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[4830-01-p]

**DEPARTMENT OF THE TREASURY**

Internal Revenue Service

26 CFR Part 31

[TD 9924]

RIN 1545-B032

Income Tax Withholding from Wages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document sets forth final regulations that provide guidance for employers concerning income tax withholding from employees' wages. These final regulations concern the amount of Federal income tax employers withhold from employees' wages, implement changes in the Internal Revenue Code made by the Tax Cuts and Jobs Act, and reflect the redesigned withholding allowance certificate (Form W-4) and related IRS publications. These final regulations affect employers that pay

wages subject to Federal income tax withholding and employees who receive wages subject to Federal income tax withholding.

**DATES: Effective date:** These final regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**Applicability dates:** For dates of applicability see §§31.3402(a)-1(h), 31.3402(b)-1(b), 31.3402(c)-1(f), 31.3402(f)(1)-1(c), 31.3402(f)(2)-1(h), 31.3402(f)(3)-1(d), 31.3402(f)(4)-1(e), 31.3402(f)(5)-1(d), 31.3402(f)(6)-1(c), 31.3402(g)-1(d), 31.3402(h)(4)-1(c), 31.3402(i)-1(b), 31.3402(l)-1(e), 31.3402(m)-1(f), and 31.3402(n)-1(f).

**FOR FURTHER INFORMATION CONTACT:** Concerning these final regulations, Mikhail Zhidkov of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), (202) 317-4774 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### **Background**

Section 3402(a)(1) provides that, except as otherwise provided in section 3402, every employer making a payment of wages shall deduct and withhold from such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary of the Treasury. Section 3402(a)(1) further provides that any tables or procedures prescribed under section 3402(a)(1) shall be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out the purposes of chapter 1 (imposition of individual income tax). Section 3402 sets forth certain methods of withholding but also gives the Secretary broad regulatory authority in providing for tables or computational procedures for

income tax withholding.

Generally, employers apply the withholding tables or computational procedures based on the entries on the Form W-4 the employee furnishes the employer. An employee who receives wages subject to withholding under section 3402 is required to furnish his or her employer a Form W-4 on commencement of employment or, generally, within 10 days after the employee experiences a “change of status” that reduces the “withholding allowance” to which the employee is entitled. See section 3402(f)(2).

An employee completes Form W-4 based on the employee’s personal tax situation by applying the factors listed in section 3402(f)(1). Section 3402(f)(1) describes the combination of these factors as the employee’s “withholding allowance.” Once an employee completes a valid Form W-4, the employee must furnish the Form W-4 to the employer. The employer puts the Form W-4 into effect in accordance with the timing rules in section 3402(f)(3). Once in effect, the employer generally applies the entries on an employee’s Form W-4 (the withholding allowance) to compute the amount of income tax to withhold from the employee’s regular wages under either the percentage method of withholding or the wage bracket method of withholding. See section 3402(b) and (c).<sup>1</sup>

In certain cases, the IRS may issue an employer a lock-in letter that notifies the employer in writing that an employee is not entitled to claim exemption from withholding

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<sup>1</sup> Special rules under §31.3402(g)-1 of the current regulations apply to “supplemental wages”. In the case of supplemental wages in excess of \$1,000,000, employers must disregard the entries on the employee’s Form W-4 and apply a mandatory flat rate of withholding. In the case of supplemental wages of less than \$1,000,000, employers may either disregard the entries on the employee’s Form W-4 and withhold using the optional flat rate or may use an aggregate procedure, taking into consideration the entries on the Form W-4 furnished by the employee.

or is not entitled to the withholding allowance claimed on the employee's Form W-4 and prescribes the withholding allowance the employer must use to figure withholding. If the employer employs the employee at the time the employer receives the lock-in letter, the employer must furnish the employee notice of the lock-in letter within 10 days of receipt of the lock-in letter. In this case, the employer must withhold in accordance with the lock-in letter as of the date specified in the lock-in letter, which cannot be any earlier than 45 calendar days after the date of issuance of the lock-in letter.

After the lock-in letter becomes effective, the IRS may issue a subsequent notice (modification notice) modifying the lock-in letter. Generally, a modification notice is issued only after the employee contacts the IRS to request an adjustment to the withholding prescribed in the lock-in letter. In certain cases, if warranted, the IRS may issue a notice releasing the employee from the lock-in program. If the employee is subject to a lock-in letter or modification notice, the employer may put in effect a Form W-4 only if doing so results in more withholding than specified by the lock-in letter or modification notice. Finally, an employee who was subject to a lock-in letter or modification notice, who terminates employment and then resumes employment with the same employer within 12 months of termination, remains subject to the lock-in letter or the modification notice withholding instructions upon resuming the employment.

#### TCJA changes

Prior to the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (TCJA), one withholding exemption was equal to the amount of one personal exemption provided in section 151(b), prorated to the payroll period. See section 3402(a)(2) (2017). TCJA enacted section 151(d)(5), which reduced the personal exemption

amount to zero for the years 2018–2025. See TCJA section 11041(a). TCJA also increased the standard deduction under section 63, increased the child tax credit under section 24, and created a new credit under section 24 for other dependents. See TCJA sections 11021 and 11022.

TCJA permanently modified the wage withholding rules in section 3402(a)(2) and, replaced “withholding exemptions” with a “withholding allowance, prorated to the payroll period.” See TCJA section 11041(c)(1). TCJA also repealed section 3401(e), which, prior to TCJA, provided, for purposes of chapter 24 (relating to collection of income tax at source on wages), that the “number of withholding exemptions claimed” meant the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402(f) or in effect under the corresponding section of prior law, except that if no such certificate was in effect, the number of withholding exemptions claimed was considered zero. See TCJA section 11041(c)(2)(A).

TCJA modified section 3402(f), and defined a “withholding allowance,” which is determined based on the factors listed in section 3402(f)(1). See TCJA section 11041(c)(2)(B). TCJA further changed the list of factors on which the withholding allowance is based and added that the withholding allowance is determined based on rules determined by the Secretary. See TCJA section 11041(c)(2)(B). This change to section 3402(f)(1) revised section 3402(f)(1)(C), entitling an employee to take into account the number of individuals for which the employee expects to take an income tax credit under section 24 instead of the number of individuals with respect to whom the employee reasonably expects to claim a deduction under section 151. Section 3402(f)(1)(D) also changed an employee’s entitlement to take into account the standard

deduction from an amount generally equal to one withholding exemption to the standard deduction allowable to such employee (one-half of the standard deduction in the case of an employee who is married and whose spouse is an employee receiving wages subject to withholding). Finally, TCJA added section 3402(f)(1)(F), which provides that the employee's withholding allowance also takes into account "whether the employee has withholding allowance certificates in effect with respect to more than one employer." See TCJA section 11041(c)(2)(B).

TCJA also made conforming changes to the "change of status" rules in section 3402(f)(2), changing "withholding exemptions" to "withholding allowance" and striking out "exemption" and inserting "allowance" in various subsections of section 3402. This resulted in a conforming change to the statutory name of the withholding exemption certificate in section 3402(f)(5) to the withholding allowance certificate. See TCJA sections 11041(c)(2)(B) and (C).

TCJA amended section 3402(m) by changing the reference from "withholding allowances" to "withholding allowance." See TCJA sections 11041(c)(2)(D) and (E). TCJA added the section 199A deduction to the list of deductions in section 3402(m)(1) that an employee may take into account in determining the additional withholding allowance that the employee is entitled to claim on Form W-4, and struck the reference to section 62(a)(10) in section 3402(m)(1) with respect to certain payments made under divorce or separation instruments previously described in section 62(a)(10). See TCJA sections 11011(b)(4) and 11051(b)(2)(B).

The legislative history of TCJA states that "the Secretary of the Treasury is to develop rules to determine the amount of tax required to be withheld by employers from

a taxpayer's wages." H.R. Rep. No. 115-466, at 203 (2017).

#### Guidance addressing TCJA

TCJA allowed the Secretary of the Treasury to administer section 3402 before January 1, 2019, without regard to the changes described above. See TCJA section 11041(f)(2). Nevertheless, on January 11, 2018, the Treasury Department and the IRS released Notice 1036, "Early Release Copies of the 2018 Percentage Method Tables for Income Tax Withholding," which implemented TCJA's tax rate changes, standard deduction, and suspension of the deduction under section 151. The Treasury Department and the IRS designed the 2018 withholding tables to work with the Forms W-4 that employees had already furnished their employers. On February 28, 2018, the Treasury Department and the IRS updated Form W-4, "Employee's Withholding Allowance Certificate," incorporating TCJA's changes in the 2018 Form W-4's worksheets and updated the online withholding calculator (now called the Tax Withholding Estimator) to reflect TCJA changes. Notice 2018-14, 2018-7 I.R.B. 353, published February 12, 2018, allowed continued use of the 2017 Form W-4 temporarily in 2018 and included a relief provision for employees who experienced changes in their tax circumstances solely attributable to TCJA.

Notice 2018-92, 2018-51 I.R.B. 1038, published December 17, 2018, addressed some of TCJA's changes to section 3402 and provided interim rules for the 2019 calendar year. Section 3 of Notice 2018-92 addressed TCJA's use of "withholding allowance" (singular) and provided that withholding allowances (plural) were to be used for wage withholding computational procedures in 2019. Under section 3 of Notice 2018-92, any reference to a withholding exemption in the regulations and other

guidance under section 3402 was to be applied as if it were a reference to a withholding allowance. Section 4 of Notice 2018-92 extended the relief provided in Notice 2018-14 for changes in tax circumstances solely attributable to TCJA. Section 5 of Notice 2018-92 addressed the repeal of section 3401(e) and provided rules for employees who fail to furnish a valid Form W-4. Section 6 of Notice 2018-92 allowed employees to include the employee's estimated deduction under section 199A in determining the additional withholding allowance under section 3402(m) that the employee is entitled to claim on Form W-4. Section 7 of Notice 2018-92 allowed taxpayers to use the online withholding calculator (now called the Tax Withholding Estimator) or Publication 505, "Tax Withholding and Estimated Tax," in lieu of the Form W-4 worksheets. Section 8 of Notice 2018-92 requested comments on alternative withholding methods under section 3402(h) and announced that the IRS and the Treasury Department intended to eliminate the combined income tax withholding and employee Federal Insurance Contributions Act (FICA) tax withholding tables under §31.3402(h)(4)-1(b). Section 9 of Notice 2018-92 confirmed that an employer in receipt of a lock-in letter should not send a response to the IRS when the employer no longer employs the employee (within the meaning of §31.3402(f)(2)-1(g)(2)(iii)).

#### 2019 Form W-4

In June 2018, the Treasury Department and the IRS released a draft 2019 Form W-4 and draft instructions for public comment. The 2019 draft Form W-4 and instructions incorporated significant changes intended to improve the accuracy of income tax withholding and make the withholding system more transparent for employees. Many comments were received on the draft form and instructions. In

response to comments received from stakeholders, the Treasury Department and the IRS announced on September 20, 2018, that implementation of the redesigned form would be postponed until 2020, and that the Treasury Department and the IRS would continue working closely with stakeholders as additional changes were made to the form for 2020. For 2019, however, Notice 2018-92 announced that the 2019 Form W-4 would include minimal changes to the 2018 Form W-4 and would continue to apply section 3402 by using the existing withholding system under which employees claimed a number of withholding allowances on a valid Form W-4.

In addition, the amount of each withholding allowance for 2019, like for the years before it, was set to what would have been the value of a personal or dependency exemption under section 151(b) prior to enactment of TCJA. See Rev. Proc. 2018-57, 2018-49 I.R.B. 827, sections 2.03 and 3.25. For calendar years 2018 through 2025, however, the exemption amount is zero. See section 151(d)(5)(A). Moreover, the high value of each withholding allowance (\$4,050 for 2017, \$4,150 for 2018, and \$4,200 for 2019) led to rounding errors that made it difficult for some employees to have their withholding equal their tax liability for the year. Accuracy was even more difficult to achieve for employees claiming tax credits, as these amounts first had to be converted into tax deductions and then expressed as a number of withholding allowances. In addition to limiting accuracy, the use of withholding allowances to compute withholding is not intuitive, given that wages, deductions, credits, and taxes are all expressed as dollar amounts, rather than as a number of withholding allowances. Although the 2019 or earlier Forms W-4 allowed an employee to achieve a high degree of accuracy if the employee requested an additional dollar amount to be withheld and/or used the online

withholding calculator (now called the Tax Withholding Estimator) or Publication 505 in completing the Form W-4, most employees did not use these options.

