

| | Taxes with respect to regular wage | Taxes with respect to tips | Total |
|--------------------------------------|------------------------------------|----------------------------|--------------|
| Section 3101 (F.I.C.A.) .. | \$1.76 | \$5.72 | \$7.48 |
| Section 3402 (Income tax at source): | | | |
| Current week | 5.65 | 22.30 | 27.95 |
| Carryover from prior week | | 3.95 | 3.95 |
| State income tax | 1.20 | 3.90 | 5.10 |
| Union dues | | | 1.00 |
| Garnishment | | | 10.00 |
| Total | | | 55.48 |

As in example 1, the amount of "wages (exclusive of tips) which are under the control of the employer" is \$31.39. This amount is applied first in satisfaction of the tax under section 3101 with respect to tips (\$5.72) and the balance is applied in partial satisfaction of the withholding of income tax at source under section 3402 with respect to tips (a total of \$26.25), including that portion of the amount required to be withheld from the prior week's wages which remained unsatisfied. The amount of the tax with respect to tips under section 3402 which remains unsatisfied (\$0.58) should be withheld from wages under the control of the employer the following week.

[T.D. 7001, 34 FR 1002, Jan. 23, 1969, as amended by T.D. 7053, 35 FR 11628, July 21, 1970]

§ 31.3402(l)-1 Determination and disclosure of marital status.

(a) *Determination of status by employer.* An employer in computing the tax to be deducted and withheld from an employee's wages paid after April 30, 1966, shall apply the applicable percentage method or wage bracket method withholding table (see section 3402 (a), (b), and (c) and the regulations thereunder) for the pertinent payroll period which relates to employees who are single persons, unless there is in effect with respect to such payment of wages a withholding exemption certificate furnished to the employer by the employee after March 15, 1966, indicating that the employee is married in which case the employer shall apply the applicable table relating to employees who are married persons.

(b) *Disclosure of status by employee.* (1) 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 by application of the rules in paragraph

(c) of this section). Thus, an employee who is contemplating marriage may not, prior to the actual marriage, furnish the employer with a withholding exemption certificate indicating that he is a married person.

(2) (i) If, on any day during the calendar year, the marital status (as determined by application of the rules in paragraph (c) of this section) of an employee who has in effect a withholding exemption certificate indicating that he is a married person, changes from married to single, the employee must within 10 days after the change occurs furnish the employer with a new withholding exemption certificate indicating that the employee is a single person.

(ii) If an employee who has in effect a withholding exemption certificate indicating that he is a married person, is considered married solely because of the application of subparagraph (2)(ii) of paragraph (c) of this section, and his spouse died during the taxable year which precedes by 2 years the current taxable year, the employee must, on or before December 1 of the current taxable year, furnish the employer with a new withholding exemption certificate indicating that he is a single person. Such certificate shall not, however become effective until the next calendar year (see paragraph (c) of § 31.3402(f)(3)-1).

(3) If, on any day during the calendar year, the marital status (as determined by application of the rules in paragraph (c) of this section) of an employee who has in effect a withholding exemption certificate indicating that he is a single person changes from single to married, the employee may furnish the employer with a new withholding exemption certificate indicating that the employee is a married person.

(c) *Determination of marital status.* For the purposes of section 3402(l)(2) and paragraph (b) of this section, the following rules shall be applied in determining whether an employee is a married person or a single person—

(1) An employee shall on any day be considered as a single person 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 same calendar year was, a nonresident alien.

(2) An employee shall on any day be considered as a married person if—

(i) His spouse (other than a spouse referred to in paragraph (c)(1) of this section) 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, he reasonably expects, at the close of his taxable year, to be a surviving spouse as defined in section 2 and the regulations thereunder.

[T.D. 7115, 36 FR 9234, May 21, 1971]

§ 31.3402(m)-1 Withholding allowances.

(a) *General rule.* An employee may claim, with respect to wages paid after December 31, 1981, a number of withholding allowances determined in accordance with this section. In order to receive the benefit of such allowances, the employee must have in effect with his employer a withholding exemption certificate claiming such allowances.

(b) *Items that may be taken into account.* The following items may be taken into account in determining the number of withholding allowances an employee may claim:

(1) Estimated itemized deductions allowable under chapter 1,

(2) The estimated tax credits allowable under Subpart A of Part IV of Subchapter A of Chapter 1, except:

(i) For the credit for tax withheld on wages under section 31(a) (relating to wage withholding),

(ii) For the credit for tax withheld at source on nonresident aliens and foreign corporations and on tax-free covenant bonds under section 32,

(iii) That the employee may claim the credit for certain uses of gasoline and special fuels under section 39 only to the extent the employee has not filed for a quarterly tax refund of the credit on Form 843,

(iv) That the employee may claim the credit for earned income under section 43 only to the extent the employee has not filed for advance payments of the credit on Form W-5, and

(v) For the credit for overpayment of tax under section 45,

(3) The estimated trade and business deductions of employees described in section 62 (2) and allowed by Part VI of Subchapter B of Chapter 1,

(4) The estimated deduction for payments to pension, profit-sharing, annuity, and bond purchase plans of self-employed individuals described in section 62(7) and allowed by section 404 and section 405(c),

(5) The estimated deduction for penalties forfeited because of premature withdrawal of funds from time savings accounts or deposits described in section 62(12) and allowed by section 165,

(6) The estimated direct charitable deduction under section 170(i),

(7) The estimated deduction for net operating loss carryovers under section 172,

(8) The estimated deduction for alimony, etc., payments under section 215,

(9) The estimated deduction for moving expenses under section 217 but only to the extent that the amount of such deduction is not excluded from the definition of wages by section 3401(a)(15),

(10) The estimated deduction for certain retirement savings under section 219 but only to the extent that the amount of such deduction is not excluded from the definition of wages by section 3401(a)(12)(D),

(11) The estimated deduction for two-earner married couples under section 221,

(12) The estimated net losses from schedules C (Profit or (Loss) From Business or Profession), D (Capital Gains and Losses), E (Supplemental Income Schedule), and F (Farm Income and Expenses) of Form 1040 and from the last line of Part II of Form 4797 (Supplemental Schedule of Gains and Losses),

(13) The estimated amount of decrease of tax due attributable to income averaging under sections 1301 through 1305.

The employee must first use these items ((1) through (13) of this paragraph (b)) to eliminate any payment of estimated tax (as defined in section 6015(d)). Only amounts of these items remaining after the employee has done