

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 31**

[REG–132741–17]

RIN 1545–B032

**Income Tax Withholding From Wages****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document sets forth proposed regulations that provide guidance for employers concerning the amount of Federal income tax to withhold from employee's wages, implementing recent changes in the Internal Revenue Code made by the Tax Cuts and Jobs Act (TCJA), and reflecting the redesigned 2020 Form W–4 and related IRS publications. These proposed regulations affect employers that pay wages subject to Federal income tax withholding and employees who receive wages subject to Federal income tax withholding.

**DATES:** Written (including electronic) comments and requests for a public hearing must be received by April 13, 2020.

**ADDRESSES:** Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG–132741–17) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) will publish for public availability any comment received to their public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG–132741–17), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Mikhail Zhidkov of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), (202) 317–4774; concerning submission of comments or requests for a hearing, please contact Regina Johnson at (202) 317–6901 (not toll-free numbers).

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**Background**

This document sets forth proposed amendments to the Employment Tax Regulations (26 CFR part 31) under sections 3401 and 3402 of the Internal Revenue Code (Code). Generally, these proposed regulations update the regulations under sections 3401 and 3402 to conform to the changes to sections 3401 and 3402 made by the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054 (2017) (TCJA) and other legislation enacted since the regulations were last revised. In addition, these proposed regulations are designed to accommodate the redesigned 2020 Form W–4, “Employee's Withholding

Certificate,” and related wage withholding tables and computational procedures established by the IRS and reflected in Publication 15–T, “Federal Income Tax Withholding Methods.”

*General Statutory and Regulatory Framework*

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.

How an employer applies the withholding tables or computational procedures generally depends on the withholding allowance certificate the employee furnishes the employer. Under section 3402(f)(5), withholding allowance certificates must be in such form and include such information as the Secretary may by regulations prescribe. Section 31.3402(f)(5)–1 of the current Employment Tax Regulations (hereinafter, “current regulations”) provides that the withholding allowance certificate is the Form W–4. 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), which, for 2019 and earlier years, were incorporated into the worksheets to the Form W–4. One of those factors reflects personal exemptions. See Section 3402(f)(1)(A).<sup>1</sup> Also, under section 3402(f)(1)(D), an employee may take into account additional amounts under section 3402(m), which allows employees to take into account items such as itemized

<sup>1</sup> Section 151(d)(5) suspends the deduction for personal exemptions for calendar years 2018–2025.

deductions in the manner provided under regulations prescribed by the Secretary.

Generally, for 2019 and earlier, an employee could make three entries on Form W-4 that could affect the amount of income tax withheld from the employee's wages: The employee's marital status, a number of withholding allowances based on the factors in section 3402(f)(1), and any additional amount, not otherwise required, that the employee requested to be withheld from the employee's wages. See sections 3402(l) (marital status), 3402(f)(1) (withholding allowance), and 3402(i) (increases in amount of withholding not otherwise required under section 3402).<sup>2</sup>

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). Under § 31.3401(e)-1(b) of the current regulations, the employer is not required to ascertain whether the number of allowances an employee claims is greater than the number of withholding allowances to which the employee is entitled.<sup>3</sup> Once in effect, the employer generally applies the entries on an employee's Form W-4 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>4</sup>

#### *TCJA Changes*

Prior to 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,” struck out “exemption,” and inserted “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). Under section 11051(c) of TCJA, there are special effective date provisions with respect to this change, which are discussed in more detail in section 7(a) of the Explanation of Provisions.

TCJA changed the rules under section 3405(a)(4) for withholding from periodic payments under section 3405(a) when no withholding allowance certificate has been furnished, changing the requirement that the default rate of withholding be determined “by treating the payee as a married individual claiming 3 withholding exemptions” to a requirement that the default rate of withholding be determined “under rules prescribed by the Secretary.” TCJA also made conforming changes to the rules under section 3405(a) for withholding from periodic payments of pensions, annuities, and certain other deferred income, changing “exemption” to “allowance” in section 3405(a)(3) and (4).

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 and Comments Received*

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

<sup>2</sup> As discussed later in this preamble, an employee may also claim exemption from withholding under section 3402(n) on a valid Form W-4. Other special rules could also apply to affect the amount of tax withheld, such as for nonresident aliens or lock-in letters, discussed later in this preamble.

<sup>3</sup> Under § 31.3402(f)(2)-1(e) of the current regulations, an employer must disregard an “invalid” Form W-4 for purposes of computing withholding. An invalid Form W-4 is one that includes any alteration or unauthorized addition or that the employee clearly indicates to be false.

<sup>4</sup> Special rules apply to “supplemental wages” under § 31.3402(g)-1 of the current regulations. 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.

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 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 stating that employees who experienced changes in their tax circumstances solely attributable to TCJA were not required to furnish a new Form W-4 to their employers in 2018. Notice 2018-14 also provided that, for 2018, the rules for withholding from periodic payments under section 3405(a) when no withholding allowance certificate has been furnished would parallel the rules for prior years and would be based on treating the payee as a married individual claiming three withholding allowances.

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 the computational procedures in 2019, consistent with Form W-4 for 2019 (discussed in the next section of this preamble) and prior years. 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 11 of Notice 2018-92 solicited comments generally, but no comments on this issue were received.

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 addressed the repeal of section 3401(e), noted earlier in this preamble, and provided that an employee who fails to furnish a valid Form W-4 will be treated as single but entitled to the number of withholding allowances

provided in accordance with computational procedures set forth by the IRS in Publication 15 (Circular E), “Employer’s Tax Guide.” For 2019, the computational procedures in Publication 15 provided that employees who fail to furnish a Form W-4 were treated as single with zero withholding allowances. One comment on this issue was received and is discussed in Section 8(a) of the Explanation of Provisions.

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 6 of Notice 2018-92 requested comments with respect to any additional items employees should be able to claim under section 3402(m), but no comments on this issue were received.

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. One comment was received on the online withholding calculator and is discussed in section 7(b) of the Explanation of Provisions.

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 intend to eliminate the combined income tax withholding and employee Federal Insurance Contributions Act (FICA) tax withholding tables under § 31.3402(h)(4)-1(b). No comments on this issue were received. Section 9 of Notice 2018-92 reflected a modification of the notification requirements for the withholding compliance program. Specifically, employers in receipt of a notice prescribing a maximum number of withholding allowances an employee may claim (a lock-in letter) were instructed not to 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)). One commenter thanked the Treasury Department and the IRS for the change to the notice requirements in the lock-in letter program.

Section 10 of Notice 2018-92 provided that, for 2019, the rules for withholding from periodic payments under section 3405(a) when no withholding certificate has been furnished would parallel the rules for prior years and would be based on treating the payee as a married

individual claiming three withholding allowances.

*2019 Form W-4 and 2019 Publication 15*

In June 2018, the Treasury Department and the IRS released for public comment a draft 2019 Form W-4 and draft instructions. Unlike the relatively minor changes made to Form W-4 in recent years prior to that, 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. In addition, 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.

Although the 2019 Form W-4 continued the computation of withholding principally based on the number of withholding allowances the employee claimed on Form W-4, the amount of each withholding allowance for 2019, like the years before it, was set to what would have been the value of a personal or dependency exemption in 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.<sup>5</sup> 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

<sup>5</sup> The 2019 Publication 15 (Circular E), “Employer’s Tax Guide,” started its income tax withholding tables for single persons at the basic standard deduction (\$12,200 for 2019) for unmarried individuals minus the value of two allowances (\$8,400), which is \$3,800 (for an annual payroll period, and otherwise be pro-rated to the payroll period). Similarly, the 2019 Publication 15 started its income tax tables for married persons at the basic standard deduction (\$24,400) for married individuals filing joint returns minus the value of three allowances (\$12,600), which is \$11,800. Thus, the tables in Publication 15 applied section 151(d)(5)(A). The income tax withholding tables in the 2018 Publication 15 were similar.

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 a number of withholding allowances. Although the 2019 Form W-4 and prior Forms W-4 generally allow employees to achieve a high degree of accuracy if the employee requests an additional dollar amount to be withheld and/or uses the withholding calculator (now called the Tax Withholding Estimator) or Publication 505 in completing the Form W-4, most employees did not use these options.

In addition, employees with multiple withholding allowance certificates in effect, including married couples filing jointly where both spouses receive wages subject to withholding, had difficulty achieving accuracy using the Two-Earner/Multiple Jobs Worksheet. This worksheet required the employee to estimate wages at the lowest-paying job and the highest-paying job and, if applicable, reduce the withholding allowances with respect to the highest-paying job. In some cases, an employee would need to determine an additional amount to withhold from each paycheck for the highest-paying job by applying two tables in the Two-Earners/Multiple Jobs Worksheet. Despite the complexity of this approach, it did not allow employees to have their withholding equal their tax liability if there were two or more simultaneous jobs in the household, and accuracy was further reduced if new Forms W-4 were not furnished to all of the employers after the amount of wages from any employer changed. Moreover, it is unclear how many employees actually used the Two-Earners/Multiple Jobs Worksheet to compute their withholding allowances, even when it would have been advantageous for employees to do so to achieve more accurate withholding.

#### *2020 Form W-4, Employee's Withholding Certificate*

To address the limitations of the prior Form W-4, on May 31, 2019, a draft of a revised Form W-4 was released for public comment. The revised Form W-4 is intended to reduce the combined complexity of the form, instructions, and worksheets and to increase the transparency and accuracy of the withholding system. The 2020 Form W-

4 uses the same underlying information as the 2019 Form W-4, but replaces complex worksheets with more straightforward questions. After extensive stakeholder feedback, the draft 2020 Form W-4 was further revised and re-released on August 8, 2019. This version was released to allow automated payroll providers sufficient time to update payroll systems, and it was announced no further substantive changes to the 2020 Form W-4 were expected. The form has been renamed from the Employee's Withholding Allowance Certificate to the Employee's Withholding Certificate. The final 2020 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, Public Law 116-94, 133 Stat. 2534, 3228 (2019).

The 2020 Form W-4 does not use withholding allowances. An employee checks a filing status (single, married filing separately, head of household, married filing jointly, or qualifying widow(er)) on the Form W-4 and, as a result, will generally have the basic standard deduction corresponding to the employee's anticipated filing status on his or her income tax return taken into account in determining the amount of tax withheld from the employee's pay, in accordance with section 3402(f)(1)(E).<sup>6</sup> In addition, the 2020 Form W-4 streamlines the multiple jobs procedures and gives employees three options to account for a working spouse or multiple jobs held concurrently in accordance with sections 3402(f)(1)(B), (E), and (F): (1) Employees may use the Tax Withholding Estimator to achieve accurate withholding; (2) employees may complete the Multiple Jobs Worksheet and enter an additional amount to withhold from the employee's pay for each pay period; or (3) employees may check the box in Step 2(c) on the 2020 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 Form W-4 from 2019 or earlier.) The 2020 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). The Tax Withholding Estimator is expected to provide instructions on how to complete Form W-4 to take into account an employee's personal tax circumstances in a manner that helps protect the employee's privacy by limiting the entries the employee is required to make on the 2020 Form W-4. The IRS will continue to update the Tax Withholding Estimator based on user feedback and to enhance accuracy, privacy, and the employee experience.

#### *2020 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 employees who furnish a 2020 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. The income tax withholding tables reflecting 2020 cost-of-living adjustments were made available on November 28, 2019, for use with automated payroll systems. Publication 15-T was finalized and released on December 24, 2019.

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 that 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 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.

<sup>6</sup> For employees who do not check the box in Step 2(c) to request withholding using higher rate tables, part of the basic standard deduction is built into the percentage method tables in Publication 15-T; the other part of the standard deduction is subtracted from the employee's wages before the tables are applied. This approach is to permit the tables to be used with Forms W-4 furnished in 2019 and prior years. Other entries on the 2020 Form W-4 can affect other additions and subtractions that determine the amount of tax withheld from the employee's pay.