#### Redesigned Form W-4, Employee's Withholding Certificate

To address the limitations of the 2019 Form W-4, on May 31, 2019, a draft of a redesigned 2020 Form W-4 was released for public comment. The redesigned Form W-4 was intended to reduce the combined complexity of the form, instructions, and worksheets and to increase the transparency and accuracy of the withholding system. The redesigned Form W-4 uses the same underlying information as the 2019 Form W-4 but replaces complex worksheets with more straightforward questions. The redesigned Form W-4 was released on December 4, 2019, and then was rereleased on December 31, 2019, to reflect a change in the medical expense deduction threshold under section 213 for 2020 made by the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, 133 Stat. 2534, 3228 (2019).

The redesigned Form W-4 does not use withholding allowances. An employee selects a filing status (single, married filing separately, head of household, married filing jointly, or qualifying widow(er)) on the Form W-4, and this entry generally results in the basic standard deduction relating to the filing status being taken into account in determining the amount of tax withheld from the employee's pay. In addition, the redesigned Form W-4 streamlines the multiple jobs procedures and gives employees three options to account for a working spouse or multiple jobs held concurrently. Specifically, employees may (1) use the Tax Withholding Estimator to achieve accurate withholding; (2) complete the Multiple Jobs Worksheet and enter an additional amount to withhold from pay for each pay period; or (3) check the box in Step 2(c) on the

redesigned Form W-4 to request withholding using higher withholding rate tables. For married taxpayers filing jointly with two jobs held concurrently, the effect of checking the box in Step 2(c) is similar to selecting “Married, but withhold at higher Single rate” on a 2019 or earlier Form W-4. The redesigned Form W-4 also allows an employee to enter dollar amounts for tax credits, other income, and deductions the employee expects to claim on his or her income tax return to reflect the permitted allowance under sections 3402(f)(1)(C) and (f)(1)(D) and the increase in the amount of withholding under section 3402(i).

#### Publication 15-T, Federal Income Tax Withholding Methods

On June 7, 2019, the IRS released for public comment a draft of Publication 15-T, “Federal Income Tax Withholding Methods,” which provided percentage method tables, wage bracket withholding tables, and other computational procedures for employers to use to compute withholding for employees for the 2020 calendar year, including for employees who furnished a redesigned Form W-4 to be effective for 2020. After stakeholder feedback, Publication 15-T was revised and rereleased on August 13, 2019, and was rereleased on November 4, 2019. Publication 15-T was finalized and released on December 24, 2019.

Publication 15-T prescribes percentage method tables, wage bracket withholding tables, discussion on alternative withholding methods, and Tables for Withholding on Distributions of Indian Gaming Profits to Tribal Members. These tables and discussions, which were formerly published in Publication 15 (Circular E), “Employer's Tax Guide,” Publication 15-A, “Employer's Supplemental Tax Guide,” and Publication 51, “Agricultural Employer's Tax Guide,” are now published only in Publication 15-T,

“Federal Income Tax Withholding Methods.” However, in 2020, the IRS discontinued publishing Formula Tables for Percentage Method Withholding (for Automated Payroll Systems), Wage Bracket Percentage Method Tables (for Automated Payroll Systems), and Combined Federal Income Tax, Employee Social Security Tax, and Employee Medicare Tax Withholding Tables. In addition, the IRS has discontinued publishing Notice 1036, “Early Release Copies of the Percentage Method Tables for Income Tax Withholding,” effective beginning with calendar year 2020, and instead will post information previously included in Notice 1036 in early release drafts of Publication 15 ([www.irs.gov/Pub15](http://www.irs.gov/Pub15)) and Publication 15-T ([www.irs.gov/Pub15T](http://www.irs.gov/Pub15T)) for use by employers and the payroll community. For percentage method and wage bracket withholding tables, Publication 15-T describes different withholding computational procedures and different tables for 2019 or earlier Forms W-4 than for Forms W-4 from 2020 or later (the redesigned Forms W-4).

#### Notice of Proposed Rulemaking

On February 13, 2020, a notice of proposed rulemaking (proposed regulations) (REG-132741-17) was published in the Federal Register (85 FR 8344) to update the regulations under sections 3401 and 3402 for legislative changes, including TCJA, and expand the rules in the regulations to accommodate the changes necessary to fully implement the redesigned Form W-4 and its related computational procedures, along with most existing computational procedures applicable to 2019 or earlier Forms W-4. These changes are explained in detail in the preamble to the proposed regulations.

The IRS did not receive any requests for a public hearing on the proposed regulations, and therefore no public hearing was held. Written comments responding to

the proposed regulations were received and are available for public inspection and copying at <http://www.regulations.gov> or upon request. After full consideration of the comments received on the proposed regulations, this Treasury decision adopts the proposed regulations with revisions as described in the Summary of Comments and Explanation of Revisions.

### **Summary of Comments and Explanation of Revisions**

The Treasury Department and the IRS received seven written comments in response to the proposed regulations. Some of the comments propose changes to the Form W-4 or related instructions, publications, or other guidance that would not require a change to the proposed regulations themselves. One commenter made a general comment about the complexity of income tax withholding from wages but did not offer any comments specific to the proposed regulations. Except to the extent that the comments raise issues related to the proposed regulations, the comments are beyond the scope of the proposed regulations, and therefore are not addressed in this Summary of Comments and Explanation of Revisions. However, the comments will remain under consideration for future revisions to forms, instructions, publications, and other guidance relating to income tax withholding from wages, including revisions to the Form W-4.

#### **1. Requirement to maintain two systems to determine withholding**

Two commenters expressed concern that the proposed regulations and the related forms, instructions, publications, and other guidance require maintenance of two different systems for computing income tax withholding from wages: one system for 2019 or earlier Forms W-4, and another system for redesigned Forms W-4. According

to these commenters, these two systems complicate computer programming and exacerbate inaccuracy of employees' withholding determined using 2019 or earlier Forms W-4. These commenters requested that all employees should be required to furnish a redesigned Form W-4. One commenter stated that requiring all employees to furnish a redesigned Form W-4 would simplify computer programming and make employees more aware of TCJA changes to the wage withholding rules. The other commenter stated that not requiring employees to furnish a redesigned Form W-4 would increase burden on employers and would confuse employees who commence employment with a second or third employer that pays wages subject to income tax withholding for which the employee has to complete a redesigned Form W-4 while the employee still has 2019 or earlier Form(s) W-4 in effect with one or more employers.

The Treasury Department and the IRS note that section 3402(f)(4) generally requires that a Form W-4 continue in effect with respect to an employer until another Form W-4, furnished by the employee, takes effect under the rules in section 3402. Thus, an employer must continue withholding according to the Form W-4 submitted by an employee until the employee furnishes the employer a new Form W-4. In addition, section 11041 of TCJA does not require all employees to submit new Forms W-4 to conform to changes to the wage withholding rules in TCJA. In contrast, section 1581 of the Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085, 2101 (1987), explicitly required all employees to furnish new Forms W-4 as a result of the changes made to the statute. In other words, although TCJA and the Tax Reform Act of 1986 both enacted significant changes to the income tax withholding rules in chapter 1, only the Tax Reform Act of 1986 mandated that employees furnish new Forms W-4. Therefore,

the final regulations do not require all employees with a 2019 or earlier Form W-4 in effect to furnish a redesigned Form W-4.

Nevertheless, the Treasury Department and the IRS acknowledge the commenters' concerns and address them in two ways: (1) through instructions to the redesigned Form W-4 for employees with multiple jobs and (2) through optional computational "bridge" entries permitted under these regulations and described in Publication 15-T.

First, in redesigning the Form W-4, the Treasury Department and the IRS were aware of the challenges facing employees who have multiple employers paying wages subject to withholding and who have 2019 or earlier Form(s) W-4 in effect in completing the redesigned Form W-4. The redesigned 2020 Form W-4 includes instructions advising employees that, "[t]o be accurate, submit a 2020 Form W-4 for all other jobs." The IRS intends to continue providing an updated version of this instruction on Forms W-4 for future years.

Second, to address commenters' concerns relating to employers maintaining separate withholding systems, these regulations adopt optional computational bridge entries that will allow employers to continue in effect 2019 or earlier Forms W-4 as if the employees had furnished redesigned Forms W-4. This will allow employers to use one process for both 2019 and earlier Forms W-4 and 2020 and later Forms W-4 and free employers from the need to use the number of allowances data field from 2019 and earlier Forms W-4 once the employers apply the appropriate computational bridge entries for their employees. Accordingly, starting for calendar year 2021, the IRS intends to include instructions in Publication 15-T for these optional computational

bridge entries. The computational bridge entries will allow employers to use the computational procedures and data fields for the redesigned Form W-4 to arrive at the equivalent withholding for an employee that would have applied using the computational procedures and data fields related to a 2019 or earlier Form W-4 furnished by the employee.

Specifically, Publication 15-T will provide for four adjustments to accurately implement the computational bridge entries. First, Publication 15-T will provide for treating an employee as having made an entry on line 1(c) (filing status) of the redesigned Form W-4 that most accurately reflects the employee's entry on line 3 (marital status) of a 2019 or earlier Form W-4. In this regard, an employee will be treated as having selected "single or married filing separately" on the redesigned form if the employee selected either "single" or "married, but withhold at higher single rate" on a 2019 or prior Form W-4. An employee will be treated as having selected "married filing jointly" on the redesigned form if the employee selected "married" on a 2019 or prior Form W-4.

Second, Publication 15-T will provide for treating an employee as also having made an entry in step 4(a) (other income (not from jobs)) on the redesigned Form W-4 based on the marital status on line 3 of a 2019 or earlier Form W-4 to help offset the full basic standard deduction that has otherwise been incorporated in tables related to the various filing statuses in step 1(c) of the redesigned Form W-4. In particular, the employer would treat the employee as having entered the value of two allowances corresponding to a single employee's filing status and the value of three allowances

corresponding to a married employee's filing status in Step 4(a) of the redesigned Form W-4.

Third, Publication 15-T will provide for treating an employee as having made an entry in step 4(b) (deductions) of the redesigned Form W-4 to replicate the effect of allowances claimed on line 5 (number of allowances) of a 2019 or earlier Form W-4. In particular, the employer would multiply the number of allowances claimed on line 5 of a 2019 or earlier Form W-4 by \$4,300 and treat the employee as having entered the product in Step 4(b) of the redesigned Form W-4.

Finally, fourth, Publication 15-T will provide for treating an employee as having made an entry in step 4(c) (extra withholding) of the redesigned Form W-4 to replicate the effect of any additional amount that the employee requested to have withheld using line 6 (additional amount withheld from each paycheck) on a 2019 or earlier Form W-4. In particular, the employer would treat the employee as having entered any additional amount the employee requested to have withheld from each paycheck on line 6 of a 2019 or earlier Form W-4 in Step 4(c) of the redesigned Form W-4.<sup>2</sup>

To facilitate the use of the computational bridge entries, starting in 2021, the IRS will no longer index the withholding allowance to reflect cost-of-living adjustments to what would have been the value of a personal or dependency exemption in section 151(b) prior to enactment of TCJA. The withholding allowance will be fixed at \$4,300 in 2021. Thus, employers that choose to implement the computational bridge entries

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<sup>2</sup> For employers that use the computational bridge entries for nonresident alien employees with 2019 or earlier Forms W-4 in effect, the procedures in Publication 15-T will provide for an entries on the redesigned form to replicate the effect of allowances claimed on a 2019 or earlier Form W-4, as well as an entry for any additional amount the nonresident alien requested to be withheld on a 2019 or earlier Form W-4. Publication 15-T will instruct employers that choose to use the computational bridge entries for nonresident alien employees with a 2019 or earlier Form W-4 in effect to apply the general procedures applicable to nonresident alien employees who furnish a redesigned Form W-4.

starting in 2021 will not have to make any adjustments to employees' withholding entries that the employee is treated as having made on the redesigned Form W-4 within their system unless the employee furnishes a new, redesigned Form W-4.

