Washington, Thursday, December 14, 1944

Regulations

TITLE 7—AGRICULTURE
Chapter XI—War Food Administration (Distribution Orders) [WFG 94, Termination]

PART 1469—FATS AND OILS

TERMINATION OF RESTRICTIONS ON TRANSFERS OF DOMESTIC PLANT OILS

War Food Order No. 94, as amended, all provisions of said order shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or proceeding with respect to any such violation, right, liability, or appeal. This order shall become effective at 12:01 a.m., e. w. t., December 11, 1944. With respect to violations, rights accrued, liabilities incurred, or appeals taken, prior to said date, under War Food Order No. 94, as amended, all provisions of said order shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violation, right, liability, or appeal. (E.O. 9392, 8 FR. Doc. 44-18839; Exec. Order No. 9392, 8 FR. 5205)

Issued this 11th day of December 1944.

Ashley Sellers, Assistant War Food Administrator.

F. R. Doc. 44-18839; Filed, Dec. 12, 1944; 12:08 p.m.

TITLE 8—ALIENS AND NATIONALITY
Chapter II—Office of Alien Property Custodian

[Gen. Order 31, Amdt.]

PART 503—GENERAL ORDERS

DELEGATION OF AUTHORITY

Prohibition of transactions and appointment of agents and delegates with power to make and to revoke authorizations and to designate supervisors.

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9035, as amended, and pursuant to law, the undersigned hereby amends paragraph (b) of General Order No. 31, heretofore issued by the Alien Property Custodian, dated July 10, 1944, and published in the Federal Register on July 12, 1944, (9 F.R. 7739), in the following manner, and not otherwise:

By striking therefrom the words "Homer Jones, as Chief of the Division of Investigation and Research", and inserting in lieu thereof the words "Fritz Machlup, as Acting Chief of the Division of Investigation and Research", and inserting in lieu thereof the words "W. D. Bradford, as Chief of the Non-Enemy Enterprise Section, Division of Business Operations and Liquidation", and inserting in lieu thereof the words "W. D. Bradford, as Assistant to the Alien Property Custodian.

Executed at Washington, D. C. on December 12, 1944.

(F. R. Doc. 44-18873; Filed, Dec. 12, 1944; 11:13 a. m.)

JAMES E. MARKHAM, Alien Property Custodian.

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Internal Revenue Title have been made for the purpose of a more convenient and orderly arrangement, at the time, and, therefore, no inference, implication or presumption of legislative construction shall be drawn or made by reason of maintenance of a particular section or provision or portion thereof, nor shall any outline, analysis, cross reference, or descriptive matter relating to the contents of said Titie be given any legal effect.

SUBPART A—INTRODUCTORY PROVISIONS

§ 405.0 Scope of regulations. The regulations in this part deal with the system of collection of income tax at source on wages, and Subchapter D, general provisions, of Chapter 9 of the Internal Revenue Code.

Inasmuch as the regulations in this part constitute Part 405 of Title 26 of the 1944 Supplement to the Code of Federal Regulations, all of the regulations bear a number commencing with 405 and a decimal point. References to sections not preceded by “405.”” are references to sections of law. References to sections of the Internal Revenue Code unless otherwise expressly indicated. Each section, sub-section, or paragraph of the Internal Revenue Code set forth in the regulations in this part shall be considered as a part of the respective regulations section to which it corresponds.

§ 405.1 Wages paid on or after January 1, 1945. The regulations in this part apply to all wages (as defined in section 1621) paid on or after January 1, 1945, regardless of when such wages were earned. Thus, if an employee is paid wages on January 1, 1945, for services performed during 1944 or any preceding year, with income tax at source on such wages shall be subject to the regulations in this part.

Wages are constructively paid within the meaning of the regulations in this part when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case, the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made and must be made available to him so that they may be drawn upon at any time, and their payment brought within his control and disposition.

SUBPART B—DEFINITIONS

Subchapter D—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

Sec. 1651. Definitions [as added by Sec. 2 (a), Revenue Act of 1932]. As used in this subchapter [Subchapter D of Chapter 9]—

(a) Wages. The term “wages” means all remuneration (other than paid to a public official) for services performed by an employee for his employer, including the value of any remuneration paid in any medium other than cash except that such term shall not include remuneration paid—

(1) to a member of the military or naval forces of the United States, other than pensions and retired pay receivable in gross income under Chapter 1 or

(2) for agricultural labor (as defined in section 1620 (b)), or

(3) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, or

(4) in the course of the employer’s trade or business, or

(5) for services by a citizen or resident of the United States for a foreign government or for the government of the Commonwealth of the Philippines, or

(6) for services performed by a nonresident alien individual who is a resident of a contiguous country who enters and leaves the United States at frequent intervals, or

(7) for services performed by a nonresident alien individual, other than a resident of a contiguous country who enters and leaves the United States at frequent intervals, or

(8) for services performed as a minister of the gospel.

For the purpose of paragraph (8) services performed on or in connection with the trade or business of the War Shipping Administration, shall not constitute services performed outside the United States.

Section 1620 (g) and (h) of the Internal Revenue Code

(g) American vessel. The term “American vessel” means any vessel documented or numbered under the laws of the United States; and includes any vessel documented or numbered under the laws of any foreign country, a vessel employed solely by a citizen or resident of the United States or corporations organized under the laws of the United States or of any State individual, other than a resident of a contiguous country who enters and leaves the United States at frequent intervals, or

(h) United States. The term “United States” includes—

(1) United States. The term “United States” includes—

(a) When used in this title (Internal Revenue Code)...

(9) United States. The term “United States” when used in a geographical sense includes—

(10) United States. The term “United States” when used in a geographical sense includes—

§ 405.101 Wages—(a) In general. The term “wages” means all remuneration for services performed by an employee for his employer unless specifically excluded under section 1622 (p). See §§ 405.102 and 405.204. If paid within the meaning of the statute if paid...
as compensation for services performed by the employee for his employer.

The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus it may be paid on the basis of piecework, or a percentage of profits; and may be paid for the convenience of the employer, daily, weekly, monthly, or annually.

Wages may be paid in money or in some medium other than money, as, for example, stocks, bonds, or other forms of property. If wages are paid in a medium other than money, the fair market value of the thing taken in payment is the amount to be included as wages subject to withholding. If the services were rendered at a stipulated price, in the absence of evidence to the contrary such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employees its own stock as remuneration for services rendered by the employee, the amount of such remuneration is the fair market value of the stock at the time of the transfer. If services received or services rendered on account for services rendered a salary and in addition thereof living quarters or meals, the value to such person of the quarters and meals so furnished is to be treated as remuneration otherwise paid for the purpose of determining the amount of wages subject to withholding. If, however, living quarters or meals are furnished to an employee for the convenience of the employer, the value thereof need not be included as wages subject to withholding.

Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as wages subject to withholding if such facilities or privileges are not specifically indicated on the remuneration of services paid for in a medium other than money, the fair market value of the thing taken in payment is the amount to be included as wages subject to withholding. If such facilities or privileges are specifically indicated on the remuneration of services paid for in a medium other than money, the fair market value of the thing taken in payment is the amount to be included as wages subject to withholding.

Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employer to the employer, are not subject to withholding.

Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though not specifically indicated on the remuneration of services. An employer is legally bound by contract, statute, or otherwise to make such payments.

(b) Pensions, retired pay, and employees' trusts. In general, pensions and retired pay, and amounts paid under employees' trusts, are wages subject to withholding. However, no withholding is required with respect to amounts paid to an employee upon retirement which are taxable as annuities under the provisions of section 22 (b) (2). So-called pensions awarded by one to whom no services have been rendered are mere gifts or gratuities and do not constitute wages.

No withholding is required with respect to so-called contributions to, or with respect to distributions under, a pension, stock bonus, profit-sharing, annuity plan, or other plan deferring the receipt of compensation by the employee, unless such contributions are paid by an employer in conjunction with such a plan in respect of life insurance or death benefits, if the contributions of the employer to such a plan are of relatively small value and are included as wages subject to withholding.

Wages representing retired pay for service in the military or naval forces of the United States are subject to withholding unless the individual receiving such payments is guilty of personal injuries or sickness resulting from active service with such forces. Where such retired pay is paid to a nonresident alien individual no withholding is required with respect to amounts paid to an employee on account of any payment which was earned for the service in the military or naval forces.

(c) Traveling and other expenses. Amounts paid specifically—either as advances or reimbursements—for traveling and other expenses of the employer are wages subject to withholding. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment. If such allowances are paid on a lump sum basis, they are wages subject to withholding.

(d) Vacation allowances. Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(e) Dismissal payments. Any payments made by an employer to any employee on account of dismissal, that is, the termination by the employer of the services of the employee, constitute wages regardless of whether the employer is legally bound by contract, statute, or otherwise to make such payments.

(f) Deductions by employer from wages of employee. The amount of any income tax or social insurance tax required by law to be deducted by the employer from the wages of an employee is considered to be a part of the employee's wages and is deemed to be paid to an employee in accordance with section 147 and the regulations applicable with respect to an employer's contributions to, or with respect to distributions under, an annuity plan, or other plan deferring the receipt of compensation by the employee, unless the contributions of the employer to such a plan are of relatively small value and are included as wages subject to withholding.