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 the public and payroll community. Notice 1036 was developed in 1996 before advanced release drafts of forms and publications were posted on [www.irs.gov/draftforms](http://www.irs.gov/draftforms) and various product web pages. The information previously included in Notice 1036 generally will be available on [www.irs.gov](http://www.irs.gov) more quickly than Notice 1036 was made available in prior years.

#### *2020 Form W–4P, Withholding Certificate for Pension or Annuity Payments*

Section 3405(a) generally requires the payor of periodic payments from pensions, annuities, or certain other deferred income to withhold from such payments as if such payments were wages paid by an employer to an employee. Under section 3405(a)(2), an individual may elect not to have withholding apply to periodic payments from pensions, annuities, or certain other deferred income; however, such election is not available with respect to eligible rollover distributions or certain payments to be made outside of the United States or its possessions. See sections 3405(c)(1) (eligible rollover distributions) and 3405(e)(13) (certain payments to be made outside the United States or its possessions). But see proposed § 31.3405(e)–1 (certain payments not considered made outside the United States).

An individual’s withholding election (or election not to have withholding apply, if available), with respect to pensions, annuities, or certain other deferred income, including periodic payments under section 3405(a), generally is made using Form W–4P, Withholding Certificate for Pension or Annuity Payments. On December 13, 2019, the IRS early released a draft 2020 Form W–4P. As the early release draft indicates, the Treasury Department and the IRS do not plan to redesign the 2020 Form W–4P in the same manner as the 2020 W–4. Instead, the 2020 Form W–4P will continue to request withholding allowances and marital status, rather than filing status, with respect to periodic payments under section 3405(a). Similarly, the Step 2(c) checkbox on the 2020 Form W–4 to request withholding using a higher withholding rate table will be

inapplicable for the 2020 Form W–4P. Notice 2020–3 (which the IRS released on December 18, 2019 in advance of its expected publication in the 2020–3 edition of the Internal Revenue Bulletin) describes withholding rules under section 3405(a) for the 2020 calendar year and provides additional information regarding the 2020 Form W–4P. Publication 15–A includes further information regarding the 2020 Form W–4P and alerts taxpayers that the related withholding tables and computational procedures for the 2020 Form W–4P are included in Publication 15–T.

#### **Explanation of Provisions**

These proposed regulations incorporate the changes made by TCJA to sections 3401 and 3402 and provide flexible and administrable rules for income tax withholding from wages that work with both the 2020 Form W–4 and its related tables and computational procedures described in Publication 15–T, and Forms W–4 and related tables and computational procedures provided in 2019 and earlier years. Because the ultimate goal of income tax withholding is to achieve withholding from employee’s wages that accurately reflects the provisions of chapter 1 applicable to wages and the period wages are paid, the Treasury Department and the IRS have determined that the mechanical details of income tax withholding should be provided in forms, instructions, publications, and other guidance, so that these materials can be quickly updated as needed (for legislative changes or other reasons) to give payroll processors adequate time to program their systems to withhold the proper amount of income tax from employees’ pay. These proposed regulations are generally compatible with the income tax withholding system in effect for 2019, as well as the system in effect for 2020, and as discussed in the Proposed Applicability Date section of this preamble, may be relied upon by employers for withholding until final regulations are published.

The changes made by TCJA to section 3405(a) (withholding on pensions, annuities, and certain other deferred income) were addressed in Notice 2018–14 and Notice 2018–92 for the 2018 and 2019 calendar years, respectively. These proposed regulations do not address withholding under section 3405(a); instead, Notice 2020–3 describes withholding rules under section 3405(a) for the 2020 calendar year.

#### *1. Number of Withholding Exemptions Claimed*

In accordance with the change made by section 11041(c)(2)(A) of TCJA and as indicated in section 5 of Notice 2018–92, the proposed regulations remove § 31.3401(e)–1. Because section 11041(c) of TCJA repealed section 3401(e) and generally changed the references in Chapter 24 from “withholding exemptions” to “withholding allowance,” current regulations under section 3401(e) are no longer consistent with the Code. (See section 2 of this Explanation of Provisions for definitions and interchangeable terms). However, rules similar to the substantive rules currently under § 31.3401(e)–1 are included in other parts of these proposed regulations. Section 5 of this Explanation of Provisions discusses the withholding allowance to which an employee is entitled, and section 6(a) of this Explanation of Provisions discusses the rules for employees who fail to furnish Forms W–4.

#### *2. Definitions and Interchangeable Terms*

These proposed regulations clarify that, for purposes of chapter 24 of the Code and subpart E of part 31 of the Employment Tax Regulations (relating to collection of income tax at source), any reference to withholding exemption certificates means withholding allowance certificates unless otherwise stated. Section 11041 of TCJA changed the statutory title of the withholding exemption certificate to the withholding allowance certificate. However, under section 3402(f)(4), a withholding allowance certificate in effect under section 3402(f) generally continues in effect until superseded by another such certificate that is effective under section 3402(f). Thus, the rules proposed in these regulations generally apply to both withholding exemption certificates and withholding allowance certificates.

These proposed regulations generally refer to the Form W–4 as the withholding allowance certificate, the statutory term in section 3402(f)(5). However, proposed § 31.3402(f)(5)–1 provides that the 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).

An employee is not required to furnish a new Form W–4 solely because of the 2020 Form W–4 redesign, regardless of when the employee’s Form W–4 currently in effect was furnished. Similarly, an employer must generally

continue to compute the amount of tax to be withheld from an employee's wages based on a valid Form W-4 furnished by the employee regardless of when the employee furnished the Form W-4 on which such computation is based.<sup>7</sup> The 2020 Publication 15-T provides guidance on how employers will withhold income tax, under the tables and computational procedures set forth therein, using Forms W-4 furnished and in effect on or before December 31, 2019. An employer may ask all employees first paid wages before 2020 to furnish a 2020 Form W-4, but in connection with the request the employer should explain that (1) employees are not required to furnish a new Form W-4, and (2) if the employee does not furnish a 2020 Form W-4, the amount of tax to be withheld from the employee's wages will continue to be based on the last valid Form W-4 previously furnished.

### 3. Percentage Method of Withholding

Section 31.3402(b)-1 of the current regulations provides that the amount of tax to be deducted and withheld under the percentage method of withholding is determined under the applicable percentage method withholding table included in Circular E (Employer's Tax Guide) according to the instructions therein. These proposed regulations clarify that employers that use the percentage method of withholding must compute the amount of tax to be withheld based on the entry for the employee's anticipated filing status or marital status and other entries on the employee's Form W-4 using the applicable percentage method tables and computational procedures in the applicable forms, instructions, publications, and other guidance prescribed by the IRS issued for use with respect to the period in which wages are paid. In 2020, percentage method tables and computational procedures are provided in Publication 15-T.

<sup>7</sup> This rule does not apply to a Form W-4 claiming exemption from withholding, which, for a 2019 Form W-4, will expire on February 18, 2020. Under proposed § 31.3402(f)(4)-1(b), if a form claiming exemption from withholding expires, and the employee does not furnish a valid Form W-4 either renewing his or her exemption or claiming a withholding allowance, the employer must treat the employee as single but having the withholding allowance provided in forms, instructions, publications, and other guidance prescribed by the IRS. Publication 15 for 2020 provides that such an employee should be treated as if the employee had checked the box for single or married filing separately in Step 1(c) and made no entries in Step 2, Step 3, or Step 4 of the 2020 Form W-4.

### 4. Wage Bracket Method of Withholding

Section 31.3402(c)-1(a) of the current regulations provides that, for employers using the wage bracket withholding method, the correct amount of withholding is determined under the applicable wage bracket withholding table in the Circular E (Employer's Tax Guide) issued for use with respect to the period in which such wages are paid. These proposed regulations clarify that employers that use the wage bracket withholding method and computational procedures based on the entry for the employee's anticipated filing status or marital status and other entries on the employee's Form W-4 should use the applicable wage bracket method tables and computational procedures in forms, instructions, publications, and other guidance prescribed by the IRS issued for use with respect to the period in which wages are paid. In 2020, wage bracket method tables and computational procedures are provided in Publication 15-T. In addition, these proposed regulations update the current regulations for the change in the Form W-4 and its computational procedures and provide that employers that use wage bracket method withholding tables applicable to a daily or miscellaneous pay period must use the wage bracket withholding tables applicable to the employee's filing status or marital status.

### 5. Determination and Disclosure of Filing Status

Under section 3402(l)(1), an employer must treat an employee as single unless there is in effect a withholding allowance certificate indicating that the employee is married. Although section 3402(l) speaks in terms of single and married persons and provides that an employee will be treated as single unless the employee furnishes a valid Form W-4 claiming married status, the Treasury Department and the IRS have determined that this provision does not preclude adoption of head of household status to compute withholding for certain filers because the ability to claim head of household filing status furthers the goal of accuracy in withholding and, thus, reflects the provisions of chapter 1. See section 3402(a)(1)(B). Under section 1(j), for calendar years 2018 through 2025,<sup>8</sup> there is a separate income tax rate table for taxpayers filing as head of household. Providing for a head of household filing status on the Form W-4 and providing withholding tables for head of household filing status

<sup>8</sup> Sections 1(b) and (i) provide separate rates for head of household filers if the rates in section 1(j) cease to apply.

further the goal of accuracy in withholding. An employee may select head of household filing status 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 the Income Tax Regulations on the employee's income tax return.

On the other hand, although section 1 rates applicable to unmarried individuals and married individuals filing separate returns are different at higher marginal rates, the Treasury Department and the IRS have determined that the burden of providing separate withholding tables for married individuals filing separate returns outweighs the added accuracy that would be provided by having separate filing statuses for these two categories for the Form W-4 and tables. Consequently, the proposed regulations provide for three filing statuses: Single, head of household, and married filing jointly.

Section 31.3402(l)-1(a) of the current regulations provides that in computing the tax to be withheld from an employee's wages, the employer must apply the withholding table that relates to employees who are single persons unless there is in effect a withholding allowance certificate indicating that the employee is married. These proposed regulations generally incorporate the principle in § 31.3402(l)-1(a) of the current regulations and provide that the employee's entry for the employee's anticipated marital status or filing status on the Form W-4 determines what table employers apply under either the percentage method of withholding or wage bracket method of withholding. Employers may generally rely on the employee's entry for filing status on the Form W-4. These proposed regulations provide, consistent with section 3402(l)(1), that an employee who fails to furnish a valid Form W-4 must be treated as single.

Under section 3402(l)(2), the employee may furnish the employer a withholding allowance certificate indicating that the employee is married only if the employee is married (determined with the application of the rules in section 3402(l)(3), discussed in more detail below). Section 31.3402(l)-1(b)(1) of the current regulations generally states that an employee's marital status determines whether the employee may select married on the Form W-4. Generally, under the current regulations, the employee's anticipated filing status on the employee's income tax return does not determine whether an employee may indicate that he or she is married on the Form W-4. These proposed regulations change this rule.

Specifically, in defining “married” under section 3402(l)(2), the Treasury Department and the IRS have determined that, in addition to the employee’s marital status, the amount of tax to be withheld should also be determined by reference to the employee’s anticipated filing status on the employee’s income tax return because this furthers accuracy and reflects the applicable provisions of chapter 1. Under section 1(j), for calendar years 2018–2025,<sup>9</sup> different tax rates apply to married individuals filing joint returns than married individuals filing separate returns. Correspondingly, married individuals who anticipate filing separately should not be allowed to select married filing jointly on the Form W–4 because, otherwise, such individuals would risk being significantly underwithheld. Therefore, these proposed regulations provide that an employee may only select married filing jointly on the employee’s Form W–4 if the employee (1) reasonably expects to file jointly a single return of income under Subtitle A with his or her spouse, (2) is lawfully married for federal tax purposes within the meaning of § 301.7701–18(b) on the day the Form W–4 is furnished, and (3) is treated as married within the meaning of section 3402(l)(3).