For example, for the year 2021 and its withholding allowance of \$4,300, an employer determining withholding from wages for an employee with a 2019 Form W-4 in effect on which the employee reported a marital status of single (or married, but withhold at a higher single rate) and one withholding allowance would compute withholding for the employee as if the employee had made the following entries on a 2021 Form W-4: single or married filing separately in Step 1(c) (filing status), an entry of \$8,600 in Step 4(a) (other income (not from jobs)) and an entry of \$4,300 in Step 4(b) (deductions) to determine withholding from wages for this employee. In this case, the computational bridge entries that the employee is treated as having made in Step 1(c), Step 4(a), and Step 4(b) of the 2021 Form W-4 replicate the effect of selecting single and one withholding allowance on the 2019 Form W-4.

Use of the computational bridge entries will be optional; the IRS intends to continue publishing withholding tables and procedures for employers that choose to continue computing withholding using the computational procedures related to 2019 or earlier Forms W-4 furnished by employees. The computational bridge entries apply only for Forms W-4 that were properly put in effect on or before December 31, 2019, and that continue in effect under section 3402(f)(4). The computational bridge entries are not intended to continue 2019 or earlier computational procedures, including the use of a number of withholding allowances, for redesigned Forms W-4. Furthermore, if an employee is either required, or chooses, to furnish a new Form W-4, the use of the

computational bridge entries by an employer does not change the requirement that the employee must use the current year's revision of the Form W-4 when furnishing a new Form W-4 to his or her employer.<sup>3</sup>

Accordingly, these final regulations revise §31.3402(f)(4)-1(a) to provide that an employer's use of the computational bridge entries to adapt a 2019 or earlier Form W-4 to the redesigned computational procedures as if using entries on a redesigned Form W-4 will continue in effect, within the meaning of section 3402(f)(4), a 2019 or earlier Form W-4 that was properly in effect on or before December 31, 2019.

## 2. Lock-in letters or modification notices

One commenter expressed concern about whether a lock-in letter under which an employer is required to withhold based on instructions using 2019 or earlier Form W-4 computational procedures ceases to be effective because of the redesign of the Form W-4 until a new lock-in letter using redesigned Form W-4 computational procedures is issued to the employer. Under current regulations, once an employer is required to furnish the employee a copy of the lock-in letter, the lock-in letter becomes effective. It remains effective until the IRS issues the employer a modification notice, including a modification notice releasing the employee from a lock-in letter or a prior modification notice, or until the employee furnishes the employer a Form W-4 that requests more withholding than required under the lock-in letter or modification notice. If the employee is no longer employed by the employer, the lock-in letter generally does not apply because the employer generally is not paying wages subject to withholding. Under the proposed regulations and these final regulations, employers are no longer required to

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<sup>3</sup> Near the end of a year, an employee may furnish the Form W-4 revision for the following calendar year to take effect for the following calendar year.

notify the IRS that they no longer employ an employee for whom a lock-in letter was issued.

These final regulations follow the proposed regulations and do not require the IRS to reissue lock-in letters or modification notices solely because of the redesign of the Form W-4. Employers may not assume that a lock-in letter or modification notice ceases to be effective because of changes resulting from the redesigned Form W-4 and related withholding procedures. Unless the employee furnishes the employer a Form W-4 that results in more withholding than under the lock-in letter or modification notice, the employer must continue following any lock-in letter or modification notice until the IRS releases the employee from the program.

For ease of administering the withholding instructions in lock-in letters or modification notices that were based on 2019 or earlier Forms W-4, employers may use the optional computational bridge entries discussed in section 1 of this Summary of Comments and Explanation of Revisions to comply with the requirement to withhold based on the maximum withholding allowance and filing status permitted in a lock-in letter or modification notice and to adapt to the redesigned Form W-4 and computational procedures. For example, for calendar year 2021, based on a withholding allowance of \$4,300, an employer that is determining withholding from wages for an employee subject to a lock-in letter that uses 2019 computational procedures and instructs the employer use a filing status of single and a maximum withholding allowance of zero allowances, may comply with the lock-in letter by using the following computational bridge entries on a 2021 Form W-4: an entry of single or married filing separately in Step 1(c), an entry of \$8,600 in Step 4(a) (other income (not from jobs)) to further

account for the effect of the withholding instructions directing an employer to withhold from the employee using the single filing status, and an entry of \$0 in Step 4(b) (deductions) to replicate the effect of the employee's maximum withholding allowance of zero withholding allowances.

These final regulations revise the rules in §31.3402(f)(2)-1(g)(2)(iv) (relating to lock-in letters) and §31.3402(f)(2)-1(g)(2)(vii) (relating to modification notices) to provide that an employer may comply with a lock-in letter or modification notice that is based on a 2019 or earlier Form W-4, as required by the regulations, if the employer implements the maximum withholding allowance and filing status permitted in a lock-in letter or modification notice by using the computational bridge entries as set forth in forms, instructions, publications, and other guidance prescribed by the Commissioner to calculate withholding for a 2019 or earlier Form W-4.

Another commenter stated that lock-in letters and modification notices should be revised in such a way that makes it easier for employers to compare withholding based on a lock-in letter or modification notice to withholding based on the redesigned Form W-4. Specifically, this commenter notes that the new entries on the redesigned Form W-4 make it more difficult for employers to determine whether a newly furnished Form W-4 results in more withholding than a lock-in letter or modification notice that the employer was required to put in effect. The commenter's suggestions regarding the contents of the lock-in letters or modifications notices do not require changes to the proposed regulations because the language of the proposed regulations is broad enough to accommodate the commenter's suggestions to the letters and notices. Accordingly, the proposed regulations regarding the contents of the lock-in letter or

modification notice will be adopted as final without change. However, these comments will be considered in future revisions of the lock-in letter and modification notice.

Furthermore, to ease the employer's burden in determining whether a Form W-4 furnished by an employee for whom a lock-in letter or modification notice is in effect results in more withholding (and thus may be put into effect), the Treasury Department and the IRS note that employers may use the Income Tax Withholding Assistant for employers available on [www.irs.gov](http://www.irs.gov). The Income Tax Withholding Assistant can aid in estimating the amount of tax to be withheld from employee's wages based on a Form W-4 furnished by the employee, which can be compared to the withholding required pursuant to a lock-in letter or modification notice. The Income Tax Withholding Assistant is a software tool that is designed to help small employers with manual payroll systems compute the amount of income tax to withhold from employees' wages. Employers enter the employees' pay frequency, wages, and Form W-4 entries, and the software tool computes the amount of income tax that is required to be withheld from employees' wages. This software tool is compatible with 2019 or earlier Forms W-4, as well as with the 2020 Form W-4, and is designed to be used by employers that use the income tax withholding tables in Publication 15-T.

The same commenter also suggested that employees who are subject to a lock-in letter or modification notice be restricted from making certain entries on a Form W-4 that they furnish to an employer that must withhold pursuant to a lock-in letter or modification notice. However, because each entry on Form W-4 is intended to foster accuracy and simplicity in income tax withholding, an employee who is subject to a lock-in letter or modification notice should be able to use all entries on Form W-4 when

appropriate. Due to the circumstances under which a lock-in letter or modification notice is issued (i.e., the employee's history of noncompliance with withholding requirements), and that any decrease in withholding from a lock-in letter or modification notice may only be accomplished by seeking a modification notice from the IRS, the employee would be furnishing a redesigned Form W-4 only to request an increase in withholding.

### 3. Effective period of a withholding allowance certificate

The proposed regulations provide that when an employee is released from a lock-in letter or modification notice, the employee would generally be required to furnish a new Form W-4, and if the employee fails to do so, the employee would be treated as single but having the withholding allowance provided in forms, instructions, publications, and other guidance prescribed by the Commissioner that applies to other employees who fail to furnish a new Form W-4.<sup>4</sup> Under the redesigned computational procedures, this means that the employee would be treated as single or married filing separately in Step 1(c) of the 2020 Form W-4 with no entries in Step 2, Step 3, or Step 4.

One commenter recommended that this rule be modified to require an employee to furnish a new Form W-4, but, in the event the employee fails to do so, the withholding according to the lock-in letter or modification notice would continue. The commenter recommended this approach to reduce the administrative burden on employers in administering lock-in letters and modification notices, especially upon the employee's release from a lock-in letter or modification notice. After careful consideration of the

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<sup>4</sup> If the employee's Form W-4 results in more withholding than prescribed by the lock-in letter or modification notice, the proposed regulations provide that the employer should continue withholding according to the employee's Form W-4, even after the employee is released from the lock-in letter or modification notice.

comment, the Treasury Department and the IRS do not agree that this approach is appropriate. To foster accuracy, the Treasury Department and IRS are of the view that an employee released from a lock-in letter should be subject to the normal default rule until the employee furnishes a new Form W-4. Accordingly, these final regulations adopt the rule in §31.3402(f)(4)-1 as set forth in the proposed regulations.

4. Head of household filing status

One commenter questioned whether employees who were eligible for the head of household filing status but claimed single filing status on a 2019 or earlier Form W-4 must be withheld as head of household using tables applicable to redesigned Forms W-4. Under the proposed regulations, the adoption of the head of household filing status and the use of related tables is limited to redesigned Forms W-4. The head of household filing status and related tables are not available for 2019 or earlier Forms W-4. These final regulations adopt the filing status rules set forth in the proposed regulations.

5. Amount of income tax withheld using the redesigned Form W-4

One commenter noted that in processing 2020 Forms W-4 for employees, it appeared that no tax would be withheld from employees' pay, in certain circumstances, such as when employees enter an amount in Step 3 to reflect the child or other dependent credits. The commenter further noted that it appeared that no tax would be withheld in these circumstances despite the Tax Withholding Estimator showing that the employee would have a tax liability. The Treasury Department and the IRS cannot comment on specific factual situations; however, the Treasury Department and the IRS note that the redesigned Form W-4 is intended to result in more accurate withholding.

Prior to the redesign of the Form W-4, approximately 30% of income tax returns that reported gross income from wages did not report any income tax liability, yet approximately 93% of these taxpayers with no income tax liability still had federal income tax withheld from wages. Accordingly, the redesigned Form W-4 was designed to consider all the deductions and credits an employee is entitled to, which often results in no income tax withholding from the employee's wages. This is consistent with the goal of increased accuracy in withholding, which includes minimizing overwithholding from employees who owe little or no income tax, especially after tax credits reduce the employees' income tax liability.

#### 6. Estimated Tax Payments

Under the proposed regulations, employees who are not subject to a lock-in letter or modification notice may take into account estimated tax payments already made, provided that they take into account nonwage income and follow the instructions to the Tax Withholding Estimator. Although no comments were received on this issue, the Treasury Department and the IRS have determined that certain employees, especially those employees with a higher amount of nonwage income relative to wage income, should also be able to take into account planned estimated tax payments not yet made provided that the employee (1) takes into account all wage and nonwage income in determining withholding, (2) follows the instructions to the Tax Withholding Estimator, and (3) does not use planned estimated tax payments to reduce income tax withholding from wages below the pro-rata share of chapter 1 income tax attributable to the estimated annual wages. The pro-rata share of chapter 1 tax attributable to estimated annual wages will be determined under forms, instructions, publications, and other

guidance prescribed by the Commissioner. The Treasury Department and the IRS have determined that this rule furthers accuracy in withholding without encouraging inappropriate underwithholding on wages by shifting withholding from wages to estimated tax payments.

