

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 distributions made by the payor to the payee under the same arrangement.

#### (c) Eligible rollover distributions

##### (1) In general

In the case of any designated distribution which is an eligible rollover distribution—

(A) subsections (a) and (b) shall not apply, and

(B) the payor of such distribution shall withhold from such distribution an amount equal to 20 percent of such distribution.

#### (2) Exception

Paragraph (1)(B) shall not apply to any distribution if the distributee elects under section 401(a)(31)(A) to have such distribution paid directly to an eligible retirement plan.

#### (3) Eligible rollover distribution

For purposes of this subsection, the term “eligible rollover distribution” has the meaning given such term by section 402(f)(2)(A).

#### (d) Liability for withholding

##### (1) In general

Except as provided in paragraph (2), the payor of a designated distribution (as defined in subsection (e)(1)) shall withhold, and be liable for, payment of the tax required to be withheld under this section.

##### (2) Plan administrator liable in certain cases

###### (A) In general

In the case of any plan to which this paragraph applies, paragraph (1) shall not apply and the plan administrator shall withhold, and be liable for, payment of the tax unless the plan administrator—

- (i) directs the payor to withhold such tax, and
- (ii) provides the payor with such information as the Secretary may require by regulations.

###### (B) Plans to which paragraph applies

This paragraph applies to any plan described in, or which at any time has been determined to be described in—

- (i) section 401(a),
- (ii) section 403(a),
- (iii) section 301(d) of the Tax Reduction Act of 1975, or
- (iv) section 457(b) and which is maintained by an eligible employer described in section 457(e)(1)(A).

#### (e) Definitions and special rules

For purposes of this section—

##### (1) Designated distribution

###### (A) In general

Except as provided in subparagraph (B), the term “designated distribution” means any distribution or payment from or under—

- (i) an employer deferred compensation plan,
- (ii) an individual retirement plan (as defined in section 7701(a)(37)), or
- (iii) a commercial annuity.

###### (B) Exceptions

The term “designated distribution” shall not include—

- (i) any amount which is wages without regard to this section,
- (ii) the portion of a distribution or payment which it is reasonable to believe is not includible in gross income, and
- (iii) any amount which is subject to withholding under subchapter A of chapter

3 (relating to withholding of tax on non-resident aliens and foreign corporations) by the person paying such amount or which would be so subject but for a tax treaty, or

(iv) any distribution described in section 404(k)(2).

For purposes of clause (ii), any distribution or payment from or under an individual retirement plan (other than a Roth IRA) shall be treated as includible in gross income.

**(2) Periodic payment**

The term “periodic payment” means a designated distribution which is an annuity or similar periodic payment.

**(3) Nonperiodic distribution**

The term “nonperiodic distribution” means any designated distribution which is not a periodic payment.

**[ (4) Repealed. Pub. L. 102-318, title V, § 521(b)(38), July 3, 1992, 106 Stat. 312 ]**

**(5) Employer deferred compensation plan**

The term “employer deferred compensation plan” means any pension, annuity, profit-sharing, or stock bonus plan or other plan deferring the receipt of compensation.

**(6) Commercial annuity**

The term “commercial annuity” means an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any State.

**(7) Plan administrator**

The term “plan administrator” has the meaning given such term by section 414(g).

**(8) Maximum amount withheld**

The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property (other than securities of the employer corporation) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of securities of the employer corporation and cash (not in excess of \$200) in lieu of financial shares. For purposes of this paragraph, the term “securities of the employer corporation” has the meaning given such term by section 402(e)(4)(E).

**(9) Separate arrangements to be treated separately**

If the payor has more than 1 arrangement under which designated distributions may be made to any individual, each such arrangement shall be treated separately.

**(10) Time and manner of election**

**(A) In general**

Any election and any revocation under this section shall be made at such time and in such manner as the Secretary shall prescribe.

**(B) Payor required to notify payee of rights to elect**

**(i) Periodic payments**

The payor of any periodic payment—

(I) shall transmit to the payee notice of the right to make an election under subsection (a) not earlier than 6 months before the first of such payments and not later than when making the first of such payments,

(II) if such a notice is not transmitted under subclause (I) when making such first payment, shall transmit such a notice when making such first payment, and

(III) shall transmit to payees, not less frequently than once each calendar year, notice of their rights to make elections under subsection (a) and to revoke such elections.

