

FAILURE TO DEDUCT AND WITHHOLD UNDER A DUTY  
CREATED OR INCREASED BY TAX REFORM ACT OF 1976

Section 304 of Pub. L. 95-30, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "No person shall be liable in respect of any failure to deduct and withhold under section 3402 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to income tax collected at source) on remuneration paid before January 1, 1977, to the extent that the duty to deduct and withhold was created or increased by any provision of the Tax Reform Act of 1976 [Pub. L. 94-455]."

WAGES PAID DURING 1972 AND AFTER 1972

Section 805(b)(3), (4) of Pub. L. 91-172, title VIII, Dec. 30, 1969, 83 Stat. 704, which provided for section 3402(b)(1) withholding rates of 13.50; 26.90; 29.20; 58.30; 175.00; 350.00; 700.00; and 1.90, effective with respect to wages during 1972, and withholding rates of 14.40; 28.80; 31.30; 62.50; 187.50; 375.00; 750.00; and 2.10, effective with respect to wages paid after 1972, was repealed by section 208(b)(2) of Pub. L. 92-178.

TRANSITIONAL DETERMINATION STATUS DATE

Section 101(f) of Pub. L. 89-368, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding section 3402(f)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], a withholding exemption certificate furnished the employer after the date of the enactment of this Act [Mar. 15, 1966] and before May 1, 1966, shall take effect with respect to the first payment of wages made on or after May 1, 1966, or the 10th day after the date on which such certificate is furnished to the employer, whichever is later, and at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is furnished."

MEANING OF TERMS

Section 1 of act Aug. 9, 1955, provided that: "The terms used in this Act [amending subsecs. (a) and (j) of this section] shall have the same meaning as when used in the Internal Revenue Code."

**§ 3403. Liability for tax**

The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.

(Aug. 16, 1954, ch. 736, 68A Stat. 469; Pub. L. 97-248, title III, §§ 307(a)(2), 308(a), Sept. 3, 1982, 96 Stat. 589, 591; Pub. L. 98-67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369.)

AMENDMENTS

1983—Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1982—Pub. L. 97-248 provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, this section is amended by striking out "this chapter" and inserting in lieu thereof "this subchapter". Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

**§ 3404. Return and payment by governmental employer**

If the employer is the United States, or a State, or political subdivision thereof, or the

District of Columbia, or any agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages may be made by any officer or employee of the United States, or of such State, or political subdivision, or of the District of Columbia, or of such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.

(Aug. 16, 1954, ch. 736, 68A Stat. 469; Pub. L. 94-455, title XIX, § 1903(c), Oct. 4, 1976, 90 Stat. 1810.)

AMENDMENTS

1976—Pub. L. 94-455 struck out "Territory" after "or a State" and "of such State".

**§ 3405. Special rules for pensions, annuities, and certain other deferred income**

**(a) Periodic payments**

**(1) Withholding as if payment were wages**

The payor of any periodic payment (as defined in subsection (e)(2)) shall withhold from such payment the amount which would be required to be withheld from such payment if such payment were a payment of wages by an employer to an employee for the appropriate payroll period.

**(2) Election of no withholding**

An individual may elect to have paragraph (1) not apply with respect to periodic payments made to such individual. Such an election shall remain in effect until revoked by such individual.

**(3) When election takes effect**

Any election under this subsection (and any revocation of such an election) shall take effect as provided by subsection (f)(3) of section 3402 for withholding exemption certificates.

**(4) Amount withheld where no withholding exemption certificate in effect**

In the case of any payment with respect to which a withholding exemption certificate is not in effect, the amount withheld under paragraph (1) shall be determined by treating the payee as a married individual claiming 3 withholding exemptions.

**(b) Nonperiodic distribution**

**(1) Withholding**

The payor of any nonperiodic distribution (as defined in subsection (e)(3)) shall withhold from such distribution an amount equal to 10 percent of such distribution.

**(2) Election of no withholding**

**(A) In general**

An individual may elect not to have paragraph (1) apply with respect to any nonperiodic distribution.

**(B) Scope of election**

An election under subparagraph (A)—

(i) except as provided in clause (ii), shall be on a distribution-by-distribution basis, or

(ii) to the extent provided in regulations, may apply to subsequent nonperiodic dis-