In addition, the Treasury Department and the IRS have determined that employees who do not use the Tax Withholding Estimator and instead use IRS Publication 505 to determine their withholding should be able to take into account estimated tax payments subject to the applicable requirements, provided that the employees use Publication 505 instructions. Accordingly, these final regulations revise §31.3402(m)-1(d) to allow employees to take into account estimated tax payments provided that the employee (1) follows the instructions to the Tax Withholding Estimator or Publication 505, (2) is not subject to a lock-in letter or modification notice, and (3) does not request withholding from wages that falls below the pro rata share of chapter 1 taxes attributable to wages as determined under forms, instructions, publications, and other guidance prescribed by the Commissioner. The IRS intends to update the Tax Withholding Estimator and Publication 505 to reflect this rule.

#### 7. Applicability Date

Consistent with the applicability date provisions in the proposed regulations, these final regulations generally apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. However, as in the proposed regulations, §31.3402(f)(2)-1(g), relating to withholding compliance, applies as of February 13, 2020, the date the notice of proposed rulemaking was published in the Federal Register; §31.3402(f)(5)-1(a)(3), regarding the requirement to use the current version of Form W-

4, applies as of March 16, 2020, 30 days after the date the notice of proposed rulemaking was published in the Federal Register; and the removal of § 31.3402(h)(4)-1(b), relating to the combined income tax withholding and employee FICA tax withholding tables, applies on and after January 1, 2020. Except with regard to the removal of § 31.3402(h)(4)-1(b), taxpayers may also choose to apply the final regulations, on and after January 1, 2020 and before their applicability date as set forth in the regulations. See section 7805(b)(7).

## **Special Analyses**

### **I. Regulatory Planning and Review**

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

### **II. Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that these final regulations do not have a significant economic impact on a substantial number of small entities that are directly affected by these final regulations. These final regulations will apply to all employers that have an income tax withholding obligation and, therefore, are likely to affect a substantial number of small entities. Although these final regulations are likely to affect a substantial number of small entities, the economic impact of these final regulations will not be significant.

These final regulations do not independently impact employers or employees because these final regulations support both the 2019 and 2020 Form W-4 and related withholding procedures, and employees are not required to furnish a new Form W-4 solely because of the redesign of the Form W-4. Employees who have a Form W-4 on file with their employer from years prior to 2020 generally will continue to have their withholding determined based on that form. These final regulations incorporate the changes made by TCJA to sections 3401 and 3402 and provide flexible and administrable rules for income tax withholding from wages to implement the 2020 Form W-4 and its related tables and computational procedures described in Publication 15-T and to work with 2019 or earlier Forms W-4. Any economic impact on small entities that have an income tax withholding obligation is generally a result of the change in underlying substantive tax rules which led to revisions in the method of computing withholding, not these final regulations. Because the final regulations preserve the option of continuing to use old Forms W-4 for existing employees who have not had significantly changed circumstances, and provide for optional computational bridge entries for employers to facilitate continued use of Forms W-4 provided in 2019 or earlier years that eliminates the need for employers to maintain separate withholding systems, these final regulations minimize impact of the statutory changes on employers, including small entities. Accordingly, the Treasury Department and the IRS certify that these final regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy

of the Small Business Administration for comment on its impact on small business, and no comments were received.

### III. Paperwork Reduction Act

Any collection of information associated with these final regulations has been submitted to the Office of Management and Budget for review under OMB control number 1545-0074 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). In general, the collection of information is required under section 3402 of the Internal Revenue Code. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to these final regulations, including estimates for how much time it would take to comply with the paperwork burdens described in OMB control number 1545-0074 and ways for the IRS to minimize the paperwork burden. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

### IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

### V. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

### **Statement of Availability of IRS Documents**

IRS Revenue Procedures, Revenue Rulings, and Notices cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS web site at <http://www.irs.gov>.

### **Drafting Information**

The principal author of these final regulations is Mikhail Zhidkov, Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). Other personnel from the Treasury Department and the IRS participated in their development.

### **List of Subjects in 26 CFR Part 31**

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 31 is amended as follows:

**PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT**

**SOURCE**

Paragraph 1. The authority citation for part 31 is amended by adding an entry for §31.3402 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

\* \* \* \* \*

Section 31.3402 also issued under 26 U.S.C. 3402(i) and (m)

\* \* \* \* \*

**§31.3401(e)-1 [Removed]**

Par. 2. Section 31.3401(e)-1 is removed.

Par. 3. Section 31.3402(a)-1 is amended by adding paragraphs (g) and (h) to read as follows:

**§31.3402(a)-1 Requirement of withholding.**

\* \* \* \* \*

(g) Definitions and Interchangeable Terms.--For purposes of Chapter 24 and this Subpart E of Part 31 of the Employment Tax Regulations:

(1) References to “withholding exemption certificate” include “withholding allowance certificate” unless otherwise stated in Subpart E of Part 31 of the Employment Tax Regulations.

(2) [Reserved]

(h) Applicability date.--The provisions of paragraph (g) of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Taxpayers may choose to apply paragraph (g) of this section on or after January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Par. 4. Section 31.3402(b)-1 is revised to read as follows:

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

(a) Percentage method of withholding. The amount of tax to be deducted and withheld from an employee's wages under the percentage method of withholding is determined based on the entry for the employee's anticipated filing status or marital status and other entries on the employee's withholding allowance certificate using the applicable percentage method tables and computational procedures set forth in the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner issued with respect to the period in which wages are paid.

(b) Applicability date. The provisions of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may choose to apply this section on or after January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see 26 CFR part 31, revised as of April 1, 2020.

Par. 5. Section 31.3402(c)-1 is amended:

1. By revising paragraph (a)(1).
2. By redesignating paragraph (a)(2) as paragraph (a)(3).
3. By adding a new paragraph (a)(2).
4. By revising paragraph (b).
5. In paragraph (c)(1), by revising the first sentence

6. By adding paragraph (f).

The revisions and additions read as follows:

§31.3402(c)-1 Wage bracket withholding.

(a) \* \* \*

(1) The employer may elect to use the wage bracket method provided in section 3402(c) instead of the percentage method with respect to any employee. The tax computed under the wage bracket method shall be in lieu of the tax required to be deducted and withheld under section 3402(a).

(2) The amount of tax to be deducted and withheld from an employee's wages under the wage bracket method of withholding is determined based on the entry for the employee's anticipated filing status or marital status and other entries on the employee's withholding allowance certificate using the applicable wage bracket method tables and computational procedures set forth in the applicable forms, instructions, publications, and other guidance prescribed by the Commissioner issued with respect to the period in which wages are paid.

\* \* \* \* \*

(b) Established payroll periods, other than daily or miscellaneous, covered by wage bracket withholding tables. The wage bracket withholding tables applicable to the employee's filing status set forth in forms, instructions, publications, and other guidance prescribed by the Commissioner for established periods other than daily or miscellaneous should be used in determining the tax to be deducted and withheld for any such period without reference to the time the employee is actually engaged in the performance of services during such payroll period.

(c) \* \* \*

(1) \* \* \* The tables applicable to a daily or miscellaneous payroll period show the tentative amount of tax to be deducted and withheld from an employee's wages for the employee's filing status for one day.\* \* \*

\* \* \* \* \*

(f) Applicability date. The provisions of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may choose to apply this section on or after January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see 26 CFR part 31, revised as of April 1, 2020.

Par. 6. Section 31.3402(f)(1)-1 is revised to read as follows:

§31.3402(f)(1)-1 Withholding allowance.

(a) In general. (1) Except as otherwise provided in section 3402(f)(6) (see §31.3402(f)(6)-1), an employee receiving wages will, on any day, be entitled to a withholding allowance as provided in section 3402(f)(1) and paragraph (b) of this section. In order to receive the benefit of the withholding allowance, the employee must furnish to the employer a valid withholding allowance certificate in effect for the calendar year as provided in section 3402(f)(2) and §31.3402(f)(2)-1.

(2) The employer is not required to ascertain whether the withholding allowance claimed is greater than the withholding allowance to which the employee is entitled. For rules relating to invalid withholding allowance certificates, see §31.3402(f)(2)-1(f)(3), for rules relating to required submission of copies of certain withholding allowance

certificates to the Internal Revenue Service, see §31.3402(f)(2)-1(g)(1), and for rules relating to the notice of the maximum withholding allowance permitted, see §31.3402(f)(2)-1(g)(2).

(b) Withholding allowance defined. (1) Generally, the withholding allowance to which an employee is entitled is determined under the computational procedures prescribed by the Commissioner in forms, instructions, publications, and other guidance for the calendar year for which the withholding allowance certificate is in effect.

(2) The withholding allowance is determined based on the following--

(i) Whether the employee is an individual for whom a deduction is allowable with respect to another taxpayer under section 151;

(ii) If the employee is married, whether the employee's spouse is an individual for whom a deduction is allowable with respect to another taxpayer under section 151 but only if such spouse does not have in effect a withholding allowance certificate claiming such deduction;

(iii) If the employee is married, whether the employee's spouse is entitled to additional deductions, credits, or other items the employee elects to take into account under §31.3402(m)-1 or would be so entitled if the employee's spouse were an employee receiving wages, but only if such spouse does not have in effect a withholding allowance certificate claiming such allowance;

(iv) Any credit under section 24(a) that the employee reasonably expects to be able to claim on the employee's income tax return for the calendar year for which the withholding allowance certificate is in effect, except that the employee may not take into account any credit under section 24(a) if this credit is claimed on another valid

withholding allowance certificate in effect with respect to another employer of the employee or the employee's spouse. In addition, an employee whose employer must withhold for that employee pursuant to a notice under §31.3402(f)(2)-1(g)(2) must offset any tax benefit resulting from a credit under section 24(a) with any anticipated income tax attributable to items other than wages includible in the employee's gross income in the manner prescribed by the Commissioner;

(v) Any additional deductions, credits, or other items the employee elects to take into account under §31.3402(m)-1 for the calendar year for which the withholding allowance certificate is in effect;

(vi) The basic standard deduction (as defined in section 63(c)(2)) relating to the filing status the employee reasonably expects to claim on the employee's income tax return for the calendar year for which the withholding allowance certificate is in effect; and

(vii) Any adjustment resulting from multiple withholding allowance certificates the employee, the employee's spouse, or both have or reasonably expect to have in effect with respect to one or more employers, determined based on the instructions to the withholding allowance certificate and other guidance for the calendar year for which the withholding allowance certificate is in effect.

(c) Applicability date. The provisions of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may choose to apply this section on or after January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before **[INSERT**

**DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see 26 CFR part 31, revised as of April 1, 2020.

Par. 7. Section 31.3402(f)(2)-1 is revised to read as follows:

§31.3402(f)(2)-1 Furnishing of withholding allowance certificates

(a) On commencement of employment. (1) On or before the date on which an individual commences employment with an employer, the individual must furnish the employer with a signed withholding allowance certificate (see §31.3402(f)(5)-1) relating to the filing status the employee reasonably expects to claim under §31.3402(l)-1(b) for the calendar year for which the withholding allowance certificate is in effect and the withholding allowance under §31.3402(f)(1)-1(b) that the employee claims.

(2) In no event may the withholding allowance exceed the withholding allowance that the employee is entitled to as determined based on the employee's reasonable expectations and the instructions set forth in forms, instructions, publications, and other guidance prescribed by the Commissioner.

(3) The employee may claim exemption from withholding if the certifications described in section 3402(n) and §31.3402(n)-1(a)(1) and (2) are true with respect to the employee.

(4) If an employee has no valid withholding allowance certificate in effect with the employer at the time of the payment of the wages, and fails to furnish a valid withholding allowance certificate to the employer, the employee will be treated as single but having the withholding allowance provided in forms, instructions, publications, and other guidance prescribed by the Commissioner.

(b) Change of status that affects calendar year--(1) General rule. If, on any day during the calendar year, the employee experiences a change of status that reduces the employee's withholding allowance or withholding allowances, in the manner described in paragraph (b)(2) of this section, the employee must, within 10 days after the change occurs, furnish the employer with a new withholding allowance certificate claiming the withholding allowance to which the employee is entitled under §31.3402(f)(1)-1(b), unless paragraph (b)(3) of this section applies to the employee.

