

of § 31.6302-1(c)(1) for the deposit of backup withholding amounts. If *A* chooses not to treat the items separately, the Semi-Weekly rule would apply to the combined amount of both the taxes with respect to wages paid and the backup withholding amounts.

[T.D. 8436, 57 FR 44106, Sept. 24, 1992, as amended by T.D. 8504, 58 FR 68035, Dec. 23, 1993]

§ 31.6302-4 Federal tax deposit rules for withheld income taxes attributable to nonpayroll payments made after December 31, 1993.

(a) *General rule.* With respect to nonpayroll withheld taxes attributable to nonpayroll payments made after December 31, 1993, a taxpayer is either a monthly or a semi-weekly depositor based on an annual determination. Except as provided in this section, the rules of § 31.6302-1 shall apply to determine the time and manner of making deposits of nonpayroll withheld taxes as though they were employment taxes. Paragraph (b) of this section defines nonpayroll withheld taxes. Paragraph (c) of this section provides rules for determining whether a taxpayer is a monthly or a semi-weekly depositor.

(b) *Nonpayroll withheld taxes defined.* For purposes of this section, effective with respect to payments made after December 31, 1993, *nonpayroll withheld taxes* means—

(1) Amounts withheld under section 3402(q), relating to withholding on certain gambling winnings;

(2) Amounts withheld under section 3402 with respect to amounts paid as retirement pay for service in the Armed Forces of the United States;

(3) Amounts withheld under section 3402(o)(1)(B), relating to certain annuities;

(4) Amounts withheld under section 3405, relating to withholding on pensions, annuities, IRAs, and certain other deferred income; and

(5) Amounts withheld under section 3406, relating to backup withholding with respect to reportable payments.

(c) *Determination of deposit status—(1) Rules for calendar years 1994 and 1995.* On January 1, 1994, a taxpayer's depositor status for nonpayroll withheld taxes is the same as the taxpayer's status on January 1, 1994, for taxes reported on Form 941 under § 31.6302-1. A taxpayer generally retains that deposi-

tor status for nonpayroll withheld taxes for all of calendar years 1994 and 1995. However, a taxpayer that under this paragraph (c) is a monthly depositor for 1994 and 1995 will immediately lose that status and become a semi-weekly depositor of nonpayroll withheld taxes if the One-Day rule of § 31.6302-1(c)(3) is triggered with respect to nonpayroll withheld taxes. See paragraph (d) of this section for a special rule regarding the application of the One-Day rule of § 31.6302-1(c)(3) to nonpayroll withheld taxes.

(2) *Rules for calendar years after 1995—*

(i) *In general.* For calendar years after 1995, the determination of whether a taxpayer is a monthly or a semi-weekly depositor for a calendar year is based on an annual determination and generally depends on the aggregate amount of nonpayroll withheld taxes reported by the taxpayer for the lookback period as defined in paragraph (c)(2)(iv) of this section.

(ii) *Monthly depositor.* A taxpayer is a monthly depositor of nonpayroll withheld taxes for a calendar year if the amount of nonpayroll withheld taxes accumulated in the lookback period (as defined in paragraph (c)(2)(iv) of this section) is \$50,000 or less. A taxpayer ceases to be a monthly depositor of nonpayroll withheld taxes on the first day after the taxpayer is subject to the One-Day rule in § 31.6302-1(c)(3) with respect to nonpayroll withheld taxes. At that time, the taxpayer immediately becomes a semi-weekly depositor of nonpayroll withheld taxes for the remainder of the calendar year and the succeeding calendar year. See paragraph (d) of this section for a special rule regarding the application of the One-Day rule of § 31.6302-1(c)(3) to nonpayroll withheld taxes.

(iii) *Semi-weekly depositor.* A taxpayer is a semi-weekly depositor of nonpayroll withheld taxes for a calendar year if the amount of nonpayroll withheld taxes accumulated in the lookback period (as defined in paragraph (c)(2)(iv) of this section) exceeds \$50,000.