(g) Payment by an employer of employee's tax, or employee's contributions under a State law. The term "wages" includes the amount paid by an employer on behalf of an employee (without deduction from the remuneration of, or other reimbursements from, the employee) with respect to any tax accrual or actual or future payments of such taxes by the employee to any governmental unit under a State law. Such taxes include all kinds of taxes, regressive or other than directly assessed taxes, taxes on real or personal property, and sales and use taxes. Such taxes are not subject to withholding if the employee reports such taxes on his return and the taxable year in which the taxes accrued is a taxable year for which there is a federal income tax return available for the year.
Army Nurse Corps, Fem. Inc, the Navy Nurse Corps, Female, the Women’s Army Corps (the “WACS”), the Women’s Reserve Branch of the Naval Reserve (the “WAVES”), the Women’s Reserve Branch of the Coast Guard Reserve (the “SPARS”), and the Marine Corps Women’s Reserve.

(a) Remuneration paid for agricultural labor—(1) In general. The term “wages” does not include remuneration for services which constitute agricultural labor as defined in section 1426 (b). The term “agricultural labor” as so defined includes services of a character described in subparagraphs (2), (3), (4), and (5) of this paragraph. In general, however, the term “agricultural labor” does not include services performed in connection with forestry, lumbering, or landscaping.

(2) Services described in section 1426 (h). (1) Remuneration paid for services performed by an employee in the employ of any person in connection with any of the following activities is excepted as remuneration for agricultural labor:

(i) The cultivation of the soil;

(ii) The raising, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife;

(iii) The raising or harvesting of any other agricultural or horticultural commodity.

The term “farm” as used in this paragraph includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, planting, orchards, nurseries, ranges, or similar structures used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets), do not constitute “farms.”

(3) Services described in section 1426 (h). (2) The remuneration paid for the following services performed by an employee in the employ of the owner or tenant of the farm of which such employee is an owner of one of two or more farms is excepted as remuneration for agricultural labor, Provided. The major part of such services is performed on a farm.

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any such farms or its tools or equipment;

(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

The services described in (i) above may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers, which contribute in any way to the conduct of the farm or farms, such as, operated by the person employing them, as distinguished from any other enterprise or business of such person may be engaged. Since the services described in this subparagraph must be performed in the employ of the owner or tenant or other operator of the farm, the exception does not extend to remuneration paid for services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties.

(4) Services described in section 1426 (h). (3) Remuneration paid for services performed by an employee in the employ of any person in connection with any of the following operations is excepted as remuneration for agricultural labor without regard to the place where such services are performed:

(i) The ginning of cotton;

(ii) The harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum resin, provided such processing is carried on by the original producer of such crude gum.

(5) Services described in section 1426 (h). (4). (i) Remuneration paid for services performed by an employee in the employ of a farmer, a farmers’ cooperative, or a commercial handler of such products; or

(ii) The production or harvesting of maple sap or the processing of maple sap (but not the subsequent blending or other processing of such sirup or sugar with other products); or

(iii) The raising or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum resin, provided such processing is carried on by the original producer of such crude gum.

(6) Services described in section 1426 (h). (5). (i) Remuneration paid for services performed by an employee in the employ of a farmer, a farmers’ cooperative, or a commercial handler of such products; or

(ii) The harvesting or processing of such sirup or sugar with other products;

(iii) The production or harvesting of any agricultural or horticultural commodity, other than fruits and vegetables (see subdivision (ii) below), produced by such farmer or producers’ organization, or group of such farmers is excepted, provided such services are performed as an incident to ordinary farming operations.

Generally services are performed “as an incident to ordinary farming operations” within the meaning of this paragraph if they are services of the character ordinarily performed by the employees of a farmer or of a farmers’ cooperative, or group as a prerequisite to the marketing, in its unmanufactured state, of any agricultural or horticultural commodity produced by such farmer or by the members of such farmer’s organization or group. Services performed by employees of such farmer or farmers’ organization or group in the handling, planting, drying, packing, processing, freezing, grading, storing, or delivering to storage or to market, remuneration paid for such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant, services rendered therein are included in the provisions of subparagraph (3) of this paragraph.

(d) Remuneration paid for domestic service. Remuneration paid for services of a household nature performed by an employee in or about the private home of the person by whom he is employed, or performed in or about the club rooms of such home, or used primarily for such purpose, is not excepted in the provisions of subparagraph (d). However, to the extent that the services of such individuals are performed in the employ of the owner or tenant, services rendered therein are included in the provisions of subparagraph (d).

A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter.

If the home is utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise, it ceases to be a private home and the remuneration paid for services performed therein is not excepted. Likewise, if the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for such purpose, the remuneration paid for services performed therein is not within the exception.

In general, services of a household nature in or about a private home include services rendered by cooks, maids, butlers, valets, laundresses, furnacemen, gardeners, footmen, grooms, and chauffeurs or chauffeurs of family use. In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, maids, butlers,
The remuneration paid for the services above enumerated is not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs, hotels, hospitals, educational institutions, or commercial offices or establishments.

Remuneration paid for services performed as an employee, even though performed in the employer's home, is not within the exception.

(a) Remuneration for casual labor not in the course of employer's trade or business. The term "casual labor" includes labor which is occasional, incidental, or irregular.

The expression "not in the course of the employer's trade or business" includes that which does not advance the trade or business of the employer. Thus remuneration paid for labor which is occasional, incidental, or irregular, or for an hour's wage, to remove a sewerage or to advance the trade or business of the employer, is not within the exception.

Remuneration paid for casual labor, that is, labor which is occasional, incidental, or irregular, but which in the course of the employer's trade or business, does not come within the above exception.

Example (1). A's business is that of operating a sawmill. He employs B, a carpenter, as an hour's wage, to remove sawdust from his mill. D's labor is casual since it is occasional, incidental, or irregular, and is in the course of A's trade or business, the remuneration paid for such services is excepted.

Remuneration paid for casual labor performed for a corporation does not come within this exception.

(b) Compensation paid by foreign government. Remuneration paid for services performed as an employee of a foreign government or the government of the Commonwealth of the Philippines, is excepted. The exception includes not only remuneration paid for services performed by ambassadors, ministers, and other diplomatic representatives of a government but also remuneration paid for services performed as a consular officer or other officer or employee of a foreign government, or the government of the Commonwealth of the Philippines, or as a nondiplomatic representative of such a government. However, the exception does not include remuneration for services performed for a corporation created or organized in the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii) even though such corporation is wholly owned by such a government.

The remuneration paid for the services above enumerated is not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs, hotels, hospitals, educational institutions, or commercial offices or establishments.

(b) Compensation paid by foreign government. Remuneration paid for services performed as an employee of a foreign government, or the government of the Commonwealth of the Philippines, or as a nondiplomatic representative of such a government. However, the exception does not include remuneration for services performed for a corporation created or organized in the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii) even though such corporation is wholly owned by such a government.

The remuneration paid for the services above enumerated is not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs, hotels, hospitals, educational institutions, or commercial offices or establishments.

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The remuneration paid for the services above enumerated is not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs, hotels, hospitals, educational institutions, or commercial offices or establishments.

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The remuneration paid for the services above enumerated is not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs, hotels, hospitals, educational institutions, or commercial offices or establishments.

(b) Compensation paid by foreign government. Remuneration paid for services performed as an employee of a foreign government, or the government of the Commonwealth of the Philippines, or as a nondiplomatic representative of such a government. However, the exception does not include remuneration for services performed for a corporation created or organized in the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii) even though such corporation is wholly owned by such a government.

The remuneration paid for the services above enumerated is not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs, hotels, hospitals, educational institutions, or commercial offices or establishments.
§ 405.103 Payroll period. The term "payroll period" means the period of service for which a payment of wages is ordinarily made to an employee by his employer. For example, if the wages are not always paid at regular intervals, for example every week, but only if the employee in a given week receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the payroll period is still the calendar week; or if, instead, that employee is sent on a 3-week trip by his employer and receives at the end of the trip a single wage payment for three weeks' services, the payroll period is still the weekly payroll period. For computation of tax on supplemental wage payments see § 405.249.

The term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semianual, or annual payroll period. For computation of tax with respect to wages paid in any one payroll period, the payroll period is the weekly payroll period. For computation of tax with respect to wages paid in any one payroll period, the payroll period is the weekly payroll period. Generally the relationship of employer and employee exists when the person for whom such services are performed as an employee of the employer and employee exists will in doubtful cases be determined with reference to the particulars of the facts of each case. The relationship of employer and employee exists, the designation or description of the relationship of the parts and employees, or the facts that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or other designation of the character of the employee, he may or may not be an employee of the corporation. Whether or not such services are performed as an employee of the corporation must be determined upon the facts of the facts in the particular case.

Although an individual may be an employee under the statute, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 1621 (a).
United States, the term "employer" (except for the purposes of subsection (a)) means such person.

§ 405.105 Employer. The term "employer" means any person for whom an individual performs or performed any service, of whatever nature, as the employee of such person.

It is not necessary that the services be continuing at the time the wages are paid in order that the status of employer exist. Thus, for purposes of withholding a person for whom an individual has performed past services for which he is still receiving wages from such person is an "employer."

If the person for whom the services are or were performed does not have legal control over the payment of the wages or over the rate at which the wages are paid, the term "employer" means the person having such control. For example, where wages, such as certain types of pensions or retired pay, are paid by the trust and the person for whom the services were performed has no legal control over the payment of such wages, the trust is the "employer."

