

§ 31.3102-1

employee. For provisions relating to the time of such receipt, see § 31.3121(a)-2.

§ 31.3102-1 Collection of, and liability for, employee tax; in general.

(a) The employer shall collect from each of his employees the employee tax with respect to wages for employment performed for the employer by the employee. The employer shall make the collection by deducting or causing to be deducted the amount of the employee tax from such wages as and when paid. (For provisions relating to the time of such payment, see § 31.3121(a)-2.) The employer is required to collect the tax, notwithstanding the wages are paid in something other than money, and to pay over the tax in money. (As to the exclusion from wages of remuneration paid in any medium other than cash for certain types of services, see § 31.3121(a)(7)-1, relating to such remuneration paid for service not in the course of the employer's trade or business or for domestic service in a private home of the employer; and § 31.3121(a)(8)-1, relating to such remuneration paid for agricultural labor.) For provisions relating to the collection of, and liability for, employee tax in respect of tips, see § 31.3102-3.

(b) The employer is permitted, but not required, to deduct amounts equivalent to employee tax from payments to an employee of cash remuneration to which the sections referred to in this paragraph (b) are applicable prior to the time that the sum of such payments equals—

(1) \$100 in the calendar year, for service not in the course of the employer's trade or business, to which § 31.3121(a)(7)-1 is applicable;

(2) The applicable dollar threshold (as defined in section 3121(x)) in the calendar year, for domestic service in a private home of the employer, to which § 31.3121(a)(7)-1 is applicable;

(3) \$150 in the calendar year, for agricultural labor, to which § 31.3121(a)(8)-1(c)(1)(i) is applicable; or

(4) \$100 in the calendar year, for service performed as a home worker, to which § 31.3121(a)(10)-1 is applicable.

(c) At such time as the sum of the cash payments in the calendar year for

a type of service referred to in paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section equals or exceeds the amount specified, the employer is required to collect from the employee any amount of employee tax not previously deducted. If an employer pays cash remuneration to an employee for two or more of the types of service referred to in paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section, the provisions of paragraph (b) of this section and this paragraph (c) are to be applied separately to the amount of remuneration attributable to each type of service. For provisions relating to the repayment to an employee, or other disposition, of amounts deducted from an employee's remuneration in excess of the correct amount of employee tax, see § 31.6413(a)-1.

(d) In collecting employee tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. The employer is liable for the employee tax with respect to all wages paid by him to each of his employees whether or not it is collected from the employee. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. Until collected from him the employee also is liable for the employee tax with respect to all the wages received by him. Any employee tax collected by or on behalf of an employer is a special fund in trust for the United States. See section 7501. The employer is indemnified against the claims and demands of any person for the amount of any payment of such tax made by the employer to the district director.

(e)(1) The provisions of paragraphs (a) and (d) of this section apply to any payment made on or after January 1, 1955.

(2) The provisions of paragraphs (b) and (c) of this section that apply to any payment made for service not in the course of the employer's trade or business or for service performed as a home worker within the meaning of section 3121(d)(3)(C) apply to any such payment made on or after January 1, 1978. The provisions of paragraphs (b)

and (c) of this section that apply to any payment made for domestic service in a private home of the employer apply to any such payment made on or after January 1, 1994. The provisions of paragraphs (b) and (c) of this section that apply to any payment made for agricultural labor apply to any such payment made on or after January 1, 1988. For rules applicable to any payment for these services made prior to the dates set forth in this paragraph (e)(2), see § 31.3102-1 in effect at such time (see 26 CFR part 31 contained in the edition of 26 CFR Parts 30 to 39, revised as of April 1, 2006).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6744, 29 FR 8305, July 2, 1964; T.D. 7001, 34 FR 998, Jan. 23, 1969; T.D. 9266, 71 FR 35154, June 19, 2006]

§ 31.3102-2 Manner and time of payment of employee tax.

The employee tax is payable to the district director in the manner and at the time prescribed in Subpart G of the regulations in this part. For provisions relating to the payment by an employee of employee tax in respect of tips, see paragraph (d) of § 31.3102-3.

[T.D. 7001, 34 FR 998, Jan. 23, 1969]

§ 31.3102-3 Collection of, and liability for, employee tax on tips.

(a) *Collection of tax from employee*—(1) *In general.* Subject to the limitations set forth in subparagraph (2) of this paragraph, the employer shall collect from each of his employees the employee tax on those tips received by the employee which constitute wages for purposes of the tax imposed by section 3101. (For provisions relating to the treatment of tips as wages, see 3121(a)(12) and 3121(q).) The employer shall make the collection by deducting or causing to be deducted the amount of the employee tax from wages (exclusive of tips) which are under the control of the employer or other funds turned over by the employee to the employer (see subparagraph (3) of this paragraph). For purposes of this section the term “wages (exclusive of tips) which are under the control of the employer” means, with respect to a payment of wages, an amount equal to wages as defined in section 3121(a) except that tips and noncash remunera-

tion which are wages are not included, less the sum of—

(i) The tax under section 3101 required to be collected by the employer in respect of wages as defined in section 3121(a) (exclusive of tips);

(ii) The tax under section 3402 required to be collected by the employer in respect of wages as defined in section 3401(a) (exclusive of tips); and

(iii) The amount of taxes imposed on the remuneration of an employee withheld by the employer pursuant to State and local law (including amounts withheld under an agreement between the employer and the employee pursuant to such law) except that the amount of taxes taken into account in this subdivision shall not include any amount attributable to tips.

(2) *Limitations.* An employer is required to collect employee tax on tips which constitute wages only in respect of those tips which are reported by the employee to the employer in a written statement furnished to the employer pursuant to section 6053(a). The employer is responsible for the collection of employee tax on tips reported to him only to the extent that the employer can—

(i) During the period beginning at the time the written statement is submitted to him and ending at the close of the 10th day of the month following the month in which the statement was submitted, or

(ii) In the case of an employer who elects to deduct the tax on an estimated basis (see paragraph (c) of this section), during the period beginning at the time the written statement is submitted to him and ending at the close of the 30th day following the quarter in which the statement was submitted,

collect the employee tax by deducting it or causing it to be deducted as provided in subparagraph (1).

(3) *Furnishing of funds to employer.* If the amount of employee tax in respect of tips reported by the employee to the employer in a written statement (or statements) furnished pursuant to section 6053(a) exceeds the wages (exclusive of tips) which are under the control of the employer, the employee may furnish to the employer, within the period specified in subparagraph (2) (i) or