

§ 31.3402(a)-1

26 CFR Ch. I (4-1-02 Edition)

§ 31.3402(a)-1 Requirement of withholding.

(a) Section 3402 provides alternative methods, at the election of the employer, for use in computing the amount of income tax to be collected at source on wages. Under the percentage method of withholding (see § 31.3402(b)-1), the employer is required to deduct and withhold a tax computed in accordance with the provisions of section 3402(a). Under the wage bracket method of withholding (see § 31.3402(c)-1), the employer is required to deduct and withhold a tax determined in accordance with the provisions of section 3402(c). The employer may elect to use the percentage method, the wage bracket method, or certain other methods (see § 31.3402(h) (4)-1). Different methods may be used by the employer with respect to different groups of employees.

(b) The employer is required to collect the tax by deducting and withholding the amount thereof from the employee's wages as and when paid, either actually or constructively. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case, the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition.

(c) Except as provided in sections 3402 (j) and (k) (see §§ 31.3402(j)-1 and 31.3402(k)-1, relating to noncash remuneration paid to retail commission salesman and to tips received by an employee in the course of his employment, respectively), an employer is required to deduct and withhold the tax notwithstanding the wages are paid in something other than money (for example, wages paid in stocks or bonds; see § 31.3401 (a)-1) and to pay over the tax in money. If wages are paid in property other than money, the employer should make necessary arrangements

to insure that the amount of the tax required to be withheld is available for payment in money.

(d) For provisions relating to the circumstances under which tax is required to be deducted and withheld from certain amounts received under accident and health plans, see paragraph (b)(8) of § 31.3401(a)-1.

(e) As a matter of business administration, certain of the mechanical details of the withholding process may be handled by representatives of the employer. Thus, in the case of an employer having branch offices, the branch manager or other representative may actually, as a matter of internal administration, withhold the tax or prepare the statements required under section 6051. Nevertheless, the legal responsibility for withholding, paying, and returning the tax and furnishing such statements rests with the employer. For provisions relating to statements under section 6051, see § 31.6051-1.

(f) The amount of any tax withheld and collected by the employer is a special fund in trust for the United States. See section 7501.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7001, 34 FR 1001, Jan. 23, 1969; T.D. 7115, 36 FR 9209, May 21, 1971; T.D. 7888, 48 FR 17588, Apr. 25, 1983]

§ 31.3402(b)-1 Percentage method of withholding.

With respect to wages paid after April 30, 1975, the amount of tax to be deducted and withheld under the percentage method of withholding shall be determined under the applicable percentage method withholding table contained in Circular E (Employer's Tax Guide) according to the instructions contained therein.

(Secs. 3402(i) and (m) and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 3402 (i) and (m), 95 Stat. 172, 184; 26 U.S.C. 7805, 68A Stat. 917))

[T.D. 7915, 48 FR 44073, Sept. 27, 1983]

§ 31.3402(c)-1 Wage bracket withholding.

(a) *In general.* (1) The employer may elect to use the wage bracket method provided in section 3402(c) instead of the percentage method with respect to