The term "employee" also means (except for the purpose of the definition of "wages") the person having such control. For example, where wages, such as certain types of pensions or retired pay, are paid by the trust and the person for whom the services were performed has no legal control over the payment of such wages, the trust is the "employer."

It is a basic purpose to centralize in the employer the responsibility for withholding, returning, and paying the tax and furnishing the returns and statements required under paragraph 1625. The foregoing two special definitions of the term "employer" are designed solely to meet unusual situations. They are not intended as a departure from the basic purpose.

As a matter of business administration, certain of the mechanical details of the withholding process may be handled by associates of the employer. Thus, in the case of a corporate employer having branch offices, the branch manager or other representative may actually, as a matter of internal administration, withhold the tax and furnish the returns and statements required under section 1625. Nevertheless, the legal responsibility for withholding, paying, and returning the tax and furnishing such statements rests with the corporate employer.

An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group, or entity. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

The term "employer" embraces not only individuals and organizations engaged in trade or business, but organizations exempt from income tax, such as religious or charitable organizations, educational institutions, clubs, social organizations and societies, as well as the governments of the United States, the States, Territories, and the District of Columbia, including their agencies, instrumentalities, and political subdivisions.

[SEC. 1621. DEFINITIONS—AS ADDED BY SECS. 2 (A), CURRENT TAX PAYMENT ACT OF 1943, AND AMENDED BY SECS. 28 (A), INDIVIDUAL INCOME TAX ACT OF 1944.]

(As used in this subsection (Subsection D of Chapter 5 of Title 26, United States Code)]

The term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 1623 (a), except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

§ 405.106 Number of withholding exemptions claimed. The term "number of withholding exemptions claimed" is defined in section 1621 (a). The number of withholding exemptions claimed must be taken into account in determining the amount of tax to be deducted and withheld under section 1623. Whether the employer computes the tax in accordance with the provisions of subsection (a) or subsection (c) of section 1623.

The employer is not required to ascertain whether or not the number of withholding exemptions claimed is greater than the number of withholding exemptions to which the employee is entitled. If, however, the employer has reserved the number of withholding exemptions claimed by an employee is greater than the number to which such employee is entitled, the collector should be so advised.

As to the number of withholding exemptions to which an employee is entitled, see § 405.205.

Section 3797 (a) and (b) of the Internal Revenue Code

(a) When used in this title [Internal Revenue Code] * * *

(1) Person. The term "person" shall be construed to mean and include an individual, trust, estate, partnership, company, or corporation.

(2) Partnership * * *. The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, group, or entity. A trust or estate, other than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

(3) Corporation. The term "corporation" includes a corporation, a partnership, and association.

(4) Domestic. The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) Foreign. The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) Fiduciary. The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) United States. The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the Districts of Columbia.

(10) State. The word "State" shall be construed to include the Commonwealth of Puerto Rico and the District of Columbia, where such construction is necessary to carry out provisions of this title.

(c) Secretary. The term "Secretary" means the Secretary of the Treasury.

(d) Commissioner. The term "Commissioner" means the Commissioner of Internal Revenue.

(e) Collector. The term "collector" means collector of Internal Revenue.

(f) Paymaster. The term "paymaster" means any person subject to a tax imposed by this title.

§ 405.107 General definition and use of terms. As used in the regulations in this part:

(a) The terms defined in the above provisions of law shall have the meanings so defined.


(c) Person includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, pool, joint venture or other unincorporated organization or group, through or by means of which any business, financial operation, or venture is carried on. It includes a group, commission, bureau, agency, department, administrative tribunal, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(d) The cross references in the regulations in this part to other portions of the regulations, when the word "see" is used, are made only for convenience, and shall be given no legal effect.

SUBPART C—DETERMINATION OF TAX

SEC. 1622. INCOME TAX COLLECTED AT SOURCE [AS AMENDED BY SEC. 1622, CURRENT TAX PAYMENT ACT OF 1943, AND AMENDED BY SEC. 28, INDIVIDUAL INCOME TAX ACT OF 1944.]

(1) Requirement of withholding. Every employer making payment of wages shall deduct and withhold upon such wages a tax equal to the sum of the following:

(A) 2.7 per cent of the amount by which the wages exceed the amount of one withholding exemption, the amount of such exemption, or on various payroll periods being shown in the table in subsection (b) (1) of this section.

(B) 10.8 per cent of the amount of any such exemption in any payroll period being shown in the table in subsection (b) (1).
FEDERAL REGISTER, Thursday, December 14, 1914

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**PERCENTAGE METHOD WITHHOLDING TABLE**

<table>
<thead>
<tr>
<th>Payroll period</th>
<th>Amount of pay withheld with percentage at 6%</th>
<th>Maximum amount subject to 6% withholding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weekly</td>
<td>$41.00</td>
<td>$44.00</td>
</tr>
<tr>
<td>Biweekly</td>
<td>$22.00</td>
<td>$22.00</td>
</tr>
<tr>
<td>Semi-monthly</td>
<td>$22.00</td>
<td>$22.00</td>
</tr>
<tr>
<td>Monthly</td>
<td>$40.00</td>
<td>$44.00</td>
</tr>
<tr>
<td>Quarterly</td>
<td>$32.00</td>
<td>$34.00</td>
</tr>
<tr>
<td>Semi-annual</td>
<td>$270.00</td>
<td>$1,112.00</td>
</tr>
<tr>
<td>Annual</td>
<td>$600.00</td>
<td>$2,220.00</td>
</tr>
<tr>
<td>(per day of each period)</td>
<td>- 1.00</td>
<td>1.00</td>
</tr>
</tbody>
</table>

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(2) If wages are paid with respect to a period which is not a payroll period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer until the date of commencement of employment with such employer during such period, or January 1 of such year, whichever is later. (4) In any case in which the period, or the time described in paragraph (3), in respect of which wages are paid during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employer during the calendar year, or the tax required to be deduced and withheld under subsection (a): (c) Wage bracket withholding. (1) At the election of the employer, the employee shall elect to have the tax required to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar. (e) Wage bracket withholding. (1) At the election of the employer, the employee shall elect to have the tax required to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar. (f) Wage bracket withholding. (1) At the election of the employer, the employee shall elect to have the tax required to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.
<table>
<thead>
<tr>
<th>At least</th>
<th>But less than</th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10 or more</th>
</tr>
</thead>
<tbody>
<tr>
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<td>$42</td>
<td>$7.90</td>
<td>$8.10</td>
<td>$8.30</td>
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<td>$29.50</td>
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<td>$49.30</td>
<td>$49.50</td>
<td>$49.70</td>
<td>$49.90</td>
</tr>
</tbody>
</table>

**IF THE PAYROLL PERIOD WITH RESPECT TO AN EMPLOYEE IS WEEKLY—continued**

<table>
<thead>
<tr>
<th>At least</th>
<th>22.5 percent of the excess over $400 plus</th>
</tr>
</thead>
<tbody>
<tr>
<td>$40</td>
<td>$42</td>
</tr>
<tr>
<td>$10</td>
<td>$12</td>
</tr>
<tr>
<td>$20</td>
<td>$22</td>
</tr>
<tr>
<td>$40</td>
<td>$42</td>
</tr>
<tr>
<td>$50</td>
<td>$52</td>
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<tr>
<td>$60</td>
<td>$62</td>
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<tr>
<td>$70</td>
<td>$72</td>
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<tr>
<td>$90</td>
<td>$92</td>
</tr>
<tr>
<td>$100</td>
<td>$102</td>
</tr>
</tbody>
</table>
### IF THE PAYROLL PERIOD WITH RESPECT TO AN EMPLOYED IS SEMIMONTHLY—continued

<table>
<thead>
<tr>
<th>And the wages are—</th>
<th>And the number of withholding exemptions claimed is—</th>
</tr>
</thead>
<tbody>
<tr>
<td>At least but less than</td>
<td>0</td>
</tr>
<tr>
<td>$626</td>
<td>$685</td>
</tr>
<tr>
<td>$740</td>
<td>$808</td>
</tr>
<tr>
<td>$854</td>
<td>$922</td>
</tr>
<tr>
<td>$978</td>
<td>$1046</td>
</tr>
<tr>
<td>$1,000 and over</td>
<td>$1046</td>
</tr>
</tbody>
</table>

#### The amount of tax to be withheld shall be—

- $1,000 and over: 22.5% of the excess over $1,000 plus $22.50.
<table>
<thead>
<tr>
<th>Period</th>
<th>Weeks per year</th>
<th>Owing Exemptions claimed</th>
<th>Taxable Income</th>
<th>Tax Rate per $1000</th>
<th>Tax per $1000</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 weeks</td>
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<tr>
<td>18 weeks</td>
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<tr>
<td>17 weeks</td>
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<td>16 weeks</td>
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<td>12 weeks</td>
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<td></td>
</tr>
<tr>
<td>9 weeks</td>
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</tr>
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<td>8 weeks</td>
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<td>6 weeks</td>
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<td>5 weeks</td>
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<tr>
<td>4 weeks</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>3 weeks</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>2 weeks</td>
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<tr>
<td>1 week</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

$30.00 and over

22.8 percent of the excess over $30 plus

60.00 63.00 66.00 68.00 70.00 72.00 74.00 76.00 78.00 80.00

(2) If wages are paid with respect to a payroll period which is not a payroll period, the amount to be deducted and withheld shall be the maximum shown in the table for a payroll period containing a number of days equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period, the amount to be deducted and withheld shall be the maximum shown in the table for a payroll period containing a number of days equal to the number of days in the period with respect to which such wages are paid.

