

# Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Notice of Public Hearing

## Withholding Exemptions

### REG-162813-04

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9196) providing guidance under section 3402(f) of the Internal Revenue Code (Code) for employers and employees relating to the Form W-4, “*Employee’s Withholding Allowance Certificate*.” The temporary regulations provide rules for the submission of copies of certain withholding exemption certificates to the IRS, the notification provided to the employer and the employee of the maximum number of withholding exemptions permitted, and the use of substitute forms. The text of the temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by July 5, 2005. Requests to speak (with outlines of topics to be discussed) at the public hearing scheduled for July 26, 2005, must be received by July 5, 2005.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-162813-04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-162813-04), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs) or via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov)

(IRS–REG–162813–04). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Margaret A. Owens, (202) 622–0047; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### **Paperwork Reduction Act**

These proposed regulations do not impose any new information collection. The Office of Management and Budget (OMB) previously approved the information collection requirements concerning Form W–4 contained in the regulation under section 6001 (§31.6001–5; OMB Control No. 1545–0798) and in the regulation under section 3402 (§31.3402(f)(2)–1; OMB Control No. 1545–0010) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### **Background**

Temporary regulations in this issue of the Bulletin amend the Employment Tax Regulations (26 CFR part 31) relating to the Form W–4, “*Employee’s Withholding Allowance Certificate*.” These temporary regulations provide rules for the submission of copies of certain withholding exemption certificates to the IRS, the notification provided to the employer and the employee of the maximum number of withholding exemptions permitted, and the use of substitute forms. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant

regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. The Treasury Department and the IRS are considering additional amendments to the regulations under section 3402 to address other issues including, but not limited to, the criteria for identifying a valid withholding exemption certificate. The Treasury Department and the IRS specifically welcome comments on this issue. All comments will be available for public inspection and copying. A public hearing has been scheduled for July 26, 2005, at 10 a.m., in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by July 5, 2005.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### **Drafting Information**

The principal author of these proposed regulations is Margaret A. Owens, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. However, other personnel from the IRS and the Treasury Department participated in the development of these proposed regulations.

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### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

#### **PART 31—EMPLOYMENT TAXES**

Paragraph 1. The authority citation for part 31 continues to read, in part, as follows:

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

Par. 2. Section 31.3402(f)(2)–1 is amended by revising paragraph (g) to read as follows:

*§31.3402(f)(2)–1 Withholding exemption certificates.*

[The text of proposed §31.3402(f)(2)–1(g) is the same as the text of §31.3402(f)(2)–1T(g) published elsewhere in this issue of the Bulletin].

Par. 3. Section 31.3402(f)(5)–1 is amended by revising paragraph (a) to read as follows:

*§31.3402(f)(5)–1 Form and contents of withholding exemption certificates.*

[The text of proposed §31.3402(f)(5)–1(a) is the same as the text of §31.3402(f)(5)–1T(a) published elsewhere in this issue of the Bulletin].

Mark E. Matthews,  
*Deputy Commissioner for  
Services and Enforcement.*

(Filed by the Office of the Federal Register on April 13, 2005, 8:45 a.m., and published in the issue of the Federal Register for April 14, 2005, 70 F.R. 19721)