(2) Changes of status. A change of status occurs if any of the following changes occur on any day during the calendar year:

(i) The employee's filing status changes in the manner described in §31.3402(l)-1(c).

(ii) The employee no longer has only one withholding allowance certificate in effect for the employee, the employee's spouse, or both, and the employee or the employee's spouse selects higher withholding rate tables on the additional withholding allowance certificate, but higher withholding rate tables are not selected on any previously furnished withholding allowance certificate.

(iii) The employee has multiple withholding allowance certificates in effect on which higher withholding rate tables are not selected, and the employee or the employee's spouse reasonably expects an increase in regular wages for the calendar year (as defined in §31.3402(g)-1(a)(1)(ii)) in excess of \$10,000.

(iv) The employee has included on a valid withholding allowance certificate the child tax credit allowed under section 24(a) but reasonably expects the number of individuals who satisfy the definition of "qualifying child" as defined in section 24(c) who

will be reported on the employee's income tax return for the year for which tax is being withheld to be less than the number taken into account in completing the withholding allowance certificate.

(v) The employee has included on a valid withholding allowance certificate a tax credit allowed under section 24(a) or other tax credits allowed under §31.3402(m)-1 but reasonably expects the employee's tax credits that will be reported on the employee's income tax return for the year for which tax is being withheld to decrease by more than \$500 from the amount taken into account in completing the withholding allowance certificate.

(vi) The employee has included on a valid withholding allowance certificate deductions allowed under §31.3402(m)-1 but reasonably expects the employee's included income tax deductions that will be reported on the employee's income tax return for the year for which tax is being withheld to decrease by more than \$2,300 from the amount taken into account in completing the withholding allowance certificate.

(vii) It is no longer reasonable for an employee who has furnished the employer with a withholding allowance certificate which relies upon the certifications described in §31.3402(n)-1(a) to anticipate that the employee will incur no liability for income tax imposed under subtitle A of the Code for the current or previous taxable year.

(3) Exception. If one or more of the changes described in paragraph (b)(2) of this section occurs, but the total effect of the changes together with any other changes affecting the employee's anticipated tax liability under Subtitle A is not anticipated to result in an amount of tax to be deducted and withheld from the employee's wages under section 3402 for the year that is less than the employee's anticipated tax liability

under Subtitle A, the employee is not required to furnish a new withholding allowance certificate.

(c) Increase in withholding allowance. If, on any day during the calendar year, the employee experiences a change of status that increases the employee's withholding allowance, the employee may furnish the employer with a new withholding allowance certificate claiming the withholding allowance the employee is entitled to under §31.3402(f)(1)-1(b).

(d) Exemption from withholding. If, on any day during the calendar year, the certifications described in section 3402(n) and §31.3402(n)-1(a)(1) and (2) are true with respect to an employee, the employee may furnish the employer with a withholding allowance certificate claiming exemption from withholding in the manner described in forms, instructions, publications, and other guidance prescribed by the Commissioner.

(e) Change of status which affects next calendar year--(1) General rule. If, on any day during the calendar year, the withholding allowance to which the employee will be, or may reasonably be expected to be, entitled under §31.3402(f)(1)-1(b) for the next calendar year, but not for the current calendar year, decreases in the manner prescribed in paragraph (b)(2) of this section, the employee must furnish a new withholding allowance certificate claiming the withholding allowance the employee is entitled to under §31.3402(f)(1)-1(b) to take effect in the next calendar year by the later of December 1 of the calendar year of the year in which the change occurs or within 10 days after the change occurs, unless paragraph (e)(2) of this section applies to the employee.

(2) Exception. If one or more of the changes in paragraph (b)(2) of this section occurs, but the total effect of the changes together with any other changes affecting the employee's anticipated tax liability under subtitle A is not anticipated to result in an amount of tax to be deducted and withheld from the employee's wages under section 3402 for the employee's next year that is less than the employee's anticipated tax liability under Subtitle A, the employee is not required to furnish a new withholding allowance certificate.

(f) Special rules--(1) Employer requests. Before December 1 of each year, every employer should request each employee to furnish a new withholding allowance certificate for the next calendar year, in the event of a change to the employee's withholding allowance.

(2) Social security account numbers. Every individual to whom a social security number has been assigned must include such number on any withholding allowance certificate furnished to an employer. An employee may not use a truncated social security number (see §301.6109-4) in completing the withholding allowance certificate. For provisions relating to the obtaining of an account number from the Social Security Administration, see §31.6011(b)-2.

(3) Invalid withholding allowance certificates--(i) General rule. Any alteration of or unauthorized addition to a withholding allowance certificate causes such certificate to be invalid; see §31.3402(f)(5)-1(b) for the definitions of alteration and unauthorized addition. Any withholding allowance certificate which the employee clearly indicates to be false by an oral statement or by a written statement (other than one made on the withholding allowance certificate itself) made by the employee to the employer on or

before the date on which the employee furnishes such certificate is also invalid. For purposes of the preceding sentence, the term “employer” includes any individual authorized by the employer either to receive withholding allowance certificates, to make withholding computations, or to make payroll distributions.

(ii) Employer disregard of invalid withholding allowance certificate. If an employer receives an invalid withholding allowance certificate, the employer must disregard it for purposes of computing withholding. The employer must inform the employee who furnished the certificate that it is invalid and must request another withholding allowance certificate from the employee. If the employee who furnished the invalid certificate fails to comply with the employer's request, the employer must treat the employee as single but having the withholding allowance provided by the forms, instructions, publications, and other guidance prescribed by the Commissioner. If, however, a prior certificate is in effect with respect to the employee, the employer must continue to withhold in accordance with the prior certificate.

(g) Submission of certain withholding allowance certificates and notice of maximum withholding allowance permitted--(1) Submission of certain withholding allowance certificates--(i) In general. An employer must submit to the Internal Revenue Service (IRS) a copy of any currently effective withholding allowance certificate as directed in a written notice to the employer from the IRS or as directed in published guidance.

(A) Notice to submit withholding allowance certificates. A notice to the employer to submit withholding allowance certificates may relate either to one or more named employees, to one or more reasonably segregable units of the employer, or to

withholding allowance certificates under certain specified criteria. The notice will designate the IRS office to which the copies of the withholding allowance certificates must be submitted. Alternatively, upon notice from the IRS, the employer must make available for inspection by an IRS employee withholding allowance certificates received from one or more named employees, from one or more reasonably segregable units of the employer, or from employees who have furnished withholding allowance certificates under certain specified criteria.

(B) Published guidance. Employers may also be required to submit copies of withholding allowance certificates under certain specified criteria when directed to do so by the IRS in published guidance in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter).

(ii) Withholding after submission of withholding allowance certificate. After a copy of a withholding allowance certificate has been submitted to the IRS under this paragraph (g)(1), the employer must withhold tax on the basis of the withholding allowance certificate, if the withholding allowance certificate meets the requirements of §31.3402(f)(5)-1. However, the employer may not withhold on the basis of the withholding allowance certificate if the certificate must be disregarded based on a notice of the maximum withholding allowance permitted under the provisions of paragraph (g)(2) of this section.

(2) Notice of the maximum withholding allowance permitted--(i) Notice to employer. The IRS may notify the employer in writing that the employee is not entitled to claim a complete exemption from withholding or more than the maximum withholding allowance specified by the IRS in the written notice. The notice will also specify the

applicable filing status for purposes of calculating the required amount of withholding. The notice will specify the IRS office to be contacted for further information. The notice of maximum withholding allowance permitted may be issued if--

(A) The IRS determines that a copy of a withholding allowance certificate submitted under paragraph (g)(1) of this section or otherwise provided to the IRS includes a materially incorrect statement or determines, after a request to the employee for verification of the statements on the certificate, that the IRS lacks sufficient information to determine if the certificate is correct; or

(B) The IRS otherwise determines that the employee is not entitled to claim a complete exemption from withholding and is not entitled to claim more than a specified number of withholding exemptions, withholding allowances, or a specified withholding allowance.

(ii) Notice to employee. If the IRS provides a notice to the employer under this paragraph (g)(2), the IRS will also provide the employer with a similar notice for the employee (employee notice) that identifies the maximum withholding allowance permitted and specifies the filing status to be used for calculating the required amount of withholding for the employee. The employee notice will indicate the process by which the employee can provide additional information to the IRS for purposes of determining the appropriate withholding allowance and/or modifying the specified filing status. The IRS will also mail a similar notice to the employee's last known address. For further guidance regarding the definition of last known address, see §301.6212-2 of this chapter. If the IRS is unable to determine a last known address for the employee, the

IRS will use other available information as appropriate to mail the notice to the employee.

(iii) Requirement to furnish. If the employee is employed by the employer as of the date of the notice, the employer must furnish the employee notice to the employee within 10 business days of receipt. The employer may follow any reasonable business practice to furnish the copy of the notice to the employee. For purposes of this paragraph (g)(2)(iii), the determination of whether an employee is employed as of the date of the notice is based on all the facts and circumstances, including whether the employer has treated the employment relationship as terminated for other purposes. An employee who is not performing services for the employer as of the date of the notice is employed by the employer as of the date of the notice for purposes of this paragraph (g)(2)(iii) if--

(A) The employer pays wages with respect to prior employment to the employee subject to income tax withholding on or after the date specified in the notice;

(B) The employer reasonably expects the employee to resume the performance of services for the employer within twelve months of the date of the notice; or

(C) The employee is on a bona fide leave of absence and either the period of such leave does not exceed twelve months or the employee retains a right to reemployment with the employer under an applicable statute or by contract.

(iv) Requirement to withhold based on the notice. If the employer is required to furnish the employee notice to the employee under paragraph (g)(2)(iii) of this section, then the employer must withhold tax on the basis of the maximum withholding allowance and the filing status specified in the notice for any wages paid after the date

specified in the notice, except as provided in paragraphs (g)(2)(v) through (ix) of this section. The employer must withhold tax in accordance with the notice as of the date specified in the notice, which shall be no earlier than 45 calendar days after the date of the notice. If the notice was provided to the employer based on computational procedures applicable to a withholding allowance certificate that was in effect on December 31, 2019 or earlier, the employer may comply with this requirement to withhold on the basis of the notice by implementing the maximum withholding allowance and filing status permitted by using the computational bridge entries as set forth in forms, instructions, publications, and other guidance prescribed by the Commissioner to calculate withholding for a withholding allowance certificate that was in effect on December 31, 2019 or earlier.

(v) Employment resumes after twelve months. If the employer is required to furnish the employee notice to the employee only pursuant to paragraph (g)(2)(iii)(B) of this section and the employee resumes the performance of services for the employer more than 12 months after the date of the notice, then the employer is not required to withhold based on the notice.

(vi) Requirement to withhold based on an existing Form W-4. If a withholding allowance certificate is in effect with respect to the employee before the employer receives a notice of the maximum withholding allowance permitted under this paragraph (g)(2), the employer must continue to withhold tax in accordance with the existing withholding allowance certificate, rather than on the basis of the notice, if the existing withholding allowance certificate does not claim complete exemption from withholding and claims a filing status, a withholding allowance, and any additional amount under

§31.3402(i)-1(a)(1) and (2) that results in more withholding than would result from applying the filing status and withholding allowance specified in the notice.

(vii) Modification notice. After issuing the notice specifying the maximum withholding allowance permitted and the filing status, the IRS may issue a subsequent notice to the employer and the employee that modifies the original notice (modification notice). The modification notice may change the filing status and/or the withholding allowance permitted. The employer must withhold based on the modification notice as of the date specified in the modification notice. If the modification notice was provided to the employer based on computational procedures applicable to a withholding allowance certificate that was in effect on December 31, 2019 or earlier, the employer may comply with this requirement to withhold on the basis of the modification notice by implementing the maximum withholding allowance and filing status permitted by using the optional computational bridge entries as set forth in forms, instructions, publications, and other guidance prescribed by the Commissioner to calculate withholding for a withholding allowance certificate that was in effect on December 31, 2019 or earlier.