Furthermore, in accordance with section 3402(l)(3)(A), these proposed regulations incorporate a rule similar to § 31.3402(l)–1(c) of the current regulations and provide that an employee may not select married filing jointly filing status on the Form W–4 if the employee is legally separated from his or her spouse under a decree of divorce or separate maintenance. These proposed regulations also update § 31.3402(l)–1(c)(1)(ii) of the current regulations and provide that an employee may not select married filing jointly status on the Form W–4 if the employee or the employee’s spouse is, or on any preceding day within the same calendar was, a nonresident alien unless the employee has made or reasonably expects to make an election under section 6013(g)<sup>10</sup> in the time and manner prescribed in § 1.6013–6(a)(4).

In accordance with section 3402(l)(3)(B), these proposed regulations provide that an employee may generally select married filing jointly on the Form W–4 if the employee’s spouse (other than a spouse referred to in section

3402(l)(3)(A)) died during the employee’s taxable year. Similarly, an employee may select married filing jointly status if the employee’s spouse died during the previous two taxable years, and the employee reasonably expects as of the close of the current taxable year to be a surviving spouse as defined in section 2(a) and § 1.2–2(a) of the Income Tax Regulations and claim qualifying widow(er) filing status on the employee’s income tax return. This rule is similar to § 31.3402(l)–1(c)(2) of the current regulations.

Under section 3402(l)(2) an employee whose marital status changes from married to single must, at such time as the Secretary may by regulations prescribe, furnish the employer with a new withholding allowance certificate. Because of the addition of head of household filing status for withholding purposes, these proposed regulations provide that an employee whose anticipated filing status changes from married filing jointly (or qualifying widow(er)) to head of household or single, must, generally, within 10 days of the change furnish his or her employer with a new Form W–4. In addition, an employee whose anticipated filing status changes from head of household to single, must generally furnish his or her employer with a new Form W–4 within 10 days of the change. However, the employee does not have to furnish a new Form W–4 within 10 days of the change of status if the amount of tax the employee expects to be withheld is greater than the amount of the employee’s anticipated income tax liability. Nonetheless, in all cases, an employee whose anticipated filing status changes from married filing jointly (or qualifying widow(er)) to head of household or single (including married filing separately) or from head of household to single (including married filing separately) must furnish a new Form W–4, to take effect in the following calendar year, to his or her employer by the later of December 1 of the calendar year in which the change occurs, or within 10 days of the change.

#### 6. Withholding Allowance

These proposed regulations provide that an employee is entitled to a “withholding allowance” as provided in section 3402(f)(1) but only if the employee furnishes a valid Form W–4 claiming the withholding allowance. This is similar to the rule in § 31.3402(f)(1)–1(a) of the current regulations. In addition, these proposed regulations provide that the employer is not required to ascertain whether the withholding allowance the employee

claims is greater than the allowance to which the employee is entitled.

The proposed regulations define the withholding allowance, but in accordance with section 3402(a)(1), leave the computational details to forms, instructions, publications, and other guidance prescribed by the IRS. In 2020, these computational details will be set forth in the Form W–4, Publication 505, Publication 15–T, and the Tax Withholding Estimator.<sup>11</sup> The Treasury Department and the IRS have determined that this flexible computation of the withholding allowance is consistent with section 3402(a)(1) because it is the most appropriate way to reflect the provisions of chapter 1 applicable to wages for a given calendar year. This approach will also allow the IRS to make adjustment as appropriate to reflect any legislative changes to chapter 1 in withholding on employees’ pay or based on statistical data.

Under these proposed regulations, the withholding allowance under section 3402(f)(1) is determined by reference to seven factors. First, the withholding allowance depends on whether the employee is an individual for whom a deduction is allowable under section 151. *See* section 3402(f)(1)(A). The regulations repeat the statutory language with respect to this factor. Second, if the employee is married, the withholding allowance depends on whether the employee’s spouse is entitled to the section 151 deduction, or would be so entitled if the spouse were an employee receiving wages, but only if the spouse does not have in effect a Form W–4 claiming an allowance for the section 151 deduction. *See* section 3402(f)(1)(B). The first and second factors, however, have no effect on withholding for calendar years 2018 through 2025 because section 151(d)(5) suspends the deduction for personal exemptions for calendar years 2018 through 2025. Accordingly, these factors are not taken into account on the 2020 Form W–4.

Third, if the employee is married, the withholding allowance depends on whether the employee’s spouse is entitled to any additional amount under section 3402(m) or would be so entitled if the employee’s spouse were an employee receiving wages, but only if the spouse does not have in effect a withholding allowance certificate claiming the allowance. *See* section 3402(f)(1)(B). The 2020 Form W–4 takes

<sup>9</sup> Sections 1(b) and (i) provide separate rates for married individuals filing joint returns if the rates in section 1(j) cease to apply.

<sup>10</sup> Section 6013(g) was added by section 1012 of the Tax Reform Act of 1976, Public Law 94–455, 90 Stat. 1612 (1976). Under section 6013(g)(1)(B), this election applies for purposes of chapter 24.

<sup>11</sup> The withholding allowance for nonresident alien individuals is subject to the rules in proposed § 31.3402(f)(6)–1, and, for 2020, nonresident aliens will find further guidance in IRS Notice 1392, “Supplemental Form W–4 Instructions for Nonresident Aliens.”

this factor into account by instructing taxpayers to complete the steps corresponding to any additional amount of tax deductions or tax credits on only one Form W-4 in the household.

Fourth, the withholding allowance depends on the number of individuals for whom a credit under section 24(a) may reasonably be expected to be allowable for the calendar year. *See* section 3402(f)(1)(C). These proposed regulations clarify that this means the credit under section 24(a) that the employee reasonably expects to claim on the employee's income tax return. This includes both the child tax credit and the credit for other dependents. The proposed regulations also clarify that the employee may not take into account any credit under section 24(a) that is claimed on another Form W-4. The 2020 Form W-4 takes this factor into account in Step 3 of the form.

Fifth, the withholding allowance depends on any additional amounts the employee elects to take into account under section 3402(m), but only if the employee's spouse does not have in effect a withholding allowance certificate making this election. *See* section 3402(f)(1)(D). These proposed regulations clarify this factor and state that the withholding allowance depends on additional deductions, credits, or other items the employee takes into account under proposed § 31.3402(m)-1. Specifically, proposed § 31.3402(m)-1(e)(3) allows the total deductions, credits, or estimated tax payments to be claimed on only one Form W-4. This is similar to the rule in § 31.3402(m)-1(f) of the current regulations. Thus, an employee or the employee's spouse may not claim an amount of a deduction, credit, or estimated tax payment in proposed § 31.3402(m)-1 if that same amount is claimed on any other Form W-4 in effect for the employee or the employee's spouse.

The 2020 Form W-4 takes into account estimated tax credits for dependents allowable under proposed § 31.3402(m)-1(b) in Step 3. The instructions to the 2020 Form W-4 clarify that employees may also claim other credits such as the education tax credit or the foreign tax credit in Step 3 of the 2020 Form W-4. The 2020 Form W-4 takes into account estimated tax deductions allowable under proposed § 31.3402(m)-1(c) in Step 4(b), which allows employees to claim deductions such as itemized deductions, student loan interest deductions, and deductible Individual Retirement Arrangement (IRA) contributions. Employees who wish to claim these and other deductions should complete the Deductions Worksheet on page 3 of

Form W-4. Finally, under proposed § 31.3402(m)-1, certain employees may take into account the credit for income tax withholding under chapter 24 and may take into account estimated tax payments paid provided they take into account nonwage income and follow the instructions to the Tax Withholding Estimator.<sup>12</sup> As stated previously in this preamble, the IRS will continue to update the Tax Withholding Estimator. The Treasury Department and IRS also request comments on whether changes should be made to the proposed regulations so that in the future the Tax Withholding Estimator may enable employees to have all required withholding on wages while taking into account expected estimated tax payments on non-wage income to be made later in the year, and, if so, what safeguards should be added to prevent inappropriate underwithholding on wages.

Sixth, the withholding allowance depends on the standard deduction allowable to the employee (one-half of the standard deduction in the case of an employee who is married (as determined under section 7703) and whose spouse is an employee receiving wages subject to withholding). *See* section 3402(f)(1)(E). These proposed regulations define this as 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 is claimed. (The additional standard deduction for the aged and blind is allowed under § 31.3402(m)-1(c)(5).) The 2020 Form W-4 takes into account the basic standard deduction allowable to the employee under section 3402(f)(1)(E) by having an employee check the box for the employee's anticipated filing status in Step 1(c). The basic standard deduction for each filing status is generally applied without further adjustment if the employee completes only Step 1 (including checking the box for a particular filing status) and Step 5 (signing under penalties of perjury) on the 2020 Form W-4.<sup>13</sup>

<sup>12</sup> An employee whose employer must withhold for that employee pursuant to a notice under proposed § 31.3402(f)(2)-1(g)(2) (lock-in letter) may not take into account any credit for tax withheld on wages under section 31(a) or any estimated tax payments. Thus, an employee for whom a lock-in letter is issued may not take into account income tax withheld to date or estimated tax payments in computing the employee's withholding allowance.

<sup>13</sup> An employee—other than a student from India or business apprentice from India—who identifies as a nonresident alien employee by following the instructions in Notice 1392 will not have the basic standard deduction subtracted from the employee's

Seventh, the withholding allowance depends on whether the employee has withholding allowance certificates in effect with respect to more than one employer. *See* section 3402(f)(1)(F). For this factor, these proposed regulations reference the Form W-4 and other computational instructions (such as the Tax Withholding Estimator) to determine the adjustment resulting from multiple Forms W-4 the employee, the employee's spouse, or both have or reasonably expect to have in effect with respect to one or more employers. The Treasury Department and the IRS have determined that the Form W-4 and the instructions to the form are best able to direct employees how to take this factor into account in determining their withholding allowance and completing the Form W-4 due to the variety of fact patterns and the need to adjust this rule for the future based on statistical data or changes in the law to ensure accurate withholding on wages under chapter 1.

The 2020 Form W-4 provides employees three options with respect to multiple Forms W-4. Employees may use the Tax Withholding Estimator, may enter an amount computed on the Multiple Jobs Worksheet, or may select higher withholding rate tables by checking the box in Step 2(c) of the form. If the box in Step 2(c) is checked, Publication 15-T instructs employers to prorate and apply one-half of the standard deduction and marginal rates that account for equal wages for employment held concurrently. Thus, in the case of married taxpayers filing jointly, Publication 15-T applies the parenthetical in section 3402(f)(1)(E), which allows one-half of the standard deduction to an employee who is married and whose spouse is receiving wages subject to withholding.

#### 7. Additional Withholding Allowance

These proposed regulations provide rules under which an employee determines the additional withholding allowance or additional reductions in withholding the employee is entitled to claim on a Form W-4 under section 3402(m). Under section 3402(m), in determining the additional withholding allowance or additional reductions in withholding, the employee may take into account estimated tax deductions under section 3402(m)(1), estimated tax credits under section 3402(m)(2), and such additional deductions and other items as may be specified by the Secretary in regulations under section 3402(m)(3). This additional withholding

wages. For 2020, the Publication 15-T provides special procedures employers must use with respect to such employees.

allowance and additional reductions in withholding are part of the “withholding allowance” the employee is entitled to claim as provided in section 3402(f)(1)(D).