(4) In any case in which the period, or the time described in paragraph (3), in respect of any wages is less than one week, the Commissioner, under regulations prescribed by him with the approval of the Secretary, may authorize an employer to determine the amount to be deducted and withheld under the tables applicable in the case of a weekly payroll period, in which case the aggregate of the wages paid to the employee during the calendar week shall be considered the weekly wages.

(5) If the wages exceed the highest wage bracket, in determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

405.201 Requirement of withholding. Section 6232 provides, at the election of the employer, alternative methods of computing the income tax collected at source on wages. Under the first method (hereinafter referred to as "the percentage method") the employer is required to deduct and withhold a tax computed in accordance with the provisions of section 6232 (a). Under the second method (hereinafter referred to as "the wage bracket method") the employer is required to deduct and withhold a tax determined in accordance with the tables provided in subsection (c) of section 6232. For the within determination see § 405.202; for the wage bracket method see § 405.203; for constructive payment of wages see § 405.1.

The percentage method involves several calculations. In using this method reference must be made to the percentage method withholding table in section 6232 (b) (1). The steps in computing the tax under such method are summarized as follows:

Step 1. Subtract the amount of one withholding exemption (see percentage method withholding table) from the employee's wages. Multiply the remainder, if any, by 0.198.

Step 2. Multiply the amount of one withholding exemption by the number of exemptions claimed by the employee, and have in effect a withholding exemption certificate claiming three exemptions. His employer, using the percentage method, computes the tax to be withheld as follows:

Step 3. Subtract the amount determined in step 2 from the employee's wages. Compare the remainder, if any, with the figure shown in the last column of the percentage method withholding table. Take the smaller of the two amounts and multiply it by 0.198.

Step 4. Add the amount determined in step 3 to the figure in the last column of the percentage method withholding table. Subtract the sum of these two figures from the employee's wages. Multiply the remainder, if any, by 0.198.

Step 5. To determine the amount required to be withheld, add the amounts determined in steps 1, 3, and 4.

Example. An employee has a weekly payroll period, for which he is paid $80, and has in effect a withholding exemption certificate claiming two exemptions. His employer, using the percentage method, computes the tax to be withheld as follows:

Step 1:

Total wage payment $80.00

Less amount of one withholding exemption $16.00

Total withholding exemptions $16.00

Balance subject to 2.7 percent rate $64.00

X 0.027 $1.75

Portion of tax to be withheld $1.75

Step 2:

Amount of one withholding exemption $16.00

Portion of tax to be withheld $1.75

Step 3:

Total wage payment $80.00

Less amount determined in step 2 $17.75

Remaining wages to be taxed $62.25

Portion of tax to be withheld $1.75

Step 4:

(405.201)
FEDERAL REGISTER, Thursday, December 14, 1944

§ 405.202 Application of withholding exemptions—(a) In general. Under the percentage method, regardless of the number of withholding exemptions claimed, the portion of the tax at the 27 percent rate is computed on the amount by which the wages paid exceed the amount of one withholding exemption. In the computation of the portion of the tax at the 18 percent rate, the maximum amount shown in the last column of the percentage method withholding table is used, even though wages are paid less than the maximum amount shown in the last column of the percentage method withholding table.

(b) Period not a payroll period. If wages are paid for a period which is not a payroll period, the withholding exemption allowable and the amount of each payroll payment subject to the tax at the 27 percent rate is computed on the amount of such wages subject to the tax at the 27 percent rate. The amount of such payroll payment subject to the tax at the 18 percent rate is the excess of the wages over the amount of the tax at the 18 percent rate, the maximum amount subject to tax at the rate of 18 percent being the amount of one withholding exemption.

Example 4. An employee is paid his weekly pay for a period of 13 consecutive days, on June 1, 1940, and is paid again on June 15, 1940. The amount of each payroll payment subject to the tax at the 27 percent rate is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period, in computing the tax at the 18 percent rate, is (15 X 0.018). The amount of the withholding exemption allowable for the 12-day period is (15 X 0.018).

(2) Period or elapsed time less than one week. In the case of any employee who has no withholding exemption certificate in effect, or an employee who has claimed no exemption, the amount of one withholding exemption is to be used for the purpose of computing the tax at the 27 percent rate and the 18 percent rate. The amount of withholding exemption is to be used for the purpose of computing the tax at the 27 percent rate and the 18 percent rate if the withholding exemption is sufficient for the 18.5 percent rate to be applicable in this instance. In the case of employees who have claimed withholding exemptions on their payrolls, the amount of the withholding exemption is to be used for the purpose of computing the tax at the 27 percent rate if the withholding exemption is sufficient for the 18.5 percent rate to be applicable in this instance.

Example 5. Employee B has a weekly payroll period. The number of withholding exemptions claimed by B is zero. Wages are paid each Friday during the month of June. During a particular week B worked only two days and resigned. The amount of the tax at the 27 percent rate is computed on the excess of $200 over 011, the latter amount being the amount of one withholding exemption for a weekly payroll period. The amount of the tax at the 18 percent rate is computed on the entire amount of $200, which amount is less than the maximum amount allowable in the percentage method withholding table. The amount of the tax at the 18 percent rate is not applicable in this instance, since the amount of the tax at the 27 percent rate is less than the amount shown in the last column of the percentage method withholding table.

Example 6. Employee B has a weekly payroll period. The number of withholding exemptions claimed by B is zero. Wages are paid each Friday during the month of June. During a particular week B worked only two days and resigned. The amount of the tax at the 27 percent rate is computed on the excess of $200 over 011, the latter amount being the amount of one withholding exemption for a weekly payroll period. The amount of the tax at the 18 percent rate is computed on the entire amount of $200, which amount is less than the maximum amount allowable in the percentage method withholding table. The amount of the tax at the 18 percent rate is not applicable in this instance, since the amount of the tax at the 27 percent rate is less than the amount shown in the last column of the percentage method withholding table.

Example 7. An employee is paid his weekly pay for a period of 13 consecutive days, on June 1, 1940, and is paid again on June 15, 1940. The amount of each payroll payment subject to the tax at the 27 percent rate is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period, in computing the tax at the 18 percent rate, is (15 X 0.018). The amount of the withholding exemption allowable for the 12-day period is (15 X 0.018).

Example 8. An employee is paid his weekly pay for a period of 13 consecutive days, on June 1, 1940, and is paid again on June 15, 1940. The amount of each payroll payment subject to the tax at the 27 percent rate is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period, in computing the tax at the 18 percent rate, is (15 X 0.018). The amount of the withholding exemption allowable for the 12-day period is (15 X 0.018).

Example 9. An employee is paid his weekly pay for a period of 13 consecutive days, on June 1, 1940, and is paid again on June 15, 1940. The amount of each payroll payment subject to the tax at the 27 percent rate is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period, in computing the tax at the 18 percent rate, is (15 X 0.018). The amount of the withholding exemption allowable for the 12-day period is (15 X 0.018).

Example 10. An employee is paid his weekly pay for a period of 13 consecutive days, on June 1, 1940, and is paid again on June 15, 1940. The amount of each payroll payment subject to the tax at the 27 percent rate is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period, in computing the tax at the 18 percent rate, is (15 X 0.018). The amount of the withholding exemption allowable for the 12-day period is (15 X 0.018).

Example 11. An employee is paid his weekly pay for a period of 13 consecutive days, on June 1, 1940, and is paid again on June 15, 1940. The amount of each payroll payment subject to the tax at the 27 percent rate is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period, in computing the tax at the 18 percent rate, is (15 X 0.018). The amount of the withholding exemption allowable for the 12-day period is (15 X 0.018).

Example 12. An employee is paid his weekly pay for a period of 13 consecutive days, on June 1, 1940, and is paid again on June 15, 1940. The amount of each payroll payment subject to the tax at the 27 percent rate is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period is 018 (12 X 0.018). The amount of the withholding exemption allowable for the 12-day period, in computing the tax at the 18 percent rate, is (15 X 0.018). The amount of the withholding exemption allowable for the 12-day period is (15 X 0.018).

Under certain conditions, however, if the payroll period, other period, or elapsed time when wages are paid without regard to any period, is less than one week, the employer may, at his election, deduct and withhold the tax computed as if the aggregate of the wages paid to the employee during the period of time was paid for a weekly payroll period. Such election by the employer is limited to the case of an employee who works for wages only for an employer during the calendar week. Any employer electing to compute the tax upon the excess of the wages paid during the calendar week over the weekly exemption must state in writing to the employee, stating that he works for wages only for such employer, and that if he should thereafter secure additional employment for wages, he will within 10 days after the beginning of such additional employment, notify such employer of that fact. Such statement shall be
signed by the employee and shall contain or be verified by a written statement that it is made under the penalties of perjury. No form of statement is specified, but any form used must include the contents specified above. An employer electing to use the tax in accordance with the provisions of this paragraph should withhold from each wage payment an amount sufficient to insure withholding of the correct amount of tax.

If such employee secures additional employment for wages, such employer may not thereafter use the weekly exemption in computing the amount of tax to be withheld from such wages paid for the period. The employer must include the use of the weekly exemption in a such case: Assume the facts stated in example (2) above, except that the employer elects to use the weekly exemption for such wages in the period following the proper statement from the employee. In such case, the amount of the withholding exemption allowable for the purpose of computing the tax at the 2.7 percent rate is $11.15. The amount of tax required to be withheld is determined by applying the table as adjusted to the total wages paid for the period.