**(ii) Nonperiodic distributions**

The payor of any nonperiodic distribution shall transmit to the payee notice of the right to make any election provided in subsection (b) at the time of the distribution (or at such earlier time as may be provided in regulations).

**(iii) Notice**

Any notice transmitted pursuant to this subparagraph shall be in such form and contain such information as the Secretary shall prescribe.

**(11) Withholding includes deduction**

The terms “withholding”, “withhold”, and “withheld” include “deducting”, “deduct”, and “deducted”.

**(12) Failure to provide correct TIN**

If—

(A) a payee fails to furnish his TIN to the payor in the manner required by the Secretary, or

(B) the Secretary notifies the payor before any payment or distribution that the TIN furnished by the payee is incorrect,

no election under subsection (a)(2) or (b)(2) shall be treated as in effect and subsection (a)(4) shall not apply to such payee.

**(13) Election may not be made with respect to certain payments outside the United States or its possessions**

**(A) In general**

Except as provided in subparagraph (B), in the case of any periodic payment or nonperiodic distribution which is to be delivered outside of the United States and any possession of the United States, no election may be made under subsection (a)(2) or (b)(2) with respect to such payment.

**(B) Exception**

Subparagraph (A) shall not apply if the recipient certifies to the payor, in such manner as the Secretary may prescribe, that such person is not—

(i) a United States citizen or a resident alien of the United States, or

(ii) an individual to whom section 877 applies.

**(f) Withholding to be treated as wage withholding under section 3402 for other purposes**

For purposes of this chapter (and so much of subtitle F as relates to this chapter)—

(1) any designated distribution (whether or not an election under this section applies to such distribution) shall be treated as if it were wages paid by an employer to an employee with respect to which there has been withholding under section 3402, and

(2) in the case of any designated distribution not subject to withholding under this section by reason of an election under this section, the amount withheld shall be treated as zero.

(Added Pub. L. 97-248, title III, §334(a), Sept. 3, 1982, 96 Stat. 623; amended Pub. L. 98-369, div. A, title V, §542(c), title VII, §§714(j)(1), (4), (5), 722(h)(4)(A), July 18, 1984, 98 Stat. 891, 962, 963, 976; Pub. L. 99-514, title XI, §1102(e)(1), title XII, §1234(b)(1), title XVIII, §1875(c)(10), Oct. 22, 1986, 100 Stat. 2416, 2566, 2895; Pub. L. 100-647, title I, §1012(bb)(2)(A)-(C), Nov. 10, 1988, 102 Stat. 3534; Pub. L. 102-318, title V, §§521(b)(36)-(40), 522(b)(1)-(2)(C), July 3, 1992, 106 Stat. 312-314; Pub. L. 104-188, title I, §1704(t)(71), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 106-554, §1(a)(7) [title III, §314(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-643; Pub. L. 107-16, title VI, §641(a)(1)(D)(ii), (iii), June 7, 2001, 115 Stat. 119.)

#### REFERENCES IN TEXT

Section 301(d) of the Tax Reduction Act of 1975, referred to in subsec. (d)(2)(B)(iii), is section 301(d) of Pub. L. 94-12, Mar. 29, 1975, 89 Stat. 26, relating to plan requirements for taxpayers electing additional credits, which was set out as a note under section 46 of this title and was repealed by Pub. L. 95-600, title I, §141(f)(1), Nov. 6, 1978, 92 Stat. 2795.

#### AMENDMENTS

2001—Subsec. (c)(3). Pub. L. 107-16, §641(a)(1)(D)(ii), reenacted heading without change and amended text of par. (3) generally. Prior to amendment, text read as follows: “For purposes of this subsection, the term ‘eligible rollover distribution’ has the meaning given such term by section 402(f)(2)(A) (or in the case of an annuity contract under section 403(b), a distribution from such contract described in section 402(f)(2)(A)).”

Subsec. (d)(2)(B)(iv). Pub. L. 107-16, §641(a)(1)(D)(iii), added cl. (iv).

2000—Subsec. (e)(1)(B). Pub. L. 106-554 inserted “(other than a Roth IRA)” after “individual retirement plan” in concluding provisions.