Section 6 of Notice 2018–92 discussed section 3402(m) generally and allowed taxpayers to include the estimated deduction under section 199A in determining the additional withholding allowance or additional reductions in withholding under section 3402(m). Section 6 of Notice 2018–92 requested comments with respect to the list of items set forth in § 31.3402(m)–1(b). No comments on this issue were received. The Treasury Department and the IRS again request comments with respect to section 3402(m) generally, and, specifically, with respect to the aspects of these proposed regulations described in further detail in the following sections.

#### a. Estimated Tax Deductions

These proposed regulations implement section 3402(m)(1) by continuing the rule that taxpayers may take into account estimated itemized deductions (as defined in section 63(d)) allowable under Chapter 1. These proposed regulations combine the rule in § 31.3402(m)–1(b)(1) and § 31.3402(m)–1(c)(3) of the current regulations and define itemized deductions in proposed § 31.3402(m)–1(b)(1) by cross-referencing to section 63(d). This change updates the cross-reference to the definition of itemized deductions to conform to section 102 of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 2101 (1987) (defining itemized deductions in section 63(d)).

These proposed regulations also implement section 3402(m)(1) by allowing employees to take into account the employee’s estimated deduction under section 199A in determining the additional withholding allowance or other reductions in withholding under section 3402(m) that the employee is entitled to claim on a Form W–4. This is consistent with section 6 of Notice 2018–92.

Section 11051(b)(2)(B) of TCJA struck the reference to section 62(a)(10) (regarding certain payments made under divorce or separation instruments) in section 3402(m)(1) as a permitted estimated deduction. Under section 11051(c) of TCJA, this change generally applies to any divorce or separation instrument (as defined in section 71(b)(2) of the Code as in effect before December 22, 2017) executed after December 31, 2018, or to any divorce or separation instrument (as so defined) executed on or before December 22,

2017, and modified thereafter, if the modification expressly provides that the amendments made by section 11051 of TCJA apply to such modification. However, because these proposed regulations generally allow taxpayers to take into account deductions described in section 62 that the employee reasonably expects will be allowable on the employee’s income tax return for the year such item is claimed, the Treasury Department and the IRS have determined that no special rule is necessary with respect to payments described in section 62(a)(10) for the period prior to the effective date of this change to section 3402(m)(1). Employees who, under section 11051(c) of TCJA, are eligible for the deduction described in section 62(a)(10), may generally continue to take this deduction into account in determining the employee’s withholding allowance or other reductions in withholding if the employee reasonably expects this deduction to be allowable on the employee’s income tax return for the year the Form W–4 is in effect.

Section 3402(m)(3) authorizes the Secretary to prescribe regulations that allow employees to take into account such additional deductions (including the additional standard deduction under section 63(c)(3) for the aged and blind) in determining the additional withholding allowance or other reductions in withholding. Under this authority, these proposed regulations allow taxpayers to take into account the estimated additional standard deduction for the aged and blind provided under section 63(c)(3) and section 63(f). These proposed regulations also allow taxpayers to take into account the estimated deduction or deductions allowed for personal exemptions under section 151. Although, under section 151(d)(5), this deduction has been suspended for the calendar years 2018 through 2025, the Treasury Department and the IRS have determined that the limited period of the suspension and the specific reference to section 151 in section 3402(f)(1)(A) necessitate including in these proposed regulations a provision for a deduction for a dependency exemption or dependency exemptions under section 151 for changes scheduled to take effect after December 31, 2025.

The Treasury Department and the IRS have also determined, consistent with § 31.3402(m)–1(b) of the current regulations, that employees should be permitted to take into account estimated deductions described in section 62, with certain exceptions, in determining the employee’s additional withholding allowance or other reductions in

withholding under section 3402(m). The proposed regulations provide for three exceptions. First, these proposed regulations provide that employees may not take into account any estimated deduction described in section 62(a)(2) if the reimbursement or payment for the amount allowable as the deduction is excludible from wages subject to income tax withholding. For example, an employee may not take into account any expenses described in section 62(a)(2)(A) that are reimbursed under a reimbursement and expense allowance arrangement since those reimbursements are excludible from wages under § 31.3401(a)–4(a). The Treasury Department and the IRS have determined that it is inappropriate to allow an employee to claim an additional withholding allowance or other reductions in withholding with respect to items that are otherwise excludible from wages.

Second, these proposed regulations provide that, in determining the employee’s additional withholding allowance or other reductions in withholding, employees are not allowed to take into account estimated trade or business deductions described in section 62(a)(1), estimated deductions for the production of income that are attributable to property held for the production of rent or royalties under section 62(a)(4), or estimated deductions described in section 62(a)(5) unless these amounts result in an aggregate net loss on schedules C (Profit or Loss from Business), E (Supplemental Income and Loss), or F (Profit or Loss from Farming) of Form 1040. Third, these proposed regulations provide that employees are not allowed to take into account estimated losses from the sale or exchange of property described in section 62(a)(3) unless these amounts result in a net loss on Schedule D (Capital Gains and Losses) of Form 1040 or on the last line of Part II of Form 4797 (Sale of Business Property). These limitations on estimated deductions described in section 62(a)(1), (3), (4), and (5) are consistent with § 31.3402(m)–1(b)(12) of the current regulations, which affirmatively permits taking into account the estimated deductions for these items “from” the applicable schedules. In addition, these proposed regulations continue the rule in § 31.3402(m)–1(b)(7) of the current regulations and allow employees to take into account a net operating loss carryover under section 172 in determining the employee’s additional withholding allowance or other reductions in withholding under section 3402(m).

## b. Estimated Tax Credits

These proposed regulations allow an employee to take into account estimated income tax credits allowable under chapter 1 in determining the employee's additional withholding allowance or other reductions in withholding and update the cross reference in § 31.3402(m)-1(b)(2) of the current regulations to conform to changes under section 471 of the Deficit Reduction Act of 1984, Public Law 98-369, 98 Stat. 494, 825 (1984). (The credit under section 24 of the Code (child tax credit) is part of the employee's withholding allowance under section 3402(f)(2)(C) and is thus not part of the employee's additional withholding allowance).

Section 31.3402(m)-1(b)(2)(i) of the current regulations does not allow an employee to take the credit for tax withheld on wages under section 31(a) into account in determining the employee's additional withholding allowance or other reductions in withholding under section 3402(m). However, section 7 of Notice 2018-92 stated that the Treasury Department and the IRS intend to update the regulations under section 3402 to explicitly allow employees to use the withholding calculator (now called the Tax Withholding Estimator) or Publication 505 to determine what entries to make on Form W-4 in lieu of completing certain worksheets included with the Form W-4. The Tax Withholding Estimator currently takes into account the amount of income tax withheld to date to estimate the amount of withholding required for the remaining payroll periods during the calendar year. Thus, the Treasury Department and the IRS have determined that employees may take into account the credit permitted under section 31(a) for income tax withheld under chapter 24 to date but only if (1) on the day the employee estimates the amount of income tax withheld, the amount has been withheld from the employee's wages (or other payments treated as wages for chapter 24 purposes, such as pension payments subject to withholding under section 3405 or certain other payments subject to backup withholding under section 3406) and (2) the employee enters this amount of tax withheld pursuant to the instructions in the Tax Withholding Estimator or Publication 505.<sup>14</sup>

The Treasury Department and the IRS have determined that these limitations in taking into account the credit for tax withheld are necessary to prevent employees from having a

disproportionate amount of income tax withheld at the end of a calendar year. Historically, the withholding tables and procedures established under the Code are structured so that withholding from wages generally occurs evenly throughout the year. However, if an employee's employer has already withheld more Federal income tax from the employee's wages than necessary to satisfy the employee's anticipated income tax liability, employees should generally be able to take any excess amounts withheld into account.

One commenter to Notice 2018-92 suggested that the withholding calculator (now called the Tax Withholding Estimator) should include an entry accommodating an annual payroll period so a multiplier of one can be used if prior year tax information is used for the entries in the calculator. The Tax Withholding Estimator currently allows employees to enter weekly, bi-weekly, semi-monthly, and monthly payroll frequencies because those are the most common types of payroll periods used by employers. The Treasury Department and the IRS request comments on whether there is a need to provide additional payroll frequencies—other than weekly, bi-weekly, semi-monthly, and monthly—as part of the Tax Withholding Estimator. Also, the Treasury Department and the IRS note that the Tax Withholding Estimator currently asks the employee to enter the total wages the employee expects to receive this year and bases its recommendation, in part, on that annual entry. In addition, the Tax Withholding Estimator makes recommendations for the current year, and prior year information may not always be useful when employees' circumstances change.

With regard to nonresident aliens, these proposed regulations continue the rule in § 31.3402(m)-1(b)(2)(ii) of the current regulations to disregard the credit for tax withheld on nonresident aliens and foreign corporations. However, these proposed regulations update the cross-reference for the credit for tax withheld on nonresident aliens from section 32 to section 33 consistent with section 471(c) of the Deficit Reduction Act of 1984.

Finally, these proposed regulations provide that an employee may not take into account, in determining the employee's additional withholding allowance or other reductions in withholding under section 3402(m), any estimated chapter 1 tax credits the employee has claimed or expects to be refunded as a result of filing an IRS form other than the employee's individual income tax return (Form 1040). For example, an employee may not take into

account an estimated credit under section 34 for certain uses of gasoline and special fuel the employee claimed or expects to claim on Form 8849, but if the employee expects to claim the section 34 credit on a Form 4136 attached to the employee's individual income tax return, the employee may take this credit into account. This rule is similar to § 31.3402(m)-1(b)(2)(iii) of the current regulations. However, under these proposed regulations, this rule applies to all chapter 1 tax credits that an employee claimed or expects to claim on an IRS form other than the employee's individual income tax return. The Treasury Department and the IRS have determined that it is inappropriate to allow an employee to take into account a chapter 1 tax credit that the taxpayer has otherwise requested to be refunded by filing an IRS form other than the employee's individual income tax return.

## c. Estimated Tax Payments

The Treasury Department and the IRS have determined that certain estimated tax payments are "other items" referenced in section 3402(m)(3) because employees who have both wages and non-wage income, including net earnings from self-employment, should be able to take into account any estimated tax payments they already paid with respect to non-wage income if they want to have income tax withheld from their wages for the remainder of the year to apply toward tax liability with respect to non-wage income for that year. The Treasury Department and the IRS also want to ensure employees do not use estimated tax payments to inappropriately reduce required withholding on wages. Accordingly, these proposed regulations allow taxpayers to take into account, in determining the additional withholding allowance or other reductions in withholding under section 3402(m)(3), estimated tax payments paid to date if (1) the amount claimed has been paid with the payment voucher from Form 1040-ES, "Estimated Tax for Individuals" (or was otherwise designated by the taxpayer as a payment of estimated tax); (2) the employee uses the Tax Withholding Estimator and enters the amount claimed pursuant to the instructions in the Tax Withholding Estimator; and (3) in using the Tax Withholding Estimator, the employee includes all items of non-wage income the Tax Withholding Estimator prompts the employee to enter.<sup>15</sup> As a result,

<sup>14</sup> An employee subject to a lock-in letter may not take the credit under section 31(a) into account.

<sup>15</sup> An employee subject to a lock-in letter may not take estimated tax payments into account.

employees who desire to satisfy their tax obligations related to self-employment and other non-wage income through wage withholding rather than future estimated tax payments may use the Tax Withholding Estimator to compute the amount necessary to do so. Employees who desire to continue to pay estimated taxes in whole or in part on self-employment or other non-wage income, should not use the Tax Withholding Estimator, but should follow the instructions in Publication 505 to determine how to complete Form W-4. The Treasury Department and the IRS request comments on whether employees should be able to take into account in the Tax Withholding Estimator estimated tax payments they have not yet made but plan to make during the calendar year with regard to their non-wage income and, if so, what conditions are advisable to ensure employees do not shift required withholding on wages to estimated tax payments or inadvertently pay insufficient taxes during the calendar year so that they owe taxes when they file their tax returns and possibly face estimated tax or underpayment penalties.