(2) Reduce the wages paid for the period to a daily basis by dividing the total wages by the number of days in the period. Apply the table to the wages so determined and multiply the result by the number of days in the period.

(c) Period not a payroll period. If wages are paid for a period which is not a payroll period, the amount to be deducted and withheld under the wage bracket method shall be the amount determined by the table applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

Example. An individual is hired by a contractor to perform services in connection with a construction project. The number of withholding exemptions claimed by the individual is two. The amount of tax to be deducted and withheld is $90, representing wages for 10 days' services performed during the period. Under the wage bracket method the amount to be deducted and withheld from such wages is determined by dividing the amount of the wages ($90) by the number of days in the period (10), the result being $9. The amount of tax required to be withheld is $9 for each withholding exemption claimed by the individual. This result is equal to the amount of tax required to be deducted and withheld for the 10 days in the period, if the elapsed time was determined as provided in paragraph (d) is less than one week, the same rule is applicable.

Example (2). An Individual is hired for four days, for which he is paid wages of $30. The number of withholding exemptions claimed by him is two. The amount of tax to be deducted and withheld under the wage bracket method is $6.30 (4 x $1.50).

If the payroll period, other period, or elapsed time where wages are paid without regard to any period, is less than one week, the employer may, under certain conditions, elect to deduct and withhold the tax determined by the application of the wage table for a weekly payroll period to the aggregate of the wages paid to the employee during the calendar week in which they are paid. The wage table in such cases is subject to the limitations and conditions prescribed in §405.202 (d) with respect to employers using the percentage method in similar cases.

(f) Wage paid without regard to any period. If wages are paid without regard to any period, as, for instance, commissions paid to a salesman upon consummation of a sale, the amount of tax to be deducted and withheld shall be determined in the same manner as in the case of a payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of wages by such employee during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the latest.

Example. On April 2, 1945, A is hired by the X Real Estate Co. to sell real estate on a commission basis, commissions only to be paid upon consummation of sales. The number of withholding exemptions claimed by A is one. On May 21, 1945, A received a commission of $300. Again, on June 16, 1945, A received another commission of $300. Under the wage bracket method, the amount of tax to be deducted and withheld in respect of the commission paid on May 21 is $47.50, which amount is obtained by multiplying $22.50 (tax under wage bracket table for a daily payroll period) by the number of days elapsed (7 days). The amount of tax required to be withheld is determined by applying the table as adjusted to the total wages paid for the period. The amount of the tax required to be withheld is determined by applying the table as adjusted to the total wages paid for the period.

(2)reduce the wages paid for the period to a daily basis by dividing the total wages by the number of days in the period. Apply the table to the wages so determined and multiply the result by the number of days in the period.

(c) Period not a payroll period. If wages are paid for a period which is not a payroll period, the amount to be deducted and withheld under the wage bracket method shall be the amount determined by the table applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

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If the payroll period, other period, or elapsed time where wages are paid without regard to any period, is less than one week, the employer may, under certain conditions, elect to deduct and withhold the tax determined by the application of the wage table for a weekly payroll period to the aggregate of the wages paid to the employee during the calendar week in which they are paid. The wage table in such cases is subject to the limitations and conditions prescribed in §405.202 (d) with respect to employers using the percentage method in similar cases.

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If the payroll period, other period, or elapsed time where wages are paid without regard to any period, is less than one week, the employer may, under certain conditions, elect to deduct and withhold the tax determined by the application of the wage table for a weekly payroll period to the aggregate of the wages paid to the employee during the calendar week in which they are paid. The wage table in such cases is subject to the limitations and conditions prescribed in §405.202 (d) with respect to employers using the percentage method in similar cases.

(f) Wage paid without regard to any period. If wages are paid without regard to any period, as, for instance, commissions paid to a salesman upon consummation of a sale, the amount of tax to be deducted and withheld shall be determined in the same manner as in the case of a payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of wages by such employee during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the latest.

Example. On April 2, 1945, A is hired by the X Real Estate Co. to sell real estate on a commission basis, commissions only to be paid upon consummation of sales. The number of withholding exemptions claimed by A is one. On May 21, 1945, A received a commission of $300. Again, on June 16, 1945, A received another commission of $300. Under the wage bracket method, the amount of tax to be deducted and withheld in respect of the commission paid on May 21 is $47.50, which amount is obtained by multiplying $22.50 (tax under wage bracket table for a daily payroll period) by the number of days elapsed (7 days). The amount of tax required to be withheld is determined by applying the table as adjusted to the total wages paid for the period. The amount of the tax required to be withheld is determined by applying the table as adjusted to the total wages paid for the period.
stipulates wages, all the remuneration paid by such employer to such employee for such period shall be wages, and if the remuneration paid by an employer to an employee for services performed during more than one-half of the services performed during the week constitutes wages, then all of the remuneration paid by such employer for services performed during such period shall for purposes of withholding be treated alike, that is, either all included as wages or all excluded. The time during which the employee performs services, the remuneration for which under section 1621 (a) constitutes wages, and the time during which he performs services, the remuneration for which under section 1621 (b) constitutes wages, is excepted as remuneration for domestic labor, and the remuneration for services performed during such period shall be deemed to be wages.

§ 408.204 Included and excluded wages. If a portion of the remuneration paid by an employer to his employee for services performed during a payroll period constitutes wages, and the remainder does not constitute wages, then all of the remuneration paid by such employer for services performed during such period shall for purposes of withholding be treated alike, that is, either all included as wages or all excluded. The time during which the employee performs services, the remuneration for which under section 1621 (a) constitutes wages, and the time during which he performs services, the remuneration for which under section 1621 (b) constitutes wages, is excepted as remuneration for domestic labor, and the remuneration for services performed during such period shall be deemed to be wages.

During another week C works 22 hours in the home and 10 hours in the store. None of the remuneration paid by C for services performed during such week constitutes wages, since the remuneration paid for the services performed during the week constitutes wages. The rules set forth in this section do not apply (1) with respect to any remuneration paid for services performed by an employee for his employer if the periods for which remuneration is paid by such employer are such as to determine whether all the remuneration paid the employee for services performed during such payroll period shall be deemed to be included or excluded wages.

If one-half or more of the employee's time in the employment of a particular person in a payroll period is spent in performing services the remuneration for which constitutes wages, then none of the remuneration paid the employee for services performed in that payroll period shall be deemed to be wages.

If less than one-half of the employee's time in the employment of a particular person in a payroll period is spent in performing services the remuneration for which constitutes wages, wages, then all of the remuneration paid the employee for services performed in that payroll period shall be deemed to be wages.

Example (1). Employee A is employed by B who operates a farm and store. The remuneration paid A for services on the farm is excepted as wages, and if the remuneration paid for the services performed on the farm constitutes wages, and the remuneration paid for such services performed in that payroll period shall be deemed to be wages.

Example (2). Employee C is employed as a maid by D, a physician, whose home and office is located in a building. The remuneration paid C for services in the home is excepted as remuneration for domestic service, and the remuneration paid for her services in the store is excepted as wages. If the remuneration paid C for services performed during the week constitutes wages, then all of the remuneration paid C for services performed during that week shall be wages. During a particular week C works 20 hours in the home and 20 hours in the office. All of the remuneration paid C for services performed during that week shall be wages. If the remuneration paid C for services performed during that week constitutes wages, then all of the remuneration paid C for services performed during that week shall be wages.
any of the following persons over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer: (A) A son or daughter of the taxpayer, or a descendant of either, (B) A stepson or stepdaughter of the taxpayer, (C) A brother, sister, stepbrother, or stepsister of the taxpayer, (D) The father, mother of the taxpayer, or an ancestor of either, (E) A stepfather or stepmother of the taxpayer, (F) A son or daughter of a brother or sister of the taxpayer, (G) A brother or sister of the father or mother of the taxpayer, (H) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer.

As used in this paragraph, the terms "brother" and "sister" include a brother or sister by the half-blood. For the purposes of determining whether any of the foregoing relationships exist, a legally adopted child of a person shall be considered a child of such person by blood. The term "dependent" does not include any individual who is a citizen or subject of a foreign country unless such individual is a resident of the United States or of a country contiguous to the United States, or of a country to which a tax treaty is in effect, which is includible under section 22 (k) or section 171 in the gross income of such wife shall or is considered a payment by her husband for the support of any dependent.

§ 405.205 Rights to claim withholding exemptions. An employee receiving wages shall on any day be entitled to withholding exemptions as provided in section 25 (d). In order to receive the benefit of such exemptions, the employee must file with his employer a withholding exemption certificate as provided in section 1622 (b). See § 405.260. The number of exemptions to which an employee is entitled on any day depends upon his status as single or married, upon the number of his dependents, and upon the number of withholding exemptions claimed by his spouse.

A single person is entitled to one withholding exemption for himself. A married person is entitled to one withholding exemption for himself and one for his spouse, unless his spouse is employed and claims the withholding exemption for herself. Thus, a married couple is entitled to one withholding exemption for each spouse and they each may claim one exemption, but if one spouse does not claim his exemption the other spouse may claim both.

For the purposes of determining the number of withholding exemptions to which an employee is entitled for himself or his spouse on any day, the employee's status as a single person or a married person, if married, whether a withholding exemption is claimed by his spouse, shall be determined as of such day. For example, a married employee having no dependents has in effect a withholding exemption certificate claiming one exemption for himself and one for his wife. On February 5, 1945, his wife dies. On February 6, 1945, the employee has the status of a single person entitled to a withholding exemption certificate claiming one exemption for himself only. Accordingly, he is required to file a new withholding exemption certificate within 10 days from the date of death of his wife claiming not more than one withholding exemption.

Subject to the limitations stated below, an employee may also be entitled on any day to a withholding exemption for each individual who may be reasonably expected to be his dependent for the taxable year beginning in the calendar year in which the day falls. For the purposes of the withholding exemption for an individual who may be reasonably expected to be a dependent, the following rules shall apply:

(a) The determination that an individual may or may not be reasonably expected to be a dependent shall be made on the basis of facts existing at the beginning of the day for which a withholding exemption for such individual is to be claimed. The individual in respect of whom an exemption is claimed must be in existence and bear the required relationship to the employee on the day of the determination.

(b) The determination that an individual may or may not be reasonably expected to be a dependent shall be made on the basis of facts existing at the time for which a withholding exemption for such individual is to be claimed. The individual in respect of whom an exemption is claimed must be in existence and bear the required relationship to the employee on the day of the determination.

(c) For the employee to be entitled on any day to a withholding exemption for an individual as a dependent, such individual must on such day be reasonably expected to receive less than $500 of gross income for such calendar year, receive over half of his support from the employee during such calendar year, and be related to the employee in one of the relationships specified in section 25 (b) (3).

(d) If an employer makes the support of an individual before July 1 of any calendar year and intends to support such individual for the rest of such year, it will be considered reasonable for such employee to claim an exemption of the withholding exemption that he expects to furnish more than half the support of such individual for such calendar year. An employee is not entitled to claim a withholding exemption for an individual otherwise reasonably expected to be a dependent of the employee if such individual is a citizen of a foreign country, unless such individual is always resident during the calendar year a resident of the United States, Canada, or Mexico.
(c) The employee finds that an individual claimed as a dependent on a withholding exemption certificate will receive $500 or more of gross income of his or her own during the current calendar year.

Before December 1 of each year, every employer shall request his employees to file amended withholding exemption certificates for the ensuing year, in the event of change in their exemption status since the filing of their latest certificates.

If an individual is entitled to claim an exemption for the year in which the change occurs.

December, the new certificate must be furnished to the employer in cases in which the change occurs.

A withholding exemption certificate furnishes the employer with the number of exemptions claimed. Thus, the employer is entitled to the number of withholding exemptions claimed. The penalties are imposed upon any such individual who willfully supplies false or fraudulent information, or who willfully fails to supply information which would increase the tax required to be withheld at the source on his wages. The penalty in each instance is a fine not exceeding $100, or imprisonment for not more than one year, or both. Such penalties are in lieu of any other penalties otherwise provided by law for failure to furnish the information required by section 1622 (b) or for the furnishing of false or fraudulent information under such section.

§ 405.201 When withholding exemption certificates effective. A withholding exemption certificate is effective, with respect to such employer, on or before December 1, 1945, and to whom wages are payable on or before December 1, 1945, and to whom wages are payable on or before December 1, 1945, or on or before December 1, 1945, or on or before February 1, 1945, or on or before February 1, 1945, or on or before February 1, 1945, or on or before February 1, 1945.

Each employer is required to ask each employee to furnish a new withholding exemption certificate on Form W-4 (Rev. 1944) or on or before December 1, 1944. Every employee receiving wages shall furnish his employer the withholding exemption certificate so requested. A withholding exemption certificate furnished the employer in cases in which the change occurs.

Thus, for example, a decrease in the number of withholding exemptions claimed in a withholding exemption certificate in effect on such day, the employee will be, or may be reasonably expected to be, entitled at the beginning of his next taxable year under Chapter 1 of the Internal Revenue Code is different from the number to which the employee is entitled on such day.

The following rules shall be applicable:

(a) If such number is greater than the number of withholding exemptions claimed in a withholding exemption certificate on Form W-4 (Rev. 1944) in 1944, certificate was furnished on or before November 1944, and to whom wages are payable on or before December 1, 1945, or on or before February 1, 1945, or on or before February 1, 1945, or on or before February 1, 1945.

(b) If such number is less than the number of withholding exemptions claimed in a withholding exemption certificate in effect on such day, the employee will be, or may be reasonably expected to be, entitled at the beginning of his next taxable year under Chapter 1 of the Internal Revenue Code.

§ 405.202 New certificates to be furnished on or before December 1, 1945. Each employer is required to ask each employee to furnish a new withholding exemption certificate on Form W-4 (Rev. 1944) or on or before December 1, 1944. Every employee receiving wages shall furnish his employer an initial withholding exemption certificate on Form W-4 (Rev. 1944). A withholding exemption certificate furnished the employer on or before November 1944, and to whom wages are payable on or before December 1, 1945, or on or before February 1, 1945, or on or before February 1, 1945.

An employee filing a certificate on Form W-4 (Rev. 1944) in 1944 for use in 1945 may not claim on such certificate the number of withholding exemptions which he would be entitled to claim if the day on which certificate is furnished were January 1, 1945. The employer is not required to determine whether the employee has claimed the correct number of exemptions. However, if there is reason to believe that the employee has claimed an excessive number of exemptions, the employer shall advise the employee, in writing, of such belief.

A complete listing of the classes of relatives of the employee eligible to be counted for withholding exemptions is shown on Form W-4 (Rev. 1944).
ment, in December 1944 after December 1, 1944, on or before the date of commencement of employment, such certificate shall be given effect with the first payment of wages made on or after January 1, 1945. However, if the new certificate is not furnished on or before December 1, 1944, or on or before the date in December 1944 of commencement of employment with the employer, or if such employer is furnished before January 1, 1945, it shall take effect with the first payment of wages made on or after the first status determination date (January 1 or July 1) which occurs at least 30 days from the date on which it is furnished, except that at the election of the employer it may be made effective beginning with any payment of wages made on or after January 1, 1945. Where a new certificate on Form W-4 (Rev. 1944) is not filed until on or after January 1, 1945, and is not filed on or before the date of commencement of employment with the employer, and a withholding exemption certificate was in effect with the same employer on December 31, 1944, such new certificate need not be made effective until the first payment of wages made on or after the first status determination date (January 1 or July 1) which occurs 30 days after the date on which such certificate was furnished, but the employer, at his election, may make such certificate effective until the first payment of wages made after such certificate is filed.

A withholding exemption certificate on Form W-4 (Rev. 1944) may be made effective beginning with respect to an employee until another such certificate is filed. The application of the foregoing rules with respect to an employee until another such certificate is filed. The application of the foregoing rules with respect to an employee until another such certificate is filed.

Example (1). A is employed on December 1, 1944, as a salesclerk at a weekly salary of $1100 plus commissions. On December 31, 1944, the number of withholding exemptions claimed is one. During January 1945 A earned $276 in commissions, which together with his regular wages would have brought him to the $275 withholding bracket. The amount of tax required to be withheld with respect to the wages paid in January 1945 is $570. Under the wage bracket method, the amount of tax required to be withheld on the aggregate of the bonus of $276 and the last preceding semimonthly wage payment of $150, to be withheld on the aggregate of the wages paid for the payroll period ending on January 31, 1944, is $59.80.

Example (2). A is employed at a salary of $9,000 per annum paid semimonthly on the 15th day and the last day of each month, and was paid $900 on January 15, 1945. The Z Corporation is not obliged to make such certificate effective until the first payment of wages made on or after July 1, 1945, but may elect to make it effective beginning with any payment of wages made on or after January 1, 1945.

Example (3). A and his wife are both employees of the X Corporation. A's wife's withholding exemption certificate on Form W-4 (Rev. 1944) to be made effective with respect to the wages paid in each week for the payroll period ending on January 1, 1945.

Example (4). A is employed as a salesclerk at a monthly salary of $1000 plus commissions. On December 31, 1944, the number of withholding exemptions claimed is one. During January 1945 A earned $276 in commissions, which together with his regular wages would have brought him to the $275 withholding bracket. The amount of tax required to be withheld with respect to the wages paid in January 1945 is $570. Under the wage bracket method, the amount of tax required to be withheld on the aggregate of the bonus of $276 and the last preceding semimonthly wage payment of $150, to be withheld on the aggregate of the wages paid for the payroll period ending on January 31, 1944, is $59.80.

Example (5). A is employed at a salary of $9,000 per annum paid semimonthly on the 15th day and the last day of each month, and was paid $900 on January 15, 1945. The Z Corporation is not obliged to make such certificate effective until the first payment of wages made on or after July 1, 1945, but may elect to make it effective beginning with any payment of wages made on or after January 1, 1945.

Example (6). A is employed as a salesclerk at a monthly salary of $1000 plus commissions. On December 31, 1944, the number of withholding exemptions claimed is one. During January 1945 A earned $276 in commissions, which together with his regular wages would have brought him to the $275 withholding bracket. The amount of tax required to be withheld with respect to the wages paid in January 1945 is $570. Under the wage bracket method, the amount of tax required to be withheld on the aggregate of the bonus of $276 and the last preceding semimonthly wage payment of $150, to be withheld on the aggregate of the wages paid for the payroll period ending on January 31, 1944, is $59.80.
bonds, the employee, who is married and has two children, has a withholding exemption certificate in effect claiming four withholding exemptions. The tax to be withheld from the bonus paid on February 10, 1945, is computed as follows:

Wages paid in January 1945 for five payroll periods (5 x $365) $1825.00
Bonus paid February 10, 1945 $125.00
Aggregate of wages and bonus $2050.00
Average wage per payroll period ($2050.00 ÷ 5) $410.00
Computation of tax under percentage method:
Tax at 2.7 percent on ($60 - $11) $1.32
Tax at 5 percent on ($60 - $35) $2.88
Tax at 19.5 percent None

Tax on average wage for one week $21.00
Less: Tax previously withheld on weekly wage payments of $35 - $0.55 per week for five weeks 3.25
Tax to be withheld on supplemental wages $17.75
Computation of tax under wage bracket method:
Tax on $60 wage under weekly wage table $4.60 per week for five weeks $23.00
Less: Tax previously withheld on weekly wage payments of $35 - $0.70 per week for five weeks 3.50
Tax to be withheld on supplemental wages $19.50

§ 405.210 Wages paid for payroll period of more than one year. If wages are paid to an employee for a payroll period of more than one year, for the purpose of determining the amount of tax required to be deducted and withheld in respect of such wages:

(a) Under the percentage method, the amount of the tax shall be determined as if such payroll period constituted an annual payroll period, and

(b) Under the wage bracket method, the amount of the tax shall be determined as if such payroll period constituted a miscellaneous payroll period of 365 days.

§ 405.211 Wages paid on behalf of two or more employers. If a payment of wages is made to an employee by an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays the wages payable by another employer to such employee, the amount of the tax required to be withheld on each wage payment made to such agent, fiduciary, or other person shall be determined by the Commissioner in the manner in which the amount contributed to the employee by such agent, fiduciary, or other person shall be determined in respect to the wages of such employee.

405.212 Withholding on basis of average wages. The Commissioner may, under regulations prescribed by him with the approval of the Secretary, authorize employers (1) to estimate the average wages which will be paid to any employee in any quarter of the calendar year, or (2) to determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter. If the average wages which would be paid to such employee during such quarter shall be estimated or determined in the same manner as if such average amount had been paid by one employer, the tax required to be deducted and withheld shall be determined upon the aggregate amount of such wages, and paid to the credit of such employer, as if such wages were contributed by such employer. Any tax required to be deducted and withheld upon such wages shall be paid to the credit of such employer; but this subsection shall not be construed to relieve the employer from liability for the return and payment of 40 percent of the tax required to be withheld and Company B is liable for the return and payment of 20 percent of the tax.

A fiduciary, agent, or other person acting for two or more employers may be authorized to withhold the tax under section 1625 with respect to the wages of the employees of such employers. Such fiduciary, agent, or other person may also be authorized to make payments of the tax withheld at source on such wages and to furnish the receipts required under section 1625. Application for authorization for this purpose shall be addressed to the Commissioner of Internal Revenue, Washington, D. C. If such authority is granted by the Commissioner, all provisions of law (including penalties) and regulations prescribed in pursuance of law applicable in respect of an employer shall be applicable to such fiduciary, agent, or other person. However, the employer for whom such fiduciary, agent, or other person acts shall remain subject to all provisions of law (including penalties) and regulations prescribed in pursuance of law applicable in respect of employers.

405.213 Liability for tax. Every employer making payment of wages shall deduct and withhold upon such wages a tax equal to the sum of the following:

(a) Tax paid by recipient. If the employee, in violation of the provisions of this subchapter, fails to deduct and withhold the tax required to be deducted and withheld upon such wages, the employer shall be liable for the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be deemed to be paid by the employer; but this subsection shall not be construed to relieve the employer from liability for
any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

* * *

SEC. 1623. LIABILITY FOR TAX [AS ADDED BY SEC. 2 (a), CURRENT TAX PAYMENT ACT OF 1943].

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

Section 3601 of the Internal Revenue Code—Enforcement of Liability for Taxes Collected

Whenever any person is required to collect or withhold any internal-revenue tax from any other person, and does not so pay such tax to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

§ 405.301 Liability for tax. The employer is required to collect the tax by deducting and withholding the amount thereof from the employee's wages paid when earned, either actually or constructively. As to when wages are constructively paid, see § 405.1. An employer is required to deduct and withhold the tax notwithstanding the wages are paid in something other than money (for example, wages paid in stocks or bonds; see § 405.101) and to pay the tax to the collector or duly designated depository of the United States in the case of tax paid in money. If wages are paid in property other than money, the employer should make necessary arrangements to insure that the amount of the tax required to be withheld is available for payment to the collector.

Every person required to deduct and withhold the tax under section 1623 from the wages of an employee is liable for the payment of such tax whether or not it is collected from the employee. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct the tax at all, the amount of any such tax not paid as required is still recoverable from the employer. The employer will not be relieved of such liability for penalties or additions to the tax for failure to deduct and withhold within the time prescribed by law or regulations made in pursuance of law. The employer will not be relieved of such liability for payment of the tax required to be withheld unless he can show that the tax against which the tax under section 1623 may be credited is paid, the tax under section 1623 shall not be collected from the employer. Such payment does not, however, operate to relieve the employer of liability for penalties or additions to the tax for failure to deduct and withhold within the time prescribed by law or regulations made in pursuance of law.

The employer will not be relieved of such liability for payment of the tax required to be withheld unless he can show that the tax against which the tax under section 1623 may be credited is paid. The tax under section 1623 shall not be collected from the employer. This section makes no provision for such relief as may be available to the employer of any other employer, who as such employer, officer, employee, or member is under a duty to pay such tax in respect of which the violation occurs.

SUBPART E—CREDIT FOR TAX WITHHELD [SEC. 1622.—INCOME TAX COLLECTED AT SOURCE.—AS ADDED BY SEC. 2 (A), CURRENT TAX PAYMENT ACT OF 1943.]

(e) Noneductibility of tax in computing net income. The tax deducted and withheld under the subchapter shall not be allowed as a deduction by the employer of such tax imposed by the collector, or to the recipient of the income in computing net income for the purpose of any tax on income imposed by the collector.

SEC. 36. CREDIT FOR TAX WITHHELD ON WAGES [AS AMENDED BY SEC. 3, CURRENT TAX PAYMENT ACT OF 1943].

The amount deducted and withheld as tax under Subchapter D of Chapter 9 during any calendar year upon the wages of any individual shall be allowed as a credit to the recipient of the income against the tax imposed by chapter 1 of the Internal Revenue Code for the taxability year beginning in such calendar year. If more than one taxable year begins in such calendar year, such credit shall be allowed as a credit against the tax for the last taxable year so beginning.

§ 405.401 Nondereudctibility of tax and credit for tax withheld. The tax deducted and withheld at the source upon wages shall not be allowed as a deduction either to the employer or the recipient of the income imposed by the collector, or to the employer to such employee during such calendar year, and the amount of the tax deducted and withheld under this subchapter in respect of such wages.

Section 2707 provides severe penalties for a willful failure to deduct, or factually account for and pay over, the tax imposed by section 1623, or for a willful attempt in any manner to evade or defeat the tax. Such penalties may be incurred by an employer, by the employer, and any officer or employee of a corporate employer, or member or employee of any other employer, who as such employer, officer, employee, or member is under a duty to pay such tax in respect of which the violation occurs.

SUBPART F—RECEIPTS [SEC. 1625.—RECEIPTS.—AS ADDED BY SEC. 2 (A), CURRENT TAX PAYMENT ACT OF 1943.]

(a) Penalties for fraudulent receipt or failure to furnish receipt. In lieu of any other penalty provided by law (except the penalty provided by subsection (b) of this section), any person required under the provisions of section 1625 to furnish a receipt in respect of tax withheld pursuant to this subchapter [Subchapter D of Chapter 9] who willfully furnishes a false or fraudulent receipt, or who willfully fails to furnish a receipt in the manner, at the time, or, if his employment is terminated before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of wages is made, a written statement showing the wages paid by the employer to such employee during such calendar year, and the amount of the tax deducted and withheld under this subchapter in respect of such wages.

(b) Statement to employer. Information required to be furnished by this section in respect of any wages shall be furnished as such other times, shall be furnished in such form as the Commissioner, with the approval of the Secretary, may by regulations prescribe. In such form as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

(c) Extension of time. The Commissioner, under such regulations as may prescribe with the approval of the Secretary, may grant for a reasonable extension of time for the furnishing of this receipt in respect to the statements required to be furnished under this section.

SEC. 1626. PENALTIES [AS ADDED BY SEC. 2 (A), CURRENT TAX PAYMENT ACT OF 1943].

(a) Penalties for fraudulent receipt or failure to furnish receipt. In lieu of any other penalty provided by law (except the penalty provided by subsection (b) of this section), anyone required under the provisions of section 1626 to furnish a receipt in respect of tax withheld pursuant to this subchapter [Subchapter D of Chapter 9] who willfully furnishes a false or fraudulent receipt, or who willfully fails to furnish a receipt in the manner, at the time, or, if his employment is terminated before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of wages is made, a written statement showing the wages paid by the employer to such employee during such calendar year, and the amount of the tax withheld

§ 405.501 Receipts for tax withheld at source on wages.—(A) In general. Every employer or other person required to deduct and withhold tax shall furnish to each employee from whose wages taxes are withheld the original and duplicate of Form W-2 (Rev.), showing the name and address of the employer, the name and address of the employee, the amount of each payment, and the amount of the tax withheld.
during the calendar year. Such receipt on Form W-2 (Rev.) shall not show re-
numeration which does not constitute wages within the meaning of section 1621. Receipts prepared in substantially like form and size as Form W-2 (Rev.), but in no case larger than 6 by 3½ inches, will be acceptable if approved by the Commissioner.

The statement on Form W-2 (Rev.) shall be furnished to the employee on or before January 31 of the succeeding cal-
endar year, or if his employment is term-
inated before the close of such calendar year, on the day on which the last pay-
ment of wages is made.

(b) Extension of time for furnishing statements. The Commissioner may extend the time for furnishing the Withholding Re-
cipient (Form W-2 (Rev.) or W-2a) are submitted with the last quar-
terly return (Form W-3) for the year.

(c) Failure of employer to file return or pay tax. In the case of failure to file and file return or pay the tax required by this subchapter, within the time prescribed in section 1609, or of failure prescribed in pursuance of law, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to the tax shown to be due shall be increased to 3% of such tax.

Sec. 1627. OTHER LAWS APPLICABLE [AS ADDED BY SEC. 2 (a), CURRENT TAX PAYMENT ACT OF 1945].

All provisions of law, including penalties, applicable with respect to the tax imposed by section 1609 shall, insofar as applicable and not inconsistent with this subchapter, be applicable with respect to the tax under this subchapter.

Sec. 1627. OTHER LAWS APPLICABLE [AS ADDED BY SEC. 2 (a), CURRENT TAX PAYMENT ACT OF 1945].

The Commissioner, under regulations pre-

scribed by him with the approval of the Secretary, may require that any return, statement, or other document required to be filed under this chapter [Chapter 9] shall contain or be verified by a written declara-
tion that it is made under the penalties of perjury, and such declaration shall be in lieu of any oath otherwise required.

(b) Penalties. Every person who will-
fully makes a false or fraudulent return, statement, or other document, which con-
tains or is verified by a written declaration that it is made under the penalties of per-
jury, and which he does not believe to be true and correct as to every material matter, shall be guilty of a felony, and, upon conviction thereof, shall be punished by fine or by the pen-
alties prescribed for perjury in section 123 of the Criminal Code.

Section 1620 of the Internal Revenue Code—Collection and Payment of Taxes

(a) Administration. The taxes imposed by this chapter shall be collected by the Bureau of Internal Revenue under the di-

rection of the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.

(b) Method of collection and payment. Such taxes shall be paid in such manner, at such times, and under such conditions, not inconsistent with this sub-
chapter (either by making and filing returns, or by having them made and filed, or by withholding the entire tax or in securing proper identification of the taxpayer), as may be prescribed by the Com-
missioner, with the approval of the Secretary.

(c) Fractional parts of a cent. In the pay-
ment of any tax under this subchapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

Section 1630 of the Internal Revenue Code—Other Laws Applicable

All provisions of law, including penalties, applicable with respect to the tax imposed by section 1609, or the prov-

isions of section 3621, shall, insofar as applicable and not inconsistent with the provisions of this subchapter, be applicable with respect to the taxes imposed by this subchapter.

Section 2706 of the Internal Revenue Code—Records, Statements, and Returns

Every person required to file a return by this subchapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such other conditions, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.
In the district in which is located his legal residence. There shall be included with the return filed for the fourth quarter of the calendar year or with the employer's final return, if filed at an earlier date, the triplicate of each withholding tax receipt (Form W-2a) furnished employees.

The triplicate Forms W-2a, when filed with the collector, must be accompanied by Form W-3 and a list (preferably in the form of an adding machine tape) of the amounts shown on Forms W-2. If an employer's total payroll consists of a number of separate units or establishments, the triplicate Forms W-2a may be assembled accordingly and a separate list or tape submitted for each unit. In such case, a summary of amounts so submitted, the total of which will agree with the corresponding entry to be made on Form W-3. Where the number of triplicate Form W-2a is large, they may be forwarded in packages of convenient size.

When this is done, the packages should be identified with the name of the employer and consecutively numbered and Form W-3 should be placed in package No. 1. The number of packages should be indicated immediately after the employer's name on Form W-3. The tax return, Form W-1, and remittance in cases of payment in cash, should be filed in the usual manner, accompanied by a brief statement that Forms W-2a and W-3 are in separate packages.

Every person required to withhold and pay tax under section 1622 shall keep such records as will indicate the names and addresses of the persons employed during the year, the amounts and dates of payment to such persons. No specific form for such records has been prescribed. Such records shall be kept at all times subject to inspection by internal revenue officers.

The return must be signed by the employer or other person required to withhold and pay any tax under section 1622, or by his agent, as a sufficient declaration that it is made under the penalties of perjury.

If the person required to withhold and pay the tax under section 1622 shall have been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or other transfer took effect.

If no such sale or transfer occurred or the employer does not know the name of the person to whom the business was sold or transferred, this fact should be included in the statement. An employer who has only temporarily ceased to pay wages, in which case, the employer may continue to file returns, shall be entitled to a statement showing the date of the last payment of wages and the date when he expects to resume paying wages.

$ 405.503 Use of prescribed forms. Copies of the prescribed return forms will so far as possible be furnished by collectors without application therefor. An employer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Employers not supplied with the proper forms should make application therefor to the collector in ample time to have their returns prepared, verified, and filed with the collector on or before the due date. If the prescribed form is not available, a statement made by the employer disclosing the amount of taxes due may be accepted as a tentative return. If filed within the prescribed time the statement so made will relieve the employer from liability for the addition to tax imposed for the delinquent filing of the return by section 1622(d) (1), Provided, That without unnecessary delay such tentative return is supplemented by a return made on the proper form.

$ 405.504 Penalties for false returns. Subsection (b) of section 1630 provides for penalties in the case of any person who willfully makes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter. Such person shall be guilty of a felony, and, upon conviction, shall be subject to the penalties prescribed for perjury in section 125 of the Criminal Code.

SEC. 1631. USE OF GOVERNMENT DEPOSITORIES IN CONNECTION WITH PAYMENT OF TAXES [AS AMENDED BY SEC. 157, CIVIL REORGANIZATION ACT OF 1943].

The Secretary may authorize incorporated banks or trust companies which are depositaries or financial agents of the United States to receive any taxes under a certificate of deposit issued by the Comptroller of the Currency in a manner, at such times, and under such conditions as he may prescribe, and he may also authorize the Secretary of the Treasury to receive deposits of withheld taxes, pursuant to section 1631, all funds withheld as taxes during that calendar month. (All banks insured by the Federal Deposit Insurance Corporation are eligible to qualify as depositaries and financial agents.) On or before the last day of the month following the close of each quarter of each calendar year, every employer shall make a return on Form W-1 to the collector of his district, covering the aggregate amount of taxes withheld during that quarter, and attach to such return, as payment for the taxes shown thereon, receipts in the form approved by the Secretary of the Treasury, issued by the authorized depositary and financial agent evidencing the payment of funds withheld as taxes; Provided, however, That for taxes withheld during the last month of the quarter the employer may, at his election, in lieu of this method of payment, include with his return direct remittance to the collector for the amount of the taxes withheld during such last month of the quarter. The employer may obtain from his local bank the name and location of the nearest bank authorized to receive deposits of withheld taxes. A list of the depositaries and financial agents will be furnished each bank by the Federal Reserve banks. See Circular No. 714, Treasury Department Circular No. 714, dated June 25, 1943.

SUBPART II—ADJUSTMENTS AND REFUNDS

SEC. 1627. OTHER LAWS APPLICABLE (AS AMENDED BY SEC. 2 (1), CURRENT TAX PAYMENT ACT OF 1943).

All provisions of law, including penalties, applicable with respect to the tax imposed by section 1400 shall, insofar as applicable
and not inconsistent with the provisions of this subchapter [Subchapter D of Chapter 9], he shall include the fact that such tax was explained in the returns and not inconsistent with the provisions of this subchapter.

Section 1401 (c) of the Internal Revenue Code—Adjustments

If more or less than the correct amount of tax imposed by section 1401 is paid with respect to any wages paid, the employer may make proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as may be prescribed by regulations made under this subchapter.

§ 405.701 Quarterly adjustments—

(a) In general. If, for any quarter of the calendar year, more or less than the correct amount of the tax is withheld, or more or less than the correct amount of the tax is paid to the collector, proper adjustment, without interest, may be made in any subsequent quarter of the same calendar year. No adjustment, however, under the provisions of this section shall be made in respect of an underpayment for any quarter after receipt from the collector of notice and demand for the amount of the overpayment, or after receipt of a statement setting forth an assessment, but the amount shall be paid in accordance with such notice and demand; nor shall any adjustment under the provisions of this section be made in respect of an overpayment for any quarter after the filing of a claim for refund thereof. Every return on which an adjustment for a preceding quarter is reported must have securely attached to it a statement explaining the adjustment, and designating the quarterly return period in which the error occurred. If an adjustment of an overcollection of tax which the employer has repaid to an employee is reported on a return, such statement shall include the fact that such tax was repaid to the employee.

(b) Less than correct amount of tax withheld. If less than the correct amount of the tax is deducted from any