(viii) Requirement to withhold after termination of employment. If the employee is employed as of the date of the notice under paragraph (g)(2)(iii) of this section but the employer or employee terminates the employment relationship after the date of the notice, the employer must continue to withhold based on the maximum withholding allowance and the filing status specified in the notice or a modification notice if any wages subject to income tax withholding are paid with respect to the prior employment after such date. Furthermore, the employer must withhold based on the notice or modification notice if the employee resumes an employment relationship with the

employer within 12 months after the termination of the employment relationship. Whether the employment relationship is terminated is based on all the facts and circumstances.

(ix) Requirement to withhold based on new Form W-4. The employee may furnish a new withholding allowance certificate after the employer receives a notice or modification notice from the IRS of the maximum withholding allowance permitted under this paragraph (g)(2).

(A) Employee requests more withholding. If the employee furnishes a new withholding allowance certificate after the employer receives the notice or modification notice, the employer must withhold tax on the basis of that new certificate only if the new certificate does not claim complete exemption from withholding and claims a filing status, a withholding allowance, and any additional amount under §31.3402(i)-1(a)(1) and (2) that results in more withholding than would result under the notice or modification notice.

(B) Employee requests less withholding. If the employee furnishes a new withholding allowance certificate after the employer receives the notice or modification notice, the employer must disregard the new certificate and withhold on the basis of the notice or modification notice if the employee claims complete exemption from withholding or claims a filing status, a withholding allowance, and any additional amount under §31.3402(i)-1(a)(1) and (2) that results in less withholding than would result under the notice or modification notice. If the employee wants to put a new certificate into effect that results in less withholding than that required under the notice or modification notice, the employee must contact the IRS. The employer must withhold on the basis of

the notice or modification notice unless the IRS subsequently notifies the employer to withhold based on the new certificate.

(3) Definition of employer. For purposes of this paragraph (g), the term employer includes any person authorized by the employer to receive withholding allowance certificates, to make withholding computations, or to make payroll distributions.

(4) Examples. The following examples illustrate the rules of this section.

(i) Example 1. Employer U receives a notice from the IRS that identifies the maximum withholding allowance permitted and specifies the filing status for Employee A. Employee A is not currently performing any services for Employer U. However, Employer U is continuing to make certain wage payments to Employee A. Employer U must furnish the employee notice to Employee A within 10 business days of receipt and must withhold based on the notice on any wages paid to Employee A on or after the date specified in the notice.

(ii) Example 2. Employer V receives a notice in October of Year 1 from the IRS that identifies the maximum withholding allowance permitted and specifies the filing status for Employee B. Employee B has not performed services for Employer V since August of Year 1. However, since Employee B has performed services for Employer V for several years on a seasonal basis, Employer V reasonably expects Employee B to resume the performance of services for Employer V in June of Year 2, a date that is within 12 months of the date of the notice. Employer V is required to furnish the notice to Employee B within 10 business days of receipt. Employee B does not resume the performance of services with Employer V until June of Year 3. Employer V is not required to withhold based on the notice.

(iii) Example 3. Employer W receives a notice from the IRS that identifies the maximum withholding allowance permitted and specifies the filing status for Employee C. Employee C began a 4-month unpaid maternity leave of absence three weeks before Employer W received the notice. Employer W must furnish the employee notice to Employee C within 10 business days of receipt. When her maternity leave ends and Employee C resumes performing services for Employer W, Employer W must withhold based on the notice.

(iv) Example 4. Employer X receives a notice from the IRS in Year 1 that identifies the maximum withholding allowance permitted and specifies the filing status for Employee D. Employer X must furnish the employee notice to Employee D within 10 business days of receipt and withhold based on the notice. In Year 2, Employee D terminates the employment relationship. Employee D applies for a different position with Employer X and resumes employment 10 months after having left her previous

position with Employer X. Since Employer X rehired Employee D within 12 months after the termination of employment, Employer X must withhold based on the notice.

(v) Example 5. Employer Y receives a notice from the IRS that identifies the maximum withholding allowance permitted and specifies the filing status for Employee E. Employer Y must furnish the employee notice to Employee E within 10 business days of receipt. After receipt of this notice, Employee E contacts the IRS and establishes that the employee is entitled to claim a modified filing status and withholding allowance. Employer Y receives a modification notice from the IRS that changes the maximum withholding allowance permitted for Employee E. Employer Y must withhold tax based on the modification notice as of the date specified in such notice.

(vi) Example 6. Employer Z pays remuneration to Employee F, a United States citizen, for services performed in Country M. Employer Z receives a notice from the IRS in Year 1 that identifies the maximum withholding allowance permitted and specifies the filing status for Employee F. Employer Z must furnish the employee notice to Employee F within 10 business days of receipt. Employer Z reasonably believes all the remuneration paid to Employee F in Year 1 is excluded from Employee F's gross income under section 911. Since section 3401(a)(8)(B) excludes such remuneration from wages for income tax withholding purposes, Employer X does not have to withhold on such remuneration, notwithstanding the maximum withholding allowance permitted and filing status specified in the notice. In Year 2, Employee F returns to the United States to perform services. Employer Z does not reasonably believe any part of Employee F's remuneration paid in Year 2 is excluded from Employee F's gross income under section 911. Rather, Employer Z reasonably believes that remuneration paid to Employee F in Year 2 is subject to income tax withholding. Employer Z must withhold on the remuneration paid to Employee F in Year 2 based on the notice.

(h) Applicability date. The provisions of paragraph (g) of this section apply on February 13, 2020. Taxpayers may choose to apply paragraph (g) of this section on or after January 1, 2020 and before February 13, 2020. For rules that apply under paragraph (g) before February 13, 2020, see 26 CFR part 31, revised as of April 1, 2020. The provisions of paragraphs (a) through (f) of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may choose to apply the provisions of paragraph (a) through (f) of this section on or after January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL**

**REGISTER]**. For rules that apply before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see 26 CFR part 31, revised as of April 1, 2020.

Par. 8. Section 31.3402(f)(3)-1 is revised to read as follows:

§31.3402(f)(3)-1 When withholding allowance certificate takes effect.

(a) No withholding allowance certificate on file. A withholding allowance certificate furnished to the employer in any case in which no previous withholding allowance certificate is in effect with such employer, takes effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

(b) Withholding allowance certificate on file. Except as provided in paragraph (c) of this section, a withholding allowance certificate furnished to the employer in any case in which a previous withholding allowance certificate is in effect with such employer takes effect as of the beginning of the first payroll period ending (or the first payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such certificate is so furnished. However, the employer may elect to put a withholding allowance certificate into effect earlier, beginning with any payment of wages on or after the day on which the certificate is so furnished.

(c) Withholding allowance certificate furnished to take effect in next calendar year. A withholding allowance certificate furnished to the employer pursuant to section 3402(f)(2)(C) (see §31.3402(f)(2)-1(e) or §31.3402(l)-1(c)) which effects a change for the next calendar year, does not take effect, and may not be made effective, with respect to the calendar year in which the certificate is furnished.

(d) Applicability date. The provisions of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may choose to apply this section on or after January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see 26 CFR part 31, revised as of April 1, 2020.

**§31.3402(f)(4)-1 [Removed]**

Par. 9. Section 31.3402(f)(4)-1 is removed.

**§31.3402(f)(4)-2 [Redesignated as §31.3402(f)(4)-1]**

Par. 10. Section 31.3402(f)(4)-2 is redesignated as §31.3402(f)(4)-1.

Par. 11. Newly redesignated §31.3402(f)(4)-1 is revised to read as follows:

§31.3402(f)(4)-1 Effective period of a withholding allowance certificate.

(a) In general. Except as provided in paragraph (b) of this section and §31.3402(f)(2)-1(g)(2), a withholding allowance certificate that takes effect under section 3402(f) of the Internal Revenue Code of 1986 continues in effect with respect to the employee until another withholding allowance certificate takes effect under section 3402(f). An employer's use of computational bridge entries as set forth in forms, instructions, publications, and other guidance prescribed by the Commissioner to calculate withholding for a withholding allowance certificate that was in effect on December 31, 2019 or earlier continues in effect an employee's withholding allowance certificate under this paragraph (a).

(b) Certifications under section 3402(n) eliminating requirement of withholding.

The certifications described in §31.3402(n)-1(a) made by an employee with respect to

the employee's preceding taxable year and current taxable year are effective until either a new withholding allowance certificate furnished by the employee takes effect or the existing certificate that relies upon such certifications expires. If an employee's certificate expires and the employee fails to furnish a valid withholding allowance certificate, the employee will be treated as single but having the withholding allowance provided in forms, instructions, publications, and other guidance prescribed by the Commissioner. In no case shall a withholding allowance certificate that relies upon such certifications be effective with respect to any payment of wages made to an employee:

(1) In the case of an employee whose liability for tax under subtitle A is determined on a calendar year basis, after February 15 of the calendar year following the estimation year, or

(2) In the case of an employee to whom paragraph (b)(1) of this section does not apply, after the 15th day of the 2nd calendar month following the last day of the estimation year.

(c) Estimation year. The estimation year is the taxable year including the day on which the employee furnishes the withholding allowance certificate to the employer, except that if the employee furnishes the withholding allowance certificate to the employer and specifies on the certificate that the certificate is not to take effect until a specified future date, the estimation year will be the taxable year including that specified future date.

(d) Applicability to notice of maximum withholding allowance. If a withholding allowance certificate is no longer in effect because of the application of § 31.3402(f)(2)-1(g)(2), the employer is no longer required to withhold pursuant to any notice under

§ 31.3402(f)(2)-1(g)(2), and the employee fails to furnish the employer a valid withholding allowance certificate, then the employee will be treated as single but having the withholding allowance provided in forms, instructions, publications, and other guidance prescribed by the Commissioner, in accordance with § 31.3402(f)(2)-1(a)(4).

(e) Applicability date. The provisions of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may choose to apply this section on or after January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see 26 CFR part 31, revised as of April 1, 2020.

Par. 12. Section 31.3402(f)(5)-1 is revised to read as follows:

§31.3402(f)(5)-1 Form and contents of withholding allowance certificates

(a) In general--(1) Form W-4. Form W-4, "Employee's Withholding Certificate," previously called "Employee's Withholding Allowance Certificate," is the form prescribed for the withholding allowance certificate required to be furnished under section 3402(f)(2). A withholding allowance certificate must be prepared in accordance with the instructions applicable thereto and must set forth fully and clearly the information that is called for therein. In lieu of the prescribed form, an employer may prepare and provide to employees a form the provisions of which are identical to those of the prescribed form, but only if the employer also provides employees with all the tables, instructions, and worksheets set forth in the Form W-4 in effect at that time, and only if the employer complies with all revenue procedures and other guidance prescribed by the Commissioner relating to substitute forms in effect at that time.

(2) Employee substitute forms. Employers are prohibited from accepting a substitute form developed by an employee, and an employee furnishing such form will be treated as failing to furnish a withholding allowance certificate. For further guidance regarding the employer's obligations when an employee is treated as failing to furnish a withholding allowance certificate, see §31.3402(f)(2)-1.

(3) Current year revision. Only the Form W-4 revision in effect for a calendar year may be furnished by an employee in that calendar year and given legal effect by the employer, unless provided otherwise in forms, instructions, publications, or other guidance, except that an employee may furnish the Form W-4 revision for the following calendar year in the current calendar year to take effect for the following calendar year.

(4) Examples. The following examples illustrate the rule in paragraph (a)(3) of this section.

(i) Example 1. Employee A furnishes a 2019 Form W-4 to Employer X in calendar year 2020. The 2019 Form W-4 furnished by Employee A in 2020 has no legal effect. Employer X must disregard this 2019 Form W-4 furnished in 2020 and continue to withhold based on a previously furnished Form W-4 that has been in effect for Employee A, if any. If Employee A has no Form W-4 in effect, she is treated as having no valid withholding allowance certificate in effect.

(ii) Example 2. Employee A furnishes a 2021 Form W-4 to Employer X in calendar year 2020 to take effect in calendar year 2021. The 2021 Form W-4 is valid, and the employer must put this form into effect in 2021 in accordance with the timing rules in §31.3402(f)(3)-1.