#### d. Definitions and Special Rules

These proposed regulations continue the rules in § 31.3402(m)-1(c)(1) of the current regulations relating to the circumstances under which an employee may take into account, in determining the employee's additional withholding allowance or other reductions in withholding under section 3402(m), deductions, credits, and other items. Specifically, an employee may generally take into account only a particular deduction or credit (other than the credit for income tax withheld on wages) that the employee reasonably expects will be allowable for the year the estimation is made, which in no event may exceed the amount shown for that particular deduction or credit on the employee's tax return for the preceding taxable year plus a determinable additional amount. However, these proposed regulations provide that a taxpayer may not take into account any proposed adjustment relating to a disallowed tax deduction or credit that is the subject of any pending request for reconsideration, protest, request for consideration by an Appeals office, or civil action.

These proposed regulations partially incorporate the rule in the flush language of § 31.3402(m)-1(b) of the current regulations to provide that an employee must offset any deduction allowable under proposed

§ 31.3402(m)-1(b) with items includible in the employee's gross income for which no Federal income tax is withheld. However, unlike the rule in the flush language of § 31.3402(m)-1(b) of the current regulations, the rule in the proposed regulations is applied only with respect to deductions and not with respect to income tax credits. The Treasury Department and the IRS have determined that requiring taxpayers to apply this rule with respect to credits is mathematically cumbersome and would complicate withholding procedures for employees. In order to offset tax credits with non-wage income, employees would have to convert the credit to a deduction, and the Treasury Department and the IRS view such a procedure as undercutting the purpose of the 2020 Form W-4, which in separate steps requests dollar amounts for estimated tax credits and estimated deductions, facilitating determination of more accurate withholding. The Treasury Department and the IRS request comments with respect to this rule.

These proposed regulations also incorporate the rules in § 31.3402(m)-1(f) of the current regulations and provide that an employee may not take into account, in determining the employee's additional withholding allowance or other reductions in withholding under section 3402(m), deductions, credits, or estimated tax payments if these deductions, credits, or estimated tax payments are claimed on another valid Form W-4 in effect with respect to another employer of the employee or an employer of the employee's spouse. These proposed regulations provide that spouses who file jointly may only claim deductions, credits, or estimated tax payments once, but these amounts may be allocated between the spouses. These proposed regulations also provide that a married employee who expects to file separately from his or her spouse and has filed separately for the preceding taxable year may take into account deductions, credits, or estimated tax payments on the basis of the employee's individual wages and allowable items. These proposed regulations further provide that an employee must follow the instructions to the Form W-4, and other forms, instructions, publications, and related guidance in determining the credits, deductions, or estimated tax payments the employee may take into account under section 3402(m). This is similar to the rule in § 31.3402(m)-1(d)(1) of the current regulations, which instructs taxpayers to compute additional allowances using the tables and instructions on Form W-4. Finally,

these proposed regulations delete the examples illustrating the application of section 3402(m) and the current regulations. The Treasury Department and the IRS request comments on the need for examples that illustrate the application of these proposed regulations.

#### 8. *Furnishing of Withholding Allowance Certificates*

As stated earlier in this preamble, these proposed regulations implement TCJA's changes to section 3402(f)(2) of the Code and conform to the redesigned 2020 Form W-4. These proposed regulations also address the circumstances under which the employee must furnish the employer a Form W-4. Under section 3402(f)(2), in no event may the employee furnish the employer a withholding allowance certificate claiming a withholding allowance in excess of the withholding allowance the employee is entitled to claim under section 3402(f)(1).

In addition, these proposed regulations restate and clarify certain longstanding special rules relating to when an employer should request each employee to furnish a new Form W-4, rules relating to inclusion of social security numbers on a Form W-4, and rules relating to invalid Forms W-4. Finally, these proposed regulations clarify longstanding rules relating to the submission of certain Forms W-4 to the IRS and rules governing when the IRS may notify the employer in writing that an employee is not entitled to claim a complete exemption from withholding or more than the maximum withholding allowance specified by the IRS in a written notice (a lock-in letter).

##### a. Commencement of Employment

Under section 3402(f)(2)(A), on or before the commencement of employment with an employer, an employee must furnish the employer with a signed withholding allowance certificate relating to the withholding allowance claimed by the employee, which in no event may exceed the withholding allowance to which the employee is entitled. These proposed regulations clarify section 3402(f)(2)(A) and provide that, on or before commencement of employment, an employee must furnish the employer with a signed Form W-4 relating to the filing status the employee reasonably expects to claim on the employee's income tax return and the withholding allowance the employee is entitled to as discussed in section 6 of this Explanation of Provisions. These proposed regulations clarify that an employee may in no event furnish a

Form W-4 claiming a withholding allowance in excess of the withholding allowance the employee is entitled to as determined based on the employee's reasonable expectations and the instructions provided in forms, instructions, publications, and other guidance prescribed by the IRS.

These proposed regulations also clarify that an employee who may claim exemption from withholding under section 3402(n) and proposed § 31.3402(n)-1 may furnish a Form W-4 claiming the exemption from withholding on or before commencement of employment with an employer.

As stated in section 5 of Notice 2018-92, because TCJA struck section 3401(e) but did not make any substantive changes to section 3402(l) (providing that an employee is treated as single unless the employee furnishes the employer a Form W-4 indicating the employee is married), these proposed regulations provide, with respect to wages paid on or after January 1, 2020, that an employer with an employee who failed or fails to furnish a valid Form W-4 on or before commencing employment with the employer must treat the employee as single but having the withholding allowance provided in forms, instructions, publications, and other guidance prescribed by the IRS (default rate). This rule provides flexibility to adjust the applicable default rate of withholding, if warranted based on future legislation or statistical data, to better align withholding with income tax liability.

The IRS plans to provide a default rate for employees who fail to furnish a Form W-4 and who commenced employment on or before December 31, 2019 (and were paid wages in 2019 or earlier) that differs from the default rate for employees who fail to furnish a Form W-4 and were first paid wages on or after January 1, 2020. However, for this purpose, for any employee commencing employment on or after January 1, 2020, in determining when the employee was first paid wages, the employer may choose to disregard any previous payment of wages during a prior employment relationship between the employee and the employer that had ended, such as for an employee who retired and is later rehired. In this circumstance, the employer may treat the employee who fails to furnish a Form W-4 as though the employee was first paid wages on or after January 1, 2020.

Employees hired and paid wages on or before December 31, 2019, who failed to furnish Forms W-4 have historically been treated as single and claiming zero

withholding allowances. This default rate will continue to apply to these employees hired and paid wages on or before December 31, 2019, who fail to furnish a valid Form W-4. As a result employees in this situation would generally have a similar amount of income tax withheld from wages in 2020 as in 2019 (although the 2020 Publication 15-T provides percentage method and wage bracket method withholding tables that take into account 2020 cost-of-living adjustments to certain items due to inflation as required by various provisions of the Code).

On the other hand, Publication 15-T instructs employers to treat an employee who is first paid wages on or after January 1, 2020 (even if hired at the end of 2019), and who fails to furnish a Form W-4 as if the employee had checked the box for single or married filing separately in Step 1(c) and made no entries in Step 2, Step 3, or Step 4 of the 2020 Form W-4. Thus, a single filer's standard deduction with no other entries for the steps on the 2020 Form W-4 will be taken into account in determining withholding for the employee. The tables and computational instructions in Publication 15-T were adjusted accordingly. The Treasury Department and the IRS have determined that this updated default rate of withholding adequately reflects the appropriate withholding for most employees.

However, if this updated default rate were applied to wages paid in 2020 or later to those employees who were hired and paid wages on or before December 31, 2019, those employees would generally have less income tax withheld from their wages paid in 2020 or later than they did in 2019 and earlier without furnishing a new Form W-4 to their employers. Thus, these employees might be surprised by such an unexpected change in withholding when they took no action to cause the change in withholding. The Treasury Department and the IRS note that if an employee desires and is entitled to have less tax withheld from the employee's wages, the employee should furnish his or her employer a valid Form W-4 (and employees will more easily achieve accurate withholding using the 2020 Form W-4). Accordingly, while the updated default rate for employees first paid wages on or after January 1, 2020, will lead to more accurate withholding than the continued default rate for employees hired and paid wages on or before December 31, 2019, the Treasury Department and the IRS view the use of separate default rates depending on when the employee commenced

employment and first received wages as appropriately balancing the desire for accurate withholding and the desire to not reduce withholding for employees with no change in circumstance or newly furnished Form W-4.

Section 11 of Notice 2018-92 solicited comments generally, and one commenter suggested that an employee who fails to furnish a Form W-4 should continue to be treated as single with zero withholding allowances because adding allowances to the employee's wages complicates the withholding system. The Treasury Department and the IRS do not agree that adding withholding allowances complicates the withholding system, especially after implementation of the redesigned 2020 Form W-4. Recognizing that the goal of the withholding system is to achieve the appropriate withholding of income tax to approximate an employee's income tax liability, the proposed regulations provide that employees who fail to furnish Form W-4 will be treated as single having the withholding allowance provided in forms, instructions, publications, or other guidance by the IRS. Withholding on these employees' wages takes into consideration statistical data concerning the tax liability of employees and is designed to avoid placing an unnecessary burden on employers. Thus, Treasury Department and the IRS will not adopt this specific comment

#### b. Change of Status

Similar to the current regulations, these proposed regulations provide "change of status" rules for employees who experience changed circumstances that reduce the withholding allowance an employee is entitled to claim. In particular, these proposed regulations update the rules to reflect TCJA changes and changes in computational procedures set forth in forms, instructions and publications. See section 3402(f)(2)(B) and (C). As required by the Code, these proposed regulations provide that an employee is generally required to furnish a new Form W-4 to his or her employer within 10 days after the change of status if the change affects the current calendar year or by December 1 of the current calendar year to take effect in the following calendar year if the change affects the next calendar year. Due to the TCJA change in the definition of a withholding allowance and to reflect the goal of the withholding system to ensure the tax withheld approximates the employee's income tax liability while minimizing employee and employer burden, these proposed regulations provide that an employee does not have

to furnish a new Form W-4 if the amount of tax the employee expects to be withheld from the employee's pay for the calendar year is greater than the amount of the employee's anticipated income tax liability.

Furthermore, because this general rule may be difficult for certain employees to apply and because the 2020 Form W-4 generally uses annual estimates of dollar amounts, the IRS and the Treasury Department have determined that requiring employees to furnish, and employers to put into effect, new Forms W-4 for small changes in circumstances would be burdensome and complex. Therefore, these proposed regulations also provide a de minimis rule with respect to changes of status under section 3402(f)(2)(B) and (C). These change of status rules apply for Forms W-4 furnished in 2019 or prior years and for Forms W-4 furnished in 2020 or later years.

Specifically, these proposed regulations provide seven circumstances under which an employee must furnish a new Form W-4 to the employer. If any of the seven circumstances apply, the employee experiences a "change of status" and must, within 10 days after the change occurs (if the change of status affects the current calendar year) or by the later of December 1 of the current calendar year or 10 days after the change occurs (if the change of status affects the next calendar year), furnish his or her employer with a new Form W-4. Notwithstanding a change in status, however, if the employee's income tax withholding for the calendar year would continue to equal or exceed the employee's anticipated income tax liability for the year, then the employee generally does not have to furnish a new Form W-4 to the employer.<sup>16</sup>

First, if an employee's filing status changes from married filing jointly (or qualifying widow(er)) to head of household or single (including married filing separately) or from head of household to single (including married filing separately), the proposed regulations provide that the employee experiences a change of status.