(iv) *Lookback period.* For purposes of this section, the lookback period for nonpayroll withheld taxes is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 1996

is calendar year 1994. A new taxpayer is treated as having nonpayroll withheld taxes of zero for any calendar year in which the taxpayer did not exist.

(d) *Special rules.* A taxpayer must treat nonpayroll withheld taxes, which are reported on Form 945, Annual Return of Withheld Federal Income Tax, separately from taxes reportable on Form 941, Employer's Quarterly Federal Tax Return. Taxes reported on Form 945 and taxes reported on Form 941 are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of § 31.6302-1(c)(3) applies, or whether any safe harbor is applicable. In addition, separate Federal tax deposit coupons must be used to deposit taxes reported on Form 945 and taxes reported on Form 941. (See paragraph (b) of § 31.6302-1 for rules for determining an employer's deposit status for taxes reported on Form 941.) A deposit of taxes reported on Form 945 for one calendar year must be made separately from a deposit of taxes reported on Form 945 for another calendar year.

[T.D. 8504, 58 FR 68036, Dec. 23, 1993]

§ 31.6302(b)-1 Method of collection.

For provisions relating to collection by means of returns of the taxes imposed by chapter 21 (Federal Insurance Contributions Act), see §§ 31.6011(a)-1 and 31.6011(a)-5.

§ 31.6302(c)-1 Use of Government depositories in connection with taxes under Federal Insurance Contributions Act and income tax withheld for amounts attributable to payments made before January 1, 1993.

(a) *Requirement for calendar months beginning after December 31, 1980, but before January 1, 1993—(1) In general.* (i) In the case of a calendar month which begins after December 31, 1980, but before April 1, 1991—

(a) Except as provided in paragraph (b) of this section and hereinafter in this subdivision (i), if at the close of any calendar month the aggregate amount of undeposited taxes (as defined in paragraph (a)(1)(iii) of this section) is \$500 or more, the employer shall deposit the undeposited taxes in a Federal Reserve bank or authorized financial institution (see paragraph

(a)(3)(iii) of this section) within 15 calendar days after the close of such calendar month.

However, this (a) of subdivision (i) shall not apply if the employer was required to make a deposit of taxes pursuant to (b) of this subdivision (i) with respect to an eighth-monthly period which occurred during the calendar month.

(b) Except as provided in paragraph (b) of this section and except in the case of first-time 3-banking-day depositors, if at the close of any eighth-monthly period the aggregate amount of undeposited taxes is \$3,000 or more, the employer shall deposit the undeposited taxes in a Federal Reserve bank or authorized financial institution within 3 banking days after the close of such eighth-monthly period. For purposes of determining the amount of undeposited taxes at the close of an eighth-monthly period, undeposited taxes with respect to wages paid during a prior eighth-monthly period shall not be taken into account if the employer has made a deposit with respect to such prior eighth-monthly period. An employer will be considered to have complied with the requirements of this paragraph (a)(1)(i)(b) for a deposit with respect to the close of an eighth-monthly period if—

(1) His deposit is not less than 95 percent (90 percent before January 1, 1982) of the aggregate amount of the taxes with respect to wages paid during the period for which the deposit is made, and

(2) If such eighth-monthly period occurs in a month other than the last month of a period for which a return is required to be filed (hereinafter in this subparagraph referred to as a return period), he deposits any underpayment with his first deposit which is otherwise required by this paragraph (a)(1)(i)(b) to be made after the 15th day of the following month.

For purposes of this paragraph (a)(1)(i)(b), a "first-time 3-banking-day depositor" is an employer who establishes to the satisfaction of the Commissioner that he was not required (but for this exception) to make a deposit pursuant to this paragraph (a)(1)(i)(b) (or pursuant to paragraph (a)(1)(ii)(b)