

amounts to be paid or accrued in the estimation year by 12 and by then dividing that result by the number of months from the 1st month in the estimation year in which the employee pays or accrues such amounts through the last month of the estimation year. If such amounts decrease during the term of obligation, the employee must, at the beginning of each subsequent calendar year, recompute the number of allowances being claimed as required by paragraph (c)(1) of this section. If the employee uses the computation described in this subparagraph (2), the employee may not request that his employer withhold on the basis of the employee's cumulative wages as provided in § 31.3402 (h)(3)-1.

(e) *Examples.* The application of this section may be illustrated by the following examples:

*Example 1.* Employee A has an estimated net loss from a partnership of \$2,000 which would be reported on Schedule E. Employee A is not required to make any payments of estimated tax. Employee A may take her \$2,000 partnership loss into consideration in determining the number of withholding allowances to which she is entitled in accordance with the tables and instructions on Form W-4.

*Example 2.* Employee B has an estimated net loss from a business of \$3,000 which would be reported on Schedule C. Employee B would also otherwise be required to make payments of estimated tax on income of \$3,000. Employee B may not take his business loss into consideration in determining the number of withholding allowances to which he is entitled in accordance with the tables and instructions on Form W-4.

*Example 3.* Employee C has an estimated net loss from a farm of \$5,000 which would be reported on Schedule F. Employee C would also otherwise be required to make payments of estimated tax on income of \$4,000. Employee C may only take her farm loss into consideration to the extent of \$1,000 (\$5,000-4,000) in determining the number of withholding allowances to which she is entitled in accordance with the tables and instructions on Form W-4.

(f) *Special rules*—(1) *Married individuals.* (i) Except as provided in subdivision (ii) of this subparagraph, a husband and wife shall determine the number of withholding allowances to which they are entitled under section 3402(m) on the basis of their combined wages and allowable items. The withholding

allowances to which a husband and wife are entitled may be claimed by the husband, by the wife, or they may be allocated between them. However, they may not both have withholding exemption certificates in effect claiming the same withholding allowance.

(ii) If a husband and wife filed separate income tax returns for the taxable year preceding the estimation year and reasonably expect to file separate returns for the estimation year, the husband and wife shall determine the number of withholding exemptions to which they are entitled under section 3402(m) on the basis of their individual wages and allowable items, and they shall be considered to be single for purposes of the tables on Form W-4.

(2) *Only one certificate to be in effect.* An employee who is entitled to one or more withholding allowances under section 3402(m) and who has, at the same time, two or more employers, may claim such withholding allowance or allowances with only one of his employers.

(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 44075, Sept. 27, 1983]

**§ 31.3402(n)-1 Employees incurring no income tax liability.**

Notwithstanding any other provision of this subpart, an employer shall not deduct and withhold any tax under chapter 24 upon a payment of wages made to an employee after April 30, 1970, if there is in effect with respect to the payment a withholding exemption certificate furnished to the employer by the employee which contains statements that—

(a) The employee incurred no liability for income tax imposed under subtitle A of the Code for his preceding taxable year; and

(b) The employee anticipates that he will incur no liability for income tax imposed by subtitle A for his current taxable year.

For purposes of section 3402(n) and this section, an employee is not considered to incur liability for income tax imposed under subtitle A if the amount of such tax is equal to or less than the total amount of credits against such

tax which are allowable to him under part iv of subchapter A of chapter 1 of the Code, other than those allowable under section 31 or 39. For purposes of section 3402(n) and this section, "liability for income tax imposed under subtitle A" shall include liability for a qualified State individual income tax which is treated pursuant to section 6361(a) as if it were imposed by chapter 1 of the Code. An employee is not considered to incur liability for such a State income tax if the amount of such tax does not exceed the total amount of the credit against such tax which is allowable to him under section 6362(b)(2) (B) or (C) or section 6362(c)(4). For purposes of this section, an employee who files a joint return under section 6013 is considered to incur liability for any tax shown on such return. An employee who is entitled to file a joint return under such section shall not certify that he anticipates that he will incur no liability for income tax imposed by subtitle A for his current taxable year if such statement would not be true in the event that he files a joint return for such year, unless he filed a separate return for his preceding taxable year and anticipates that he will file a separate return for his current taxable year.

For rules relating to invalid withholding exemption certificates, see § 31.3402(f)(2)-1(e), and for rules relating to submission to the Internal Revenue Service of withholding exemption certificates claiming a complete exemption from withholding, see § 31.3402(f)(2)-1(g).

*Example 1.* Employee A, an unmarried, calendar-year basis taxpayer, files his income tax return for 1970 on April 15, 1971. A has adjusted gross income of \$1,200 and is not liable for any tax. He had \$180 of income tax withheld during 1970. A anticipates that his gross income for 1971 will be approximately the same amount, and that he will not incur income tax liability for that year. On April 20, 1971, A commences employment and furnishes his employer an exemption certificate stating that he incurred no liability for income tax imposed under subtitle A for 1970, and that he anticipates that he will incur no liability for income tax imposed under subtitle A for 1971. A's employer shall not deduct and withhold on payments of wages made to A on or after April 20, 1971. Under paragraph (c) of § 31.3402(f)(4)-1, unless A files a new exemption certificate with his em-

ployer, his employer is required to deduct and withhold upon payments of wages to A made on or after May 1, 1972. (Under § 31.3402(f)(3)-1(b), if A had been employed by his employer prior to April 20, 1971, and had furnished his employer a withholding exemption certificate not containing the statements described in § 31.3402(n)-1 prior to furnishing the withholding exemption certificate containing such statements on April 20, 1971, his employer would not be required to give effect to the new certificate with respect to payments of wages made by him prior to July 1, 1971 (the first status determination date which occurs at least 30 days after April 20, 1971). However his employer could, if he chose, make the new certificate effective with respect to any payment of wages made on or after April 20 and before July 1, 1971.)

*Example 2.* Assume the facts are the same as in example 1 except that for 1970 A has taxable income of \$8,000, income tax liability of \$1,630, and income tax withheld of \$1,700. Although A received a refund of \$70 due to income tax withholding of \$1,700, he may not state on his exemption certificate that he incurred no liability for income tax imposed by subtitle A for 1970.

(86 Stat. 944, 26 U.S.C. 6364; and 68A Stat. 917, 26 U.S.C. 7805, 68A Stat. 731, 26 U.S.C. 6001; 68A Stat. 732, 26 U.S.C. 6011)

[T.D. 7048, 35 FR 10292, June 24, 1970, as amended by T.D. 7577, 43 FR 59359, Dec. 20, 1978; T.D. 7598, 44 FR 14553, Mar. 13, 1979; T.D. 7682, 45 FR 15527, Mar. 11, 1980; T.D. 7803, 47 FR 3547, Jan. 26, 1982]

#### **§ 31.3402(o)-1 Extension of withholding to supplemental unemployment compensation benefits.**

(a) *In general.* Withholding of income tax is required under section 3402(o) with respect to payments of supplemental unemployment compensation benefits made after December 31, 1970, which are treated under paragraph (b)(14) of § 31.3401(a)-1 as if they were wages.

(b) *Withholding exemption certificates.* For purposes of section 3402(f) (2) and (3) and the regulations thereunder (relating to withholding exemption certificates), in the case of supplemental unemployment compensation benefits an employment relationship shall be considered to commence with either the date on which such benefits begin to accrue or January 1, 1971, whichever is later, and the withholding exemption certificate furnished the employer with