited or refunded to the withholding agent in accordance with chapter 65 and the amount of \$20 shall be credited or refunded in accordance with such chapter to the person from whose income such amount has been withheld.

(b) *Tax repaid to payee.* For purposes of this section and § 1.6414-1, any amount of tax withheld under chapter 3 of the Code, which, pursuant to paragraph (a)(1) of § 1.1461-2, is repaid by the withholding agent to the person from whose income such amount was erroneously withheld shall be considered as tax which, within the meaning of sections 1464 and 6414, was not actually withheld by the withholding agent.

[T.D. 6922, 32 FR 8713, June 17, 1967, as amended by T.D. 8804, 63 FR 72188, Dec. 31, 1998]

### Rules Applicable to Recovery of Excessive Profits on Government Contracts

#### RECOVERY OF EXCESSIVE PROFITS ON GOVERNMENT CONTRACTS

##### § 1.1471-1 Recovery of excessive profits on government contracts.

The inclusion of the statutory provisions of section 1471 in this part does not supersede the provisions of 26 CFR (1939) part 17 (Treasury Decision 4906) and 26 CFR (1939) part 16 (Treasury De-

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cision 4909) as made applicable to section 1471 by Treasury Decision 6091 (19 FR 5167, C.B. 1954-2, 47).

[T.D. 6500, 25 FR 12081, Nov. 26, 1960]

EDITORIAL NOTE: For the convenience of the user, the text of parts 16 and 17 (not entirely superseded) of 26 CFR (1939) referred to above is set forth below:

#### PART 16—EXCESS PROFITS ON ARMY CONTRACTS FOR AIRCRAFT

##### REGULATIONS UNDER SECTION 14 OF THE ACT OF APRIL 3, 1939, AND OTHER PROVISIONS

AUTHORITY: Sections 16.1 to 16.18 issued under 52 Stat. 467; 26 U.S.C. 3791. Interpret or apply sec. 3, 48 Stat. 505, as amended, sec. 14, 53 Stat. 560; 34 U.S.C. 496, 10 U.S.C. 311, 312.2206

SOURCE: Sections 16.1 to 16.18 contained in T.D. 4909, 4 FR 2733, July 1, 1939, except as otherwise noted.

§ 16.1 *Definitions.* As used in the regulations in this part the term:

(a) “Act” means the act of April 3, 1939 (53 Stat. 560; 10 U.S.C. 311, 312, 34 U.S.C. 496), together with the applicable provisions of section 3 of the act of March 27, 1934, 48 Stat. 505; 34 U.S.C. 496, as amended by the act of June 25, 1936, 49 Stat. 1926; 34 U.S.C., Sup. IV, 496, and as further amended by the act of April 3, 1939 (53 Stat. 560; 34 U.S.C. 496).

(b) “Person” includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture or other unincorporated organization or group, through or by means of which any business, financial operation or venture is carried on.

(c) “Contract” means an agreement made by authority of the Secretary of the Army for the construction or manufacture of any complete aircraft or any portion thereof for the Army.

(d) “Contractor” means a person entering into a direct contract with the Secretary of the Army or his duly authorized representative.

(e) “Subcontract” means an agreement entered into by one person with another person for the construction or manufacture of any complete aircraft or any portion thereof for the Army, the prime contract for such aircraft or portion thereof having been entered into between a contractor and the Secretary of the Army or his duly authorized representative.

(f) “Subcontractor” means any person other than a contractor entering into a subcontract.

(g) “Contracting party” means a contractor or subcontractor as the case may be.