Second, if an unmarried employee commences concurrent employment with a second employer that pays wages subject to income tax withholding and selects higher withholding rate tables on

the second Form W-4, the proposed regulations provide that the employee experiences a change of status with respect to the first Form W-4 if higher withholding rates were not selected on the first Form W-4. Similarly, if a married employee (1) expects to file jointly with his or her spouse, (2) no longer has only one Form W-4 on file for the employee, the employee's spouse, or both, and (3) the employee or the employee's spouse selects higher withholding rate tables on a second Form W-4, then the employee experiences a change of status with respect to the first Form W-4 if higher withholding rate tables were not selected on the first Form W-4. The higher withholding rate tables are designed to work for employees with two employers (including married employees filing jointly if both spouses are employed by employers who pay wages subject to income tax withholding). Employees with two Forms W-4 in effect who select higher withholding rate tables on one Form W-4 without selecting higher withholding rate tables on the second Form W-4 have a significant risk of having less than the amount necessary to satisfy their tax liability withheld from their wages.

Third, if an employee has multiple Forms W-4 in effect, and the employee or the employee's spouse reasonably expects an annual increase in regular wages of \$10,000, the proposed regulations provide that a change of status occurs with respect to the Form W-4 on which the employee has utilized the multiple job procedures (other than selecting higher withholding rate tables) set forth in forms, instructions, publications, and other guidance. For this purpose, the proposed regulations indicate that "regular wages" means wages paid by an employer for a payroll period either at a regular periodic rate (e.g., daily, hourly) or at a predetermined fixed amount. The Treasury Department and the IRS anticipate that this change of status rule will promote accuracy in withholding without imposing unnecessary burden in requiring new Forms W-4 for smaller changes in regular wages. As in prior years, in 2020, the income tax withholding tables in Publication 15-T do not adequately account for increases in regular wages for employees who utilize the multiple job procedures (other than selecting higher withholding rate tables) because these wages may be subject to a higher marginal rate of income tax on the employee's income tax return.

Fourth, if an employee claims a child tax credit on a Form W-4 and expects

the number of qualifying children with respect to whom a child tax credit was claimed to decrease, the proposed regulations provide that the employee experiences a change of status with respect to the Form W-4 on which the child tax credit was claimed.

Fifth, if an employee has claimed any tax credit, including a child tax credit, and the amount of tax credits the employee reasonably expects to claim decreases by more than \$500, the proposed regulations provide that the employee experiences a change of status with respect to the Form W-4 on which these tax credits are claimed.

Sixth, the proposed regulations provide that an employee experiences a change of status with respect to deductions the employee reasonably expects to claim (such as itemized deductions in excess of the basic standard deduction corresponding to the employee's claimed filing status) if the employee reasonably expects the deductions claimed on the employee's tax return to decrease by more than \$2,300.

The Treasury Department and the IRS anticipate that these dollar thresholds for requiring a new Form W-4 will account for decreases in credits and deductions and will promote accuracy in the withholding system. Indeed, these threshold amounts for requiring a new Form W-4 will lead to more accuracy than the change of status rules in the current regulations that are in effect for 2019, which turn on the value of one allowance that historically has been tied to the pre-TCJA personal exemption amount, which for 2019 is \$4,200.<sup>17</sup> Accordingly, this proposed change of status rule should help make withholding more accurate and thereby decrease the risk of underwithholding for employees.

Seventh, an employee experiences a change of status under the proposed regulations if he or she no longer reasonably expects to be able to claim exemption from withholding under section 3402(n) and proposed § 31.3402(n)-1. This change can occur if the employee expects to incur an income tax liability under subtitle A for either the current or the previous calendar year.

Finally, similar to the rule in § 31.3402(f)(2)-1(b)(2) of the current

<sup>16</sup> However, any employee whose anticipated filing status changes from married filing jointly (or qualifying widow(er)) to head of household or single (including married filing separately) or from head of household to single (including married filing separately) must furnish a new Form W-4 to take effect in the following calendar year to his or her employer by the later of December 1 of the calendar year in which the change occurs, or within 10 days of the change.

<sup>17</sup> Under section 3 of Notice 2018-92, an employee would experience a change of status if the employee's claimed deductions decrease by more than \$4,200 or if the employee's claimed tax credits decrease by as much as \$1,554 (i.e., assuming the individual is taxed at the highest marginal tax rate in section 1(j) of 37%, the maximum benefit from a tax credit equivalent to \$4,200 in deductions is \$1,554).

regulations, these proposed regulations provide that if an employee experiences a change of status that increases the employee's withholding allowance, the employee may furnish the employer with a new Form W-4 claiming the increased withholding allowance the employee is entitled to claim under proposed § 31.3402(f)(1)-1(b). Like § 31.3402(f)(2)-1(b)(3) of the current regulations, these proposed regulations also provide that if, on any day during the calendar year, the employee may claim exemption from withholding under section 3402(n) and proposed § 31.3402(n)-1, the employee may furnish the employer with a new Form W-4 claiming exemption from withholding.

### c. Special Rules Relating to Withholding Allowance Certificates

These proposed regulations provide that employers should request each employee to furnish a new Form W-4 for the next calendar year before December 1 of each year, in the event of a change to an employee's withholding allowance. A similar rule is in § 31.3402(f)(2)-1(c)(3) of the current regulations, which states that employers should request each employee to furnish a new Form W-4. These proposed regulations update the current "exemption status" nomenclature to "withholding allowance," which is defined in proposed § 31.3402(f)(1)-1(b).

These proposed regulations provide that an employee must include the employee's social security number on the signed Form W-4 the employee furnishes to the employer. An employee may not use a truncated social security number in completing the employee's Form W-4 because a person may not truncate his or her own taxpayer identification number on any statement or document the person furnishes to another person. See § 301.6109-4(b)(2)(iv). A similar rule is set forth in § 31.3402(f)(2)-1(d) of the current regulations.

These proposed regulations continue the rule that any alteration or unauthorized addition to a Form W-4 causes a Form W-4 to be invalid.<sup>18</sup> In

<sup>18</sup> Similar to the rule in the current regulations, proposed § 31.3402(f)(5)-1(b)(1) provides that an alteration of a Form W-4 is any deletion of the language of the jurat or other similar provision of the Form W-4 by which the employee certifies or affirms the correctness of the completed Form W-4, or any material defacing the Form W-4. Proposed § 31.3402(f)(5)-1(b)(2) provides that an unauthorized addition to a Form W-4 is any writing on the Form W-4 other than the entries requested on the Form W-4 (e.g., name, address, and filing status) or permitted by instructions or other guidance.

addition, any oral or written statement clearly indicating that an employee's Form W-4 is false that an employee makes to the employer on or before the date on which the employee furnishes the Form W-4 causes the employee's Form W-4 to be invalid. An employer that receives an invalid Form W-4 must disregard the invalid Form W-4 for purposes of computing withholding. The employer must inform the employee that the Form W-4 is invalid and must request another Form W-4 from the employee. If the employee fails to comply with the employer's request the employer must withhold according to the employee's last valid Form W-4 in effect. If no valid Form W-4 is in effect, the employer must treat the employee as single but having the withholding allowance provided by the forms, instructions, and publications prescribed by the IRS. This treatment is consistent with default rates described in section 8(a) of this Explanation of Provisions that apply if an employee fails to furnish a valid W-4 upon commencement of employment.

These proposed regulations remove § 31.3402(f)(2)-1(f) of the current regulations, which provides that the withholding exemption certificate shall be used for purposes of withholding with respect to qualified State individual taxes, as well as Federal Tax. Section 31.3402(f)(2)-1(f) relates to a subchapter of the Code that was repealed by section 11801(a)(45) of Title XI of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1388-522 (repealing Subchapter E of Chapter 64).

### d. Submission of Certain Withholding Allowance Certificates

These proposed regulations continue the rule in the current regulations regarding the submission of withholding exemption certificates to the IRS but update any reference to "withholding exemption certificate" to "withholding allowance certificate". Under these proposed regulations, the IRS may, by written notice or through published guidance in the IRB, request submission of a Form W-4.<sup>19</sup>

### e. Notice of Maximum Withholding Allowance Permitted

These proposed regulations continue the rule from the current regulations regarding the notice prescribing the maximum number of withholding exemptions an employee may claim (a lock-in letter) but update any reference to "maximum number of withholding

exemptions permitted" to "maximum withholding allowance." This change is consistent with TCJA's changes to section 3402(f)(1). In addition, these proposed regulations replace the term "marital status" with an employee's "filing status." These proposed regulations also replace references to "number of exemptions" with "withholding allowance" to implement TCJA's changes to section 3402(f)(1).

These proposed regulations are consistent with section 3 of Notice 2019-92, which provided that, until further guidance is issued, any reference to a withholding exemption in the regulations and guidance under section 3402 is applied as if it were a reference to a withholding allowance.<sup>20</sup> Proposed § 31.3402(f)(1)-1(b) prescribes the withholding allowance an employee is entitled to, and, therefore, the maximum withholding allowance the employee is entitled to is based on that definition. Correspondingly, the IRS and the Treasury Department have determined that the notices issued under § 31.3402(f)(2)-1(g)(2), including a lock-in letter or a modification notice, which the IRS may issue subsequently to a lock-in letter to modify an employee's filing status and/or permitted withholding allowance, will be updated to reflect the 2020 Form W-4 withholding procedures. These proposed regulations update the reference to the withholding allowance certificate if an employee subject to a lock-in letter requests more withholding or requests less withholding to correspond to proposed § 31.3402(f)(1)-1(b) (defining the withholding allowance to which the employee is entitled), § 31.3402(i)-1(a)(1) and (2) (providing for voluntary increases in the amount of withholding not otherwise required under section 3402), and proposed § 31.3402(l)-1(b) (providing for the filing status an employee may claim on the Form W-4). If an employer is required to apply a maximum withholding allowance prescribed by a lock-in letter or modification notice, and the employee subsequently furnishes the employer a new Form W-4, the employer must put this new Form W-4 into effect only if it requires the employer to withhold more income tax than prescribed by the lock-in letter or modification notice. If the new Form W-4 would result in less income tax being withheld from the employee's

<sup>20</sup> Section 3 of Notice 2018-92 further provides, as an example, that the language in § 31.3402(f)(2)-1(g)(2)(i) providing for an IRS notification process to specify a "maximum number of withholding exemptions" an employee may claim will be applied as a reference to a maximum number of withholding allowances.

<sup>19</sup> Separate procedures apply to examination of returns, which are further discussed in § 601.105.

wages, the employer may not put the Form W-4 into effect.

Consistent with section 9 of Notice 2018-92, these proposed regulations eliminate the requirement that the employer send a written response to the IRS office designated in the lock-in letter that the employee is not employed by the employer. Notices issued under § 31.3402(f)(2)-1(g)(2) will continue to provide that if an employer no longer employs an employee, no action is required. These proposed regulations also include minor non-substantive changes with regard to the lock-in letter.

Finally, these proposed regulations provide for three special rules in determining the withholding allowance for employees who are subject to a lock-in letter or who request that the IRS issue a modification notice to modify a lock-in letter. First, the anticipated tax benefit from any tax credit or deduction must be offset by the anticipated tax attributable to items includible in the employee's gross income in the manner determined by the IRS. Second, the section 31(a) credit may not be taken into account. Third, estimated tax payments may not be taken into account. The Treasury Department and the IRS have determined that these special rules are appropriate because taxpayers subject to a lock-in letter have been significantly noncompliant with wage withholding rules and requirements for payment of income tax liability. Moreover, these rules will generally be applied by the IRS in preparing any modification notice, once such notices have been revised to incorporate the 2020 Form W-4 withholding procedures, and thus concerns that apply to other employees regarding the complexity of these computations do not apply to employees subject to a lock-in letter.

#### 9. When a Withholding Allowance Certificate Takes Effect

Section 31.3402(f)(3)-1 of the current regulations was last updated in 1983 by T.D. 7915, 48 FR 44072-01 (September 27, 1983). These proposed regulations update the regulations under section 3402(f)(3) to reflect the statutory rules enacted in section 10302 of the Omnibus Reconciliation Act of 1987, Public Law 100-203, 101 Stat. 1330, 1330-429 (1987). As noted in section 2, above, these rules apply to withholding exemption certificates, and any reference to withholding allowance certificates or Forms W-4 includes a reference to a withholding exemption certificate, furnished and effective on or before December 31, 2017.

Specifically, section 3402(f)(3)(A) provides that when there is no

withholding allowance certificate in effect for a particular employee, and the employee furnishes a withholding allowance certificate to the employer, the employer must put the certificate into effect as of the beginning of the first payroll period ending after the date the certificate is furnished. If the payment of wages is made without regard to a payroll period, the employer must put the withholding allowance certificate into effect as of the first payment of wages after it is furnished. These proposed regulations reiterate the statutory rule.

Under section 3402(f)(3)(B), if the employer has a valid withholding allowance certificate in effect with respect to a particular employee, and the employee furnishes a withholding allowance certificate to take effect during the calendar year, the employer must put the certificate into 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 the certificate is furnished. An employer may elect to put a withholding allowance certificate into effect earlier but no earlier than on or after the day the withholding allowance certificate is furnished. An employer may not put into effect a withholding allowance certificate furnished to take effect in the next calendar year under section 3402(f)(2)(C) until the next calendar year. These proposed regulations reiterate these statutory rules.

#### 10. Period During Which Withholding Exemption Certificates Remain in Effect

The proposed regulations remove § 31.3402(f)(4)-1 of the current regulations, which applies to withholding exemption certificates furnished prior to January 1, 1982. Generally, withholding exemption or allowance certificates continue in effect until replaced by a new Form W-4. The Treasury Department and the IRS have determined that the rules discussed in section 11 of this Explanation of Provisions are sufficient to account for Forms W-4 in effect under prior law.

#### 11. Effective Period of a Withholding Allowance Certificate

Similar to the current regulations, the proposed regulations provide that Forms W-4 that took effect under prior law generally remain in effect until another Form W-4 is furnished. See section 3402(f)(4). This applies with respect to withholding exemption certificates and Forms W-4 furnished on or before December 31, 2019, including those that are in effect on

December 31, 2019, that have not been superseded by a new Form W-4 furnished to be effective for 2020 or subsequent years. However, under these proposed regulations, a Form W-4 furnished by an employee subject to a lock-in letter ceases to be effective when the lock-in letter takes effect unless the Form W-4 results in more withholding than prescribed by the lock-in letter. If the employee's Form W-4 results in more withholding than prescribed by the lock-in letter, the employer should continue withholding according to the employee's Form W-4, even after the employee is released from the lock-in letter. If the employer had been withholding according to a lock-in letter, upon the employee's release from the lock-in letter, the proposed regulations provide that the employee must furnish his or her employer a new valid Form W-4 in order to ensure that withholding after release from the lock-in letter is as accurate as possible. If the employee fails to do so, 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). Accordingly, an employee subject to a lock-in letter and subsequently released who does not furnish a new Form W-4 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 of the 2020 Form W-4, once withholding compliance notices are modified for 2020 withholding procedures.

These proposed regulations delete the cross reference in § 31.3402(f)(4)-2(b) of the current regulations to the withholding allowance under section 3402(m) because this cross-reference is designed to highlight a distinction relevant to Forms W-4 furnished before 1982. Even though this distinction is no longer relevant, these proposed regulations continue the general rule in the current regulations and provide that an employee who claims deductions, credits, or other items under section 3402(m) must furnish a new Form W-4 when he or she experiences a change of status to which the rules under proposed § 31.3402(f)(2)-1(b) (change of status that affects the current calendar year) or proposed § 31.3402(f)(2)-1(e) (change of status that affects the next calendar year) apply.

These proposed regulations continue the rule of the current regulations and provide that Forms W-4 that claim exemption from withholding under section 3402(n) generally are effective up to and including February 15 of the

following year, and an employer may continue to rely on an employee's Form W-4 claiming exemption from withholding until February 16 of the following year. See section 3402(n) (providing in flush language that the Secretary shall by regulations provide for the coordination of the provisions of section 3402(n) and section 3402(f)). However, these proposed regulations provide that if a Form W-4 claiming exemption from withholding expires, and the employee does not furnish a valid Form W-4 either renewing his or her exemption or claiming a withholding allowance, the employer must treat the employee as single but having the withholding allowance provided in forms, instructions, publications, and other guidance prescribed by the IRS. Unlike the current regulations, these proposed regulations do not require the employer to put into effect a previously furnished valid Form W-4 when an employee's Form W-4 claiming exemption from withholding expires.

For 2020, Publication 15 instructs employers to treat employees who claimed exemption from withholding in 2019 and who do not furnish a new 2020 Form W-4 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 of the 2020 Form W-4. This treatment is consistent with default rates described in section 8(a) of this Explanation of Provisions that apply if an employee fails to furnish a Form W-4 upon commencement of employment.

#### 12. Form and Contents of Withholding Allowance Certificates

These proposed regulations provide that the withholding allowance certificate required to be furnished under section 3402(f)(2) is the Form W-4. The Form W-4 is called the "Employee's Withholding Certificate." Previously, for years 1972 through 2019, the Form W-4 was called the "Employee's Withholding Allowance Certificate." The name of the form was changed for the 2020 revision because the Form W-4 is no longer based on a number of withholding allowances valued at a particular dollar amount. Blank copies of paper Forms W-4 will be supplied to employers upon request to the IRS. An employer may also download and print Form W-4 from the IRS internet site at [www.irs.gov](http://www.irs.gov). These proposed regulations provide rules similar to § 31.3402(f)(5)-1(a) of the current regulations relating to substitute paper Forms W-4.

These proposed regulations provide that, unless provided otherwise in

forms, instructions, publications, or other guidance prescribed by the IRS, 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 as a new Form W-4 or to replace a previously furnished Form W-4. However, 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. These proposed regulations provide an example illustrating this rule.

The Treasury Department and the IRS have received questions from payroll groups on the extent to which employers have to comply with revenue procedures relating to substitute forms when providing paper substitute Forms W-4 to employees. Rev. Proc. 2018-51, 2018-44 I.R.B. 721 (also published in Publication 1167, "General Rules and Specifications for Substitute Forms and Schedules") applies to any substitute paper Forms W-4. However, because the broader purpose of Rev. Proc. 2018-51 and Publication 1167 is to provide guidance on forms filed with the IRS, and the Form W-4 is generally not filed with the IRS, the Treasury Department and the IRS request comments on whether additional guidance is needed regarding substitute paper Forms W-4.

These proposed regulations also provide rules similar to § 31.3402(f)(5)-1(b) of the current regulations relating to invalid Forms W-4. However, these proposed regulations replace any reference to "withholding exemption certificate" with a reference to the "withholding allowance certificate" because of TCJA's changes to section 3402(f)(5) and clarify certain provisions. Under these proposed regulations, an unauthorized addition to a Form W-4 is any writing on the certificate other than the entries on the Form W-4 (e.g., name, address, and filing status). An unauthorized addition does not include entries on the Form W-4 permitted by the instructions or other guidance. Thus, a 2020 Form W-4 with an entry "Exempt" on Form W-4 in the space below Step 4(c) is not an unauthorized addition because this entry is permitted by the 2020 Form W-4 instructions. Similarly, an entry on the Form W-4 indicating an employee is a nonresident alien individual is not an unauthorized addition because this entry is permitted by Notice 1392, "Supplemental Form W-4 Instructions for Nonresident Aliens." The proposed regulations clarify, however, that an entry claiming exemption from withholding that is accompanied by any other entry on the Form W-4 (other than the employee's

filing status) that could potentially affect the amount of income tax withheld from the employee's pay (i.e., an entry on Step 2, Step 3, or Step 4 of the 2020 Form W-4) is an unauthorized addition and, thus, a Form W-4 that includes such an entry is invalid.

In addition to all the rules under § 31.3402(f)(5)-1(c) of the current regulations related to electronic Form W-4 systems, these proposed regulations provide that an employer that maintains an electronic Form W-4 system for its employees to furnish Forms W-4 electronically must provide the employee with the same information as the current version of the official IRS Form W-4 available on [irs.gov](http://irs.gov) and must satisfy any requirements specified by the IRS in forms, publications, and other guidance. These proposed regulations further provide that an employer that maintains an electronic Form W-4 system for its employees must provide the employees the ability to claim exemption from withholding under section 3402(n) and must include the two certifications described in proposed § 31.3402(n)-1(a).

#### 13. Withholding Exemptions for Nonresident Alien Individuals

Section 3402(f)(6) provides that a nonresident alien individual (other than an individual described in section 3401(a)(6)(A) or (B))<sup>21</sup> shall be entitled to only one withholding exemption. The Treasury Department and the IRS have concluded that the withholding exemption referenced in section 3402(f)(6) is the deduction allowed to the nonresident alien individual under section 151, which for 2018-2025 means zero under section 151(d)(5). These proposed regulations include this clarification.

In addition, proposed § 31.3402(f)(6)-1(a) provides that a nonresident alien individual (other than a nonresident individual treated as a resident under section 6013(g) and (h)) must follow administrative guidance such as forms, instructions, publications, or other guidance prescribed by the IRS that apply to the nonresident alien individual's withholding. For 2020, nonresident alien individuals should review and apply Notice 1392 to determine how to complete the 2020 Form W-4. Employers are instructed to apply special procedures in Publication 15-T for these individuals. The application of the procedures in the

<sup>21</sup> Although section 3402(f)(6) references section 3401(a)(6)(A) or (B), section 3401(a)(6) was amended so that there are no longer separately enumerated subparagraphs (A) or (B). Thus, this reference applies to section 3401(a)(6) and § 31.3401(a)(6)-1 of the current regulations.

2020 Publication 15–T depends on whether the nonresident alien individual has furnished a Form W–4 on or after January 1, 2020.

#### 14. Supplemental Wage Payments

These proposed regulations provide that mandatory flat rate withholding under § 31.3402(g)–1(a)(2) is computed without regard to any entries on a Form W–4, including the expanded entries on the 2020 Form W–4. In addition, optional flat rate withholding under § 31.3402(g)–1(a)(7) applies without regard to any entries on the Form W–4 other than the entry claiming exempt status. However, employers who use the aggregate procedure for withholding on supplemental wages under § 31.3402(g)–1(a)(6) of the current regulations should take into consideration the Form W–4 (including a 2020 Form W–4) furnished by the employee.

#### 15. Alternative Withholding Methods

The proposed regulations eliminate the combined income tax withholding and employee FICA tax withholding tables under § 31.3402(h)(4)–1(b) of the current regulations. The Treasury Department and the IRS announced their intention to eliminate these tables in section 8 of Notice 2018–92. No comments were received on this issue. As stated in section 8 of Notice 2018–92, although employers may withhold a combined amount of income and FICA tax, employers must still compute and report amounts of income tax and FICA tax separately on quarterly or annual employment tax returns and Forms W–2. Though use of the combined tables would generally reduce the number of computations in determining the withholding from wages for an employer, this difference in the number of computations has become less relevant with the advance in computational technology since 1970 when these tables were first provided.

Moreover, the combined tables are not consistent with these proposed regulations as applied to certain entries on the 2020 Form W–4. Specifically, income tax must be withheld with respect to an employee's entry in Step 4(a) (Other income) of the 2020 Form W–4, which applies proposed § 31.3402(i)–1(a)(2)(i). An employer must reduce wages by an employee's entry in Step 4(b) (Deductions) of the 2020 Form W–4, which applies proposed § 31.3402(m)–1(b). However, neither the entry in Step 4(a) nor the entry on Step 4(b) impacts employees' FICA tax liability under section 3101. Thus, an employer who is furnished a Form W–4 with entries on either Step 4(a) or Step 4(b) would not be able to

use combined tables, which further diminishes the usefulness of this alternative withholding procedure.

Because section 8 of Notice 2018–92 announced the Treasury Department's and the IRS' intent to remove the combined income tax withholding and employee FICA tax withholding tables, this rule will be proposed with an effective date of January 1, 2020. Accordingly, the 2020 version of Publication 15–T does not include combined income tax withholding and employee FICA tax withholding tables. The Treasury Department and the IRS again request comments on alternative withholding procedures under section 3402(h) generally. However, the Treasury Department and the IRS do not consider allowing employees to base their withholding on a fixed dollar amount or percentage as consistent with section 3402(a).

#### 16. Additional Withholding

These proposed regulations remove § 31.3402(i)–1 of the current regulations because this provision applies to agreements to withhold additional amounts of Federal income tax, not otherwise required, entered into before October 1, 1981. The Treasury Department and the IRS request comments on whether this rule should be retained.

#### 17. Increases in Withholding

Section 3402(i) provides that the Secretary may by regulations provide for increases in the amount of withholding in cases in which an employee requests such changes. The current regulations express this rule as an agreement to withhold "an additional amount" from the employee's wages. See § 31.3402(i)–1(a). This rule was consistent with the format of Form W–4 for years prior to 2020 with respect to the line requesting an additional amount to be withheld from each payment of regular wages. To reflect the revised computational procedures on the 2020 Form W–4, these proposed regulations provide that, for amounts not otherwise required to be withheld from an employee's wages under section 3402, in addition to specifying an additional amount to withhold from the employee's wages, the employee may request that an additional amount be added to the employee's wages on Form W–4, so that the employer may withhold an additional amount of income tax resulting from this addition under the computational procedures prescribed by the IRS in forms, instructions, publications, and other guidance for the calendar year for which the Form W–4 is in effect. In addition, these proposed

regulations provide that an employee may request an additional amount, not otherwise required, to be withheld from the employee's wages by selecting higher withholding rate tables.

These proposed regulations also clarify the circumstances under which the employer must comply with the employee's request. Employers must generally comply with the employee's request on a valid Form W–4 after the employer has withheld all amounts otherwise required to be withheld by Federal law (other than by amounts described in this section), state law, and local law (other than by state or local law that provides for voluntary withholding). The amounts withheld under section 3402(i) are considered tax required to be withheld under section 3402. Finally, these proposed regulations delete references to decreases in withholding under section 3402(i) because of statutory changes made in section 1581 of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat 2085, 2766 (1987), which eliminated the option to decrease withholding by a set dollar amount from section 3402(i).

#### 18. Exemption From Withholding

These proposed regulations add certain clarifying rules to the rules in § 31.3402(n)–1 of the current regulations concerning claiming an exemption from withholding, and thereby propose to restore in substance rules that were formerly in the regulations. See 26 CFR 31.3402(n)–1(2005). To qualify for the exemption provided by section 3402(n) for a taxable year, an employee must certify that the employee incurred no liability for income tax imposed under subtitle A of the Code for the employee's preceding taxable year, and that the employee anticipates that he or she will incur no liability for income tax imposed under subtitle A for the current taxable year. These proposed regulations amend the current regulations to add a provision concerning when the employee is considered to incur no liability for income tax imposed under subtitle A. Specifically, § 31.3402(n)–1(c) of these proposed regulations provides that, for purposes of section 3402(n) and § 31.3402(n)–1 of the regulations, an employee is not considered to incur liability for income tax imposed under subtitle A if the amount of the tax is equal to or less than the total amount of credits against the tax that are allowable to the employee under chapter 1, other than the credits allowable under section 31 or 34. Proposed § 31.3402(n)–1(c) also provides that, for purposes of section 3402(n) and § 31.3402(n)–1, an

employee who files a joint return under section 6013 is considered to incur liability for any tax shown on that return. These proposed regulations provide that 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 the statement would not be true in the event the employee files a joint return for the year, unless the employee filed a separate return for the preceding taxable year and anticipates that he or she will file a separate return for the current taxable year.

The rule concerning incurring liability for income tax imposed by Subtitle A and the rule concerning joint returns were in the regulations before 2006 (see 26 CFR 31.3402(n)-1(2005)) but were deleted by T.D. 9276, 71 FR 42049 (July 26, 2006). This deletion did not indicate a change in position by the Treasury Department and the IRS, and the position of the Treasury Department and the IRS on these issues has remained the same as reflected in Publication 505 for each year from 2007 through 2019. Restoring the rules to the regulations is intended to provide additional clarity and guidance as to the Treasury Department and the IRS position on these issues.

#### **Proposed Applicability Date**

The amendments set forth in this notice of proposed rulemaking are generally proposed to apply on the date of publication of a Treasury Decision adopting these rules as final regulations in the **Federal Register**. Taxpayers may rely on the rules set forth in this notice of proposed rulemaking, in their entirety, until the date a Treasury Decision adopting these regulations as final regulations is published in the **Federal Register**. However, proposed § 31.3402(f)(2)-1(g) relating to withholding compliance is proposed to apply as of the date the notice of proposed rulemaking is published in the **Federal Register**, proposed § 31.3402(f)(5)-1(a)(3) regarding the requirement to use the current version of Form W-4 is proposed to apply as of 30 days after the date the notice of proposed rulemaking is published in the **Federal Register**, and the proposed removal of § 31.3402(h)(4)-1(b) relating to the combined income tax withholding and employee FICA tax withholding tables is proposed to apply on and after January 1, 2020. Except with regard to the removal of § 31.3402(h)(4)-1(b), the proposed regulations provide that, under section

7805(b)(7), taxpayers may choose to apply the rules therein on or after January 1, 2020.

#### **Paperwork Reduction Act**

Any collection of information associated with this notice of proposed rulemaking 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 § 3402 of the Internal Revenue Code (the Code). The Treasury Department and the IRS request comments on all aspects of information collection burdens related to these proposed 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.

#### **Special Analyses**

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

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury 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 proposed regulations, if adopted, would not have a significant economic impact on a substantial number of small entities that are directly affected by the proposed regulations. The proposed 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 the proposed regulations are likely to affect a substantial number of small entities, the economic impact of the regulations will not be significant.

These proposed regulations do not independently impact employers or employees because these 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 proposed regulations incorporate the changes made by TCJA to sections 3401 and 3402 and conform the regulations to 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 Forms W-4 provided in 2019 and earlier years. 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 proposed regulations. Because the proposed regulations preserve the option of continuing to use old Forms W-4 for existing employees who have not had significantly changed circumstances, the proposed regulations minimize impact of the statutory changes on employers, including small entities. Accordingly, Treasury and the IRS certify that this proposed rule 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).

Notwithstanding this certification, the Treasury Department and the IRS invite comments on any impact this rule would have on small entities.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

##### *III. 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.

##### *IV. 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 proposed 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 website at <http://www.irs.gov>.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at <http://www.regulations.gov> or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these proposed 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.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be 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 [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**]. Under section 7805(b)(7) a taxpayer may choose to apply paragraph (g) of this section on and after January 1, 2020.

■ **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 [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL**

**REGISTER**]. For rules that apply before [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], see 26 CFR part 31, revised as of March 14, 2019. Under section 7805(b)(7) a taxpayer may choose to apply this section on and after January 1, 2020.

■ **Par. 5.** Section 31.3402(c)–1 is amended by:

- 1. Revising paragraph (a)(1).
- 2. Redesignating paragraph (a)(2) as paragraph (a)(3).
- 3. Adding a new paragraph (a)(2).
- 4. Revising paragraph (b).
- 5. In paragraph (c)(1), revising the first sentence
- 6. 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 [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER]. For rules that apply before [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER], see 26 CFR part 31, revised as of March 14, 2019. Under section 7805(b)(7) a taxpayer may choose to apply this section on and after January 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 [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER]. For rules that apply before [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER], see 26 CFR part 31, revised as of March 14, 2019. Under section 7805(b)(7) a taxpayer may choose to

apply this section on and after January 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 allowances, or withholding allowance 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 his 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 also 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.

(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.

(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. For rules that apply under paragraph (g) before February 13, 2020, see 26 CFR part 31, revised as of March 14, 2019. The provisions of paragraphs (a) through (f) of this section apply on and after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER]. For rules that apply before [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER], see 26 CFR part 31, revised as of March 14, 2019. Under section 7805(b)(7) a taxpayer may choose to

apply paragraphs (a) through (g) of this section on and after January 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 1st payroll period ending (or the 1st 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 [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**]. For rules that apply before [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], see 26 CFR part 31, revised as of March 14, 2019. Under section 7805(b)(7) a taxpayer may choose to apply this section on and after January 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).

(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 IRS. 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 [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**]. For rules that apply before [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], see 26 CFR part 31, revised as of March 14, 2019. Under section 7805(b)(7) a taxpayer may choose to apply this section on and after January 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 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 in 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](http://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 furnishing.

(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 this section apply on and after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **Federal Register**], except that paragraph (a)(3) of this section applies on and after March 16, 2020. For rules that apply before [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **Federal Register**], see 26 CFR part 31, revised as of March 14, 2019. Under section 7805(b)(7) a taxpayer may choose to apply this section on and after January 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 IRS to determine the nonresident alien's withholding allowance.

(c) *Applicability date.* The provisions of this section apply on and after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**]. For rules that apply before [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**], see 26 CFR part 31, revised as of March 14, 2019. Under section 7805(b)(7) a taxpayer may choose to apply this section on and after January 1, 2020.

■ **Par. 14.** Section 31.3402(g)-1 is amended by

■ 1. In paragraph (a)(2), revising the second sentence.

■ 2. In paragraph (a)(7)(ii), revising the first sentence.

■ 3. 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 [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER]. Under section 7805(b)(7) a taxpayer may choose to apply paragraph (a)(2) and (a)(7)(ii) of this section on and after January 1, 2020.

**§ 31.3402(h)(4)–1 [Amended]**

■ **Par. 15.** Section 31.3402(h)(4)–1 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

**§ 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 IRS 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 [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER]. Under section 7805(b)(7) a taxpayer may choose to apply paragraphs (a)(2) and (3) of this section on and after January 1, 2020.

■ **Par. 19.** 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, 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 [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER]. For rules that apply before [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER], see 26 CFR part 31, revised as of March 14, 2019. Under section 7805(b)(7) a taxpayer may choose to apply this section on and after January 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 paid to date 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); (3) The employee uses the Tax Withholding Estimator (or successor) and enters the amount claimed pursuant to the instructions in the Tax Withholding Estimator (or successor); and

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

(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 non-wage 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 [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER]. For rules that apply before [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER], see 26 CFR part 31, revised as of March 14, 2019. Under section 7805(b)(7) a taxpayer may choose to

apply this section on and after January 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 Example 1 in paragraph (e)(1) of this section 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 Example 1 in paragraph (e)(1) of this section 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 [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER].

For rules that apply before [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER], see 26 CFR part 31, revised as of March 14, 2019. Under section 7805(b)(7) a taxpayer may choose to apply this section on and after January 1, 2020.

**Sunita Lough,**

*Deputy Commissioner for Services and Enforcement.*

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