1996—Subsec. (e)(12). Pub. L. 104-188 substituted “(b)(2)” for “(b)(3)” in closing provisions.

1992—Subsec. (a). Pub. L. 102-318, §521(b)(36), substituted “Periodic payments” for “Pensions, annuities, etc.” in heading.

Subsec. (a)(1). Pub. L. 102-318, §522(b)(2)(A), substituted “subsection (e)(2)” for “subsection (d)(2)”.

Subsec. (b)(1). Pub. L. 102-318, §§521(b)(37)(A), 522(b)(2)(B), substituted “subsection (e)(3)” for “subsection (d)(3)” and “an amount equal to 10 percent of such distribution” for “the amount determined under paragraph (2)”.

Subsec. (b)(2), (3). Pub. L. 102-318, §521(b)(37)(B), redesignated par. (3) as (2) and struck out former par. (2) which related to amount of withholding.

Subsec. (c). Pub. L. 102-318, §522(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102-318, §522(b)(1), (2)(C), redesignated subsec. (c) as (d) and substituted “subsection (e)(1)” for “subsection (d)(1)” in par. (1). Former subsec. (d) redesignated (e).

Pub. L. 102-318, §521(b)(40), substituted “(b)(2)” for “(b)(3)” in par. (13)(A).

Pub. L. 102-318, §521(b)(39), amended par. (8) generally. Prior to amendment, par. (8) read as follows: “The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of

the amount of money and the fair market value of other property (other than employer securities of the employer corporation (within the meaning of section 402(a)(3))) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of \$200) in lieu of fractional shares.”

Pub. L. 102-318, §521(b)(38), struck out par. (4) which defined “qualified total distribution” and provided special rule for accumulated deductible employee contributions in determining qualified total distribution.

Subsecs. (e), (f). Pub. L. 102-318, §522(b)(1), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

1988—Subsec. (d)(13). Pub. L. 100-647, §1012(bb)(2)(C), substituted “United States or its possessions” for “United States” in heading.

Subsec. (d)(13)(A). Pub. L. 100-647, §1012(bb)(2)(A), substituted “the United States and any possession of the United States” for “the United States”.

Subsec. (d)(13)(B)(i). Pub. L. 100-647, §1012(bb)(2)(B), amended cl. (i) generally, substituting “or a resident alien of the United States” for “who is a bona fide resident of a foreign country”.

1986—Subsec. (d)(1)(B). Pub. L. 99-514, §1102(e)(1), inserted last sentence for “For purposes of clause (ii), any distribution or payment from or under an individual retirement plan shall be treated as includible in gross income.”

Subsec. (d)(1)(B)(iii), (iv). Pub. L. 99-514, §1875(c)(10), reenacted cl. (iii) relating to amounts subject to withholding under subchapter A of chapter 3 as cl. (iii) and reenacted cl. (iii) relating to distribution described in section 404(k)(2) as cl. (iv).

Subsec. (d)(13). Pub. L. 99-514, §1234(b)(1), added par. (13).

1984—Subsec. (b)(2)(C). Pub. L. 98-369, §714(j)(1), substituted “nonperiodic distribution” for “distribution described in subparagraph (B)” and “subparagraph (A) or (B) (as the case may be) shall be applied by taking into account” for “the Secretary, in prescribing tables or procedures under paragraph (1), shall take into account”, designated phrase “which is made by reason of a participant’s death” as cl. (i) and added cl. (ii).

Subsec. (d)(1)(B)(iii). Pub. L. 98-369, §714(j)(4), added cl. (iii) relating to amounts subject to withholding under subchapter A of chapter 3.

Pub. L. 98-369, §542(c), added cl. (iii) relating to distributions described in section 404(k)(2). Directory language that section (d)(1)(B) be amended by striking out “and” at end of cl. (i) and substituting “, or” for the period at end of cl. (ii) could not be executed in view of prior amendment by section 714(j)(4) of Pub. L. 98-369, which struck out “and” at end of cl. (i) and substituted “, and” for the period at end of cl. (ii).

Subsec. (d)(8). Pub. L. 98-369, §714(j)(5), freed from withholding requirement any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of \$200) in lieu of fractional shares.

Subsec. (d)(12). Pub. L. 98-369, §722(h)(4), added par. (12).

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107-16, set out as a note under section 402 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106-554, set out as a note under section 56 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(36)-(40) of Pub. L. 102-318 applicable to distributions after Dec. 31, 1992,

see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

Amendment by section 522(b)(1)-(2)(C) of Pub. L. 102-318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102-318, set out as a note under section 401 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1012(bb)(2)(D), Nov. 10, 1988, 102 Stat. 3534, provided that: "The amendments made by this paragraph [amending this section] shall apply to distributions made after the date of the enactment of this Act [Nov. 10, 1988]."

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(e)(1) of Pub. L. 99-514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99-514, set out as a note under section 219 of this title.

Pub. L. 99-514, title XII, §1234(b)(2), Oct. 22, 1986, 100 Stat. 2566, provided that: "The amendment made by this subsection [amending this section] shall apply to payments after December 31, 1986."

Amendment by section 1875(c)(10) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 542(c) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 542(d) of Pub. L. 98-369, set out as a note under section 404 of this title.

Amendment by section 714(j)(1), (4), (5) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 722(h)(4)(A) of Pub. L. 98-369 applicable to payments or distributions after Dec. 31, 1984, unless the payor elects to have such amendment apply to payments or distributions before Jan. 1, 1985, see section 722(h)(5)(B) of Pub. L. 98-369, set out as a note under section 643 of this title.

#### EFFECTIVE DATE

Pub. L. 97-248, title III, §334(e), Sept. 3, 1982, 96 Stat. 627, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) AMENDMENT MADE BY SUBSECTIONS (a) AND (d).—Except as provided in paragraph (4), the amendment made by subsections (a) [enacting this section] and (d) [amending section 3402 of this title] shall apply to payments or other distributions made after December 31, 1982.

"(2) AMENDMENTS MADE BY SUBSECTION (b).—Except as provided in paragraph (4), the amendments made by subsection (b) [amending section 6047 of this title] shall take effect on January 1, 1983.

"(3) AMENDMENTS MADE BY SUBSECTION (c).—The amendments made by subsection (c) [enacting section 6704 of this title] shall take effect on January 1, 1985.

"(4) PERIODIC PAYMENTS BEGINNING BEFORE JANUARY 1, 1983.—For purposes of section 3405(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of periodic payments beginning before January 1, 1983, the first periodic payment after December 31, 1982, shall be treated as the first such periodic payment.

"(5) DELAY IN APPLICATION.—The Secretary of the Treasury shall prescribe such regulations which delay (but not beyond June 30, 1983) the application of some or all of the amendments made by this section with respect to any payor until such time as such payor is able to comply without undue hardship with the requirements of such provisions.

"(6) WAIVER OF PENALTY.—No penalty shall be assessed under section 6672 with respect to any failure to withhold as required by the amendments made by this section if such failure was before July 1, 1983, and if the person made a good faith effort to comply with such withholding requirements."

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

### § 3406. Backup withholding

#### (a) Requirement to deduct and withhold

##### (1) In general

In the case of any reportable payment, if—

(A) the payee fails to furnish his TIN to the payor in the manner required,

(B) the Secretary notifies the payor that the TIN furnished by the payee is incorrect,

(C) there has been a notified payee under-reporting described in subsection (c), or

(D) there has been a payee certification failure described in subsection (d),

then the payor shall deduct and withhold from such payment a tax equal to the product of the fourth lowest rate of tax applicable under section 1(c) and such payment.

##### (2) Subparagraphs (C) and (D) of paragraph (1) apply only to interest and dividend payments

Subparagraphs (C) and (D) of paragraph (1) shall apply only to reportable interest or dividend payments.

#### (b) Reportable payment, etc.

For purposes of this section—

##### (1) Reportable payment

The term "reportable payment" means—

(A) any reportable interest or dividend payment, and

(B) any other reportable payment.

##### (2) Reportable interest or dividend payment

###### (A) In general

The term "reportable interest or dividend payment" means any payment of a kind, and to a payee, required to be shown on a return required under—

(i) section 6049(a) (relating to payments of interest),

(ii) section 6042(a) (relating to payments of dividends), or

(iii) section 6044 (relating to payments of patronage dividends) but only to the extent such payment is in money.