(b) Invalid Form W-4. A Form W-4 does not meet the requirements of section 3402(f)(5) or this section and is invalid if it includes an alteration or unauthorized addition. For purposes of §31.3402(f)(2)-1(f)(3) and this paragraph (b)--

(1) An alteration of a withholding allowance certificate is any deletion of the language of the jurat or other similar provision of such certificate by which the employee

certifies or affirms the correctness of the completed certificate, or any material defacing of such certificate;

(2) An unauthorized addition to a withholding allowance certificate is any writing on such certificate other than the entries requested on the Form W-4 (e.g., name, address, and filing status) or permitted by instructions or other guidance. For purposes of this rule, an entry claiming exemption from withholding that is accompanied by other entries on the Form W-4 (other than the employee's filing status) that could potentially affect the amount of income tax deducted and withheld from the employee's pay is an unauthorized addition; consequently, the employer must treat the Form W-4 as an invalid Form W-4.

(c) Electronic Form W-4--(1) In general. An employer may establish a system for its employees to furnish withholding allowance certificates electronically.

(2) Requirements--(i) In general. The electronic system must ensure that the information received is the information sent and must document all occasions of employee access that result in the furnishing of a Form W-4. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and furnishing the Form W-4 is the employee identified in the form.

(ii) Information to employer. The electronic furnishing must provide the employer with exactly the same information as the current version of the official Internal Revenue Service (IRS) Form W-4 available on [irs.gov](http://irs.gov).

(iii) Information to employee. The electronic Form W-4 system must provide the employee with the same information as the current version of the official IRS Form W-4

available on irs.gov and must satisfy any requirements specified by the IRS in forms, publications, and other guidance. The electronic Form W-4 system must provide employees the ability to claim exemption from withholding under section 3402(n) and must include the two certifications described in §31.3402(n)-1(a).

(iv) Jurat and signature requirements. The electronic furnishing must be signed by the employee under penalties of perjury.

(A) Jurat. The jurat (perjury statement) must contain the language that appears on the paper Form W-4. The electronic program must inform the employee that he or she must make the declaration set forth in the jurat and that the declaration is made by signing the Form W-4. The instructions and the language of the jurat must immediately follow the employee's income tax withholding selections and immediately precede the employee's electronic signature.

(B) Electronic signature. The electronic signature must identify the employee furnishing the electronic Form W-4 and authenticate and verify the furnishing. For this purpose, the terms “authenticate” and “verify” have the same meanings as they do when applied to a written signature on a paper Form W-4. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the employee's Form W-4 furnished electronically.

(v) Copies of electronic Forms W-4. Upon request by the Internal Revenue Service, the employer must supply a hard copy of the electronic Form W-4 and a statement that, to the best of the employer's knowledge, the electronic Form W-4 was furnished by the named employee. The hardcopy of the electronic Form W-4 must

provide exactly the same information as, but need not be a facsimile of, the paper Form W-4.

(d) Applicability date. The provisions of paragraph (a)(3) and (4) of this section apply on and after March 16, 2020. Taxpayers may choose to apply the provisions of paragraph (a)(3) and (4) of this section on or after January 1, 2020 and before March 16, 2020. For the provision of paragraph (a)(3) of this section that applies before March 16, 2020, see 26 CFR part 31, revised as of April 1, 2020. The provisions of paragraphs (a)(1) and (2), (b), and (c) of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may choose to apply paragraphs (a)(1) and (2), (b), and (c) of this section on or after January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see 26 CFR part 31, revised as of April 1, 2020.

Par. 13. Section 31.3402(f)(6)-1 is revised to read as follows:

§31.3402(f)(6)-1 Withholding exemptions for nonresident alien individuals.

(a) In general. (1) A nonresident alien individual (other than a nonresident alien individual treated as a resident under section 6013(g) or (h)) subject to withholding under section 3402 is on any one day entitled to the number of withholding exemptions corresponding to the number of personal exemptions to which the nonresident alien is entitled on such day by reason of the application of section 873(b)(3) or section 876, whichever applies. Thus, a nonresident alien individual who is not a resident of Canada or Mexico and who is not a resident of Puerto Rico during the entire taxable year, is allowed only one withholding exemption.

(2) The withholding exemption in paragraph (a) of this section and section 3402(f)(6) is the deduction allowed to the nonresident alien individual under section 151.

(b) Additional guidance. A nonresident alien individual (other than a nonresident alien individual treated as a resident under section 6013(g) or (h)) subject to withholding must follow administrative guidance such as forms, instructions, publications, or other guidance prescribed by the Commissioner to determine the nonresident alien's withholding allowance.

(c) Applicability date. The provisions of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may choose to apply this section on or after January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see 26 CFR part 31, revised as of April 1, 2020.

Par. 14. Section 31.3402(g)-1 is amended:

1. In paragraph (a)(2), by revising the second sentence.
2. In paragraph (a)(7)(ii), by revising the first sentence.
3. By adding paragraph (d).

The revisions and addition read as follows:

Sec. 31.3402(g)-1 Supplemental wage payments.

(a) \* \* \*

(2) \* \* \* This flat rate shall be applied without regard to whether income tax has been withheld from the employee's regular wages, and without regard to any entries on Form W-4, including whether the employee has claimed exempt status on Form W-4 or

whether the employee has requested additional withholding on Form W-4, and without regard to the withholding method used by the employer. \* \* \*

\* \* \* \* \*

(7) \* \* \*

(ii) \* \* \* The determination of the tax to be withheld under paragraph (a)(7)(iii) of this section is made without reference to any payment of regular wages and without regard to any entries on the Form W-4 other than the entry claiming exempt status on Form W-4 (see §31.3402(n)-1(b)). \* \* \*

\* \* \* \* \*

(d) Applicability date. The provisions of paragraph (a)(2) and (a)(7)(ii) of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may choose to apply paragraph (a)(2) and (a)(7)(ii) of this section on or after January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For the provisions of paragraph (a)(2) and (a)(7)(ii) of this section that apply before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see 26 CFR part 31, revised as of April 1, 2020.

Par. 15. Section 31.3402(h)(4)-1 is amended by:

1. Removing paragraph (b).
2. Redesignating paragraph (c) as paragraph (b).
3. Adding a new paragraph (c).

The addition reads as follows:

§31.3402(h)(4)-1 Other Methods.

\* \* \* \* \*

(c) The removal of former paragraph (b) of this section providing for combined FICA and income tax withholding tables applies on and after January 1, 2020. For rules that apply before January 1, 2020, see 26 CFR part 31, revised as of April 1, 2020.

**§31.3402(i)-1 [Removed]**

Par. 16. Section 31.3402(i)-1 is removed.

**§31.3402(i)-2 [Redesignated as §31.3402(i)-1]**

Par. 17. Section 31.3402(i)-2 is redesignated as §31.3402(i)-1.

Par. 18. Newly redesignated §31.3402(i)-1 is amended by:

1. Revising the section heading.
2. Revising paragraph (a)(2).
3. Adding paragraph (a)(3).
4. Revising paragraph (b).

The revisions and addition read as follows:

§31.3402(i)-1 Increases in withholding.

(a) \* \* \*

(2) Increases in withholding based on additional income. (i) The employee may request that the employer add an additional amount to the employee's wages and that the employer deduct and withhold an additional amount of income tax resulting from this addition under the computational procedures prescribed by the Commissioner in forms, instructions, publications, and other guidance for the calendar year for which the withholding allowance certificate claiming an additional amount to add to the employee's wages is furnished;

(ii) The employee may request that the employer deduct and withhold additional amounts of income tax resulting from the employee selecting higher withholding rate tables on the withholding allowance certificate;

(iii) The employer must comply with the employee's request under paragraph (a)(1)(i) or (ii) of this section, except that the employer shall comply with the employee's request only to the extent that the amount that the employee requests to be deducted and withheld under this section does not exceed the amount that remains after the employer has deducted and withheld all amounts otherwise required to be deducted and withheld by Federal law (other than by section 3402(i) and this section), State law, and local law (other than by State or local law that provides for voluntary withholding); and

(iv) The employer must comply with the employee's request in accordance with the time limitations in §31.3402(f)(3)-1. The employee must make the request on Form W-4 as provided in §31.3402(f)(5)-1 (relating to form and contents of withholding allowance certificates), and this Form W-4 shall take effect and remain effective in accordance with section 3402(f) and §31.3402(f)(4)-1.

(3) Amount deducted treated as tax. The amount deducted and withheld pursuant to paragraphs (a)(1) and (2) of this section shall be treated as tax required to be deducted and withheld under section 3402.

(b) Applicability date. The provisions of paragraph (a)(2) and (3) of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may choose to apply paragraph (a)(2) and (3) this section on or after

January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Par. 18. Section 31.3402(l)-1 is revised to read as follows:

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

(a) In general. An employer shall apply the applicable percentage method or wage bracket method withholding tables corresponding to the marital status or filing status that the employee selects on a valid withholding allowance certificate as set forth in forms, instructions, publications, and other guidance prescribed by the Commissioner.

(b) Employee's filing status. An employee will be treated as single unless the employee selects head of household or married filing jointly filing status on a valid withholding allowance certificate. Employees may select a filing status other than single, subject to the following conditions:

(1) The employee may select head of household filing status on the employee's withholding allowance certificate only if the employee reasonably expects to be eligible to claim head of household filing status under section 2(b) and §1.2-2(b) of this chapter on the employee's income tax return.

(2) The employee may select married filing jointly filing status on the employee's withholding allowance certificate only if paragraph (d) of this section applies to the employee and the employee reasonably expects to file jointly a single return of income under Subtitle A with the employee's spouse. If an employee is married and expects to file a separate return from the employee's spouse, the employee must select single or

married filing separately filing status on the employee's withholding allowance certificate.

(c) Change in filing status--(1) In general. Unless paragraph (c)(2) of this section applies, the employee must within 10 days furnish the employer with a new withholding allowance certificate if the employee's filing status changes--

(i) From married filing jointly (or qualifying widow(er)) to head of household, married filing separately, or single, or

(ii) From head of household to married filing separately or single.

(2) Exception. If the employee's filing status changes in the manner described in paragraph (c)(1)(i) or (ii) of this section, but the total effect of the changes together with other changes affecting the employee's anticipated tax liability under Subtitle A does not result in an amount of tax to be deducted and withheld from the employee's wages for the taxable year that is less than the employee's anticipated tax liability under Subtitle A, the employee is not required to furnish a new withholding allowance certificate within 10 days. However, the employee must furnish a new withholding allowance certificate to take effect the following calendar year by the later of December 1 of the calendar year in which the employee's filing status changes, or within 10 days of such change.

(d) Determination of marital status. For the purposes of section 3402(l)(2) and paragraph (b) of this section, paragraphs (d)(1) and (2) of this section shall be applied in determining whether an employee is a single person or a married person:

(1) An employee shall on any day be considered as a single person and not married if--

(i) The employee is legally separated from the employee's spouse under a decree of divorce or separate maintenance, or

(ii) Either the employee or the employee's spouse is, or on any preceding day within the same calendar year was, a nonresident alien unless the employee has made or reasonably expects to make an election under section 6013(g) in the time and manner prescribed in §1.6013-6(a)(4) of this chapter.

(2) An employee shall on any day be considered as a married person if paragraph (d)(1) of this section does not apply and--

(i) The employee is married within the meaning of §301.7701-18(b) of this chapter on the day the withholding allowance certificate is furnished;

(ii) The employee's spouse died during the employee's taxable year; or

(iii) The employee's 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, the employee reasonably expects, at the close of the taxable year, to be a surviving spouse as defined in section 2 and §1.2-2(a) of this chapter. The employee must reasonably expect to file an income tax return claiming qualifying widow(er) status.

(e) Applicability date. The provisions of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may choose to apply paragraph (a)(2) and (3) this section on or after January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see 26 CFR part 31, revised as of April 1, 2020.

Par. 20. Section 31.3402(m)-1 is revised to read as follows:

§31.3402(m)-1 Additional withholding allowance.

(a) In general. In determining the withholding allowance or additional reductions in withholding under section 3402(m) on employee withholding allowance certificates furnished to the employer to be effective on or after January 1, 2020, employees may take into account the estimated tax deductions described in paragraph (b) of this section, the estimated tax credits described in paragraph (c) of this section, and estimated tax payments described in paragraph (d) of this section. Employees may only claim items in paragraphs (b), (c), and (d) of this section to the extent provided in paragraph (e) of this section.

(b) Estimated tax deductions. Employees may take into account the following income tax deductions in chapter 1:

(1) Estimated itemized deductions (as defined in section 63(d)) allowable under chapter 1;

(2) Estimated deductions described in section 62(a), except for--

(i) Any deduction described in section 62(a)(1);

(ii) Any deduction described in section 62(a)(2) if the reimbursement or payment for the amount allowable as such deduction is excludable from wages subject to income tax withholding;

(iii) Any deduction described in section 62(a)(3);

(iv) Any deduction described in section 62(a)(4); and

(v) Any deduction described in section 62(a)(5).

(3) Estimated deductions for net operating loss carryovers under section 172;

(4) The estimated aggregate net losses from schedules C (Profit or Loss from Business), D (Capital Gains and Losses), E (Supplemental Income and Loss), and F (Profit or Loss from Farming) of Form 1040 and from the last line of Part II of Form 4797 (Sale of Business Property);

(5) Estimated additional standard deduction for the aged and blind provided under section 63(c)(3) and section 63(f);

(6) Estimated deduction allowed under section 199A; and

(7) Estimated deduction or deductions allowed under section 151.

(c) Estimated tax credits. Employees may take into account the estimated income tax credits allowable under chapter 1, except for--

(1) The credit under section 31(a) for taxes withheld under chapter 24 (which includes taxes withheld on wages and amounts treated as wages for chapter 24 purposes, such as pension withholding under section 3405 and backup withholding under section 3406) unless, on the day the employee estimates this amount, the amount has been actually withheld from the employee's wages (or another payment treated as wages for this purpose), the employee enters this amount of tax withheld pursuant to the instructions in the Tax Withholding Estimator (or successor) or Publication 505 (or successor), and the employee is not an employee whose employer must withhold for that employee pursuant to a notice under §31.3402(f)(2)-1(g)(2);

(2) The credit for tax withheld at source for nonresident aliens and foreign corporations under section 33; and

(3) Any credit to the extent that the employee has filed or expects to file any IRS form claiming such credit other than the employee's United States Individual Income Tax Return (Form 1040).

(d) Estimated tax payments. Employees may take into account estimated tax payments only if--

(1) The employee's employer is not obligated to withhold on the employee's wages pursuant to a notice under §31.3402(f)(2)-1(g)(2);

(2) The amount claimed has been paid with the payment voucher from Form 1040-ES (or was otherwise designated by the taxpayer as a payment of estimated tax) or is planned to be made with respect to nonwage items but only if the planned amount does not decrease withholding below the pro-rata share of chapter 1 tax attributable to wages as determined under forms, instructions, publications, and other guidance prescribed by the Commissioner;

(3) The employee uses the Tax Withholding Estimator (or successor) or Publication 505 (or successor) and enters the amount claimed pursuant to the instructions in the Tax Withholding Estimator (or successor) or Publication 505 (or successor); and

(4) In using the Tax Withholding Estimator (or successor) or Publication 505 (or successor), the employee includes all items of nonwage income the Tax Withholding Estimator (or successor) or Publication 505 (or successor) prompts or instructs the employee to enter or include.

(e) Definitions and special rules--(1) Estimated. The term "estimated" as used in this section to modify the terms "deduction," "deductions," "credits," "losses," and

“amount of decrease” means with respect to an employee the aggregate dollar amount of a particular item that the employee reasonably expects will be allowable to the employee on the employee’s income tax return for the estimation year under the section of the Code specified for each item. In no event shall that amount exceed the sum of:

(i) The amount shown for that particular item on the income tax return that the employee has filed for the taxable year preceding the estimation year (or, if such return has not yet been filed, then the income tax return that the employee filed for the taxable year preceding such year), which amount the employee also reasonably expects to show on the income tax return for the estimation year, plus

(ii) The determinable additional amounts (as defined in paragraph (e)(1)(iii) of this section) for each item for the estimation year.

(iii) The determinable additional amounts are amounts that are not included in paragraph (e)(1)(i) of this section and that are demonstrably attributable to identifiable events during the estimation year or the preceding year. Amounts are demonstrably attributable to identifiable events if they relate to payments already made during the estimation year, to binding obligations to make payments (including the payment of taxes) during the year, and to other transactions or occurrences, the implementation of which has begun and is verifiable at the time the employee furnishes a withholding allowance certificate. The estimation year is the taxable year including the day on which the employee furnishes the withholding allowance certificate to the employer, except that if the employee furnishes the withholding allowance certificate to the employer and specifies on the certificate that the certificate is not to take effect until a specified future date, the estimation year shall be the taxable year including that

specified future date. It is not reasonable for an employee to include in his or her withholding computation for the estimation year any amount that is shown for a particular item on the income tax return that the employee has filed for the taxable year preceding the estimation year (or, if such return has not yet been filed, then the income tax return that the employee filed for the taxable year preceding such year) and that has been disallowed by the Service as part of an adjustment described in §601.103(b) of this chapter (relating to examination and determination of tax liability) and §601.105(b) through (d) of this chapter (relating to examination of returns), without regard to any pending request for reconsideration, protest, request for consideration by an Appeals office, or civil action in which such proposed adjustment is at issue.

(2) Restriction for employees with nonwage income. The employee must offset any deduction described in paragraph (b) of this section with items includible in the employee's gross income for which no Federal income tax is withheld in accordance with forms, instructions, publications, and other guidance prescribed by the Commissioner. In addition, an employee whose employer must withhold for that employee pursuant to a notice under §31.3402(f)(2)-1(g)(2) must offset any tax benefit resulting from any deduction or credit described in paragraph (b) or (c) of this section with the anticipated income tax attributable to items other than wages includible in the employee's gross income in the manner determined by the Commissioner.

(3) Multiple withholding allowance certificates--(i) In general. The employee may not take into account deductions, credits, or estimated tax payments described in paragraph (b), (c), or (d) of this section if these deductions, credits, or estimated tax payments are claimed on another valid withholding allowance certificate in effect with

respect to another employer of the employee or any employer of the employee's spouse.

(ii) Married taxpayers filing jointly. Married taxpayers who reasonably expect to file as married filing jointly on their Federal income tax return for the estimation year determine the withholding allowance to which they are entitled under section 3402(m) on the basis of their combined wages, allowable credits or deductions, and estimated tax payments permitted to be taken into account. The deductions, credits, or estimated tax payments described in paragraphs (b), (c), and (d) of this section to which either spouse is entitled may be claimed by either spouse or may be allocated between both spouses. However, one spouse may not claim deductions, credits, or estimated tax payments described in paragraphs (b), (c), and (d) of this section claimed on the other spouse's withholding allowance certificate.

(iii) Married taxpayers filing separately. A married taxpayer who reasonably expects to file a separate income tax return from the employee's spouse for the estimation year determines the withholding allowance deductions, credits, or estimated tax payments described in paragraphs (b), (c), and (d) of this section on the basis of the employee's individual wages, deductions, credits, and estimated tax payments.

(4) IRS instructions. An employee must follow the instructions to the Form W-4, and other IRS forms, instructions, publications, and related guidance in determining the employee's withholding allowance or other reductions in withholding permitted under section 3402(m) for deductions, credits, or estimated tax payments described in paragraphs (b), (c), and (d) of this section.

(f) Applicability date. The provisions of this section apply on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may choose to apply paragraph (a)(2) and (3) this section on or after January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see 26 CFR part 31, revised as of April 1, 2020.

Par. 21. Section 31.3402(n)-1 is revised to read as follows:

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

(a) In general. Notwithstanding any other provision of this subpart (except to the extent a payment of wages is subject to withholding under §31.3402(g)-1(a)(2)), an employer shall not deduct and withhold any tax under chapter 24 upon a payment of wages made to an employee, if there is in effect with respect to the payment a withholding allowance certificate furnished to the employer by the employee which certifies that--

(1) The employee incurred no liability for income tax imposed under subtitle A of the Internal Revenue Code for the employee's preceding taxable year; and

(2) The employee anticipates that the employee will incur no liability for income tax imposed under subtitle A for the employee's current taxable year.

(b) Mandatory flat rate withholding. To the extent wages are subject to income tax withholding under §31.3402(g)-1(a)(2), such wages are subject to such income tax withholding regardless of whether a withholding allowance certificate under section 3402(n) and this section has been furnished to the employer.

(c) Liability for income tax. 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 imposed is equal to or less than the total amount of credits against such tax which are allowable under chapter 1 of the Internal Revenue Code, other than those credits allowable under section 31 or 34. 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 section 6013 shall not certify that the employee anticipates that he or she will incur no liability for income tax imposed by subtitle A for the employee's current taxable year if such statement would not be true in the event that the employee files a joint return for such year, unless the employee filed a separate return for the preceding taxable year and anticipates that the employee will file a separate return for the current taxable year.

(d) Rules about withholding allowance certificates. For rules relating to invalid withholding allowance certificates, see §31.3402(f)(2)-1(h), and for rules relating to disregarding certain withholding allowance certificates on which an employee claims a complete exemption from withholding, see §31.3402(f)(2)-1(i).

(e) Examples. The following examples illustrate this section:

(1) Example 1. A, an unmarried, calendar-year basis taxpayer, files an income tax return for 2020 on April 10, 2021, showing that A had adjusted gross income of \$5,000 and is not liable for any income tax for 2020. A had \$180 of income tax withheld during 2020. A anticipates that A's gross income for 2021 will be approximately the same amount, and that A will not incur income tax liability for that year. On April 20, 2021, A commences employment and furnishes the employer a withholding allowance certificate certifying that A incurred no liability for income tax imposed under subtitle A for 2020, and that A anticipates that A will incur no liability for income tax imposed under subtitle A for 2021. A's employer shall not deduct and withhold on payments of wages made to A on or after April 20, 2021. Under §31.3402(f)(4)-1(b), unless A furnishes a new withholding allowance certificate including the certifications described in paragraph

(a) of this section to the employer, the employer is required to deduct and withhold upon payments of wages to A made after February 15, 2022.

(2) Example 2. Assume the facts are the same as in paragraph (e)(1) of this section (Example 1) except that A had been employed by the employer prior to April 20, 2021, and had furnished the employer a withholding allowance certificate prior to furnishing the withholding allowance certificate including the certifications described in paragraph (a) of this section on April 20, 2021. Under §31.3402(f)(3)-1(b), the employer would be required to give effect to the new withholding allowance certificate no later than the beginning of the first payroll period ending (or the first payment of wages made without regard to a payroll period) on or after May 20, 2021. However, under §31.3402(f)(3)-1(b), the employer could, if it chose, make the new withholding allowance certificate effective with respect to any payment of wages made on or after April 20, 2021, and before the effective date mandated by section 3402(f)(3)(B)(i) and §31.3402(f)(3)-1(b). Under §31.3402(f)(4)-1(b), unless A furnishes a new withholding allowance certificate including the certifications described in §31.3402(n)-1(a) to A's employer, the employer is required to deduct and withhold upon payments of wages to A made after February 15, 2022.

(3) Example 3. Assume the facts are the same as in paragraph (e)(1) of this section (Example 1) except that for 2020 A has taxable income of \$8,000, income tax liability of \$839, and income tax withheld of \$1,195. Although A received a refund of \$356 due to income tax withholding of \$1,195, A may not certify on A's withholding allowance certificate that A incurred no liability for income tax imposed by subtitle A for 2020.

(f) Applicability date. The provisions of this section apply on and after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may choose to apply paragraph (a)(2) and (3) this section on or after January 1, 2020 and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, see 26 CFR part 31, revised as of April 1, 2020.

Sunita Lough

Deputy Commissioner for Services and Enforcement.

Approved: September 29, 2020.

David J. Kautter

Assistant Secretary of the Treasury (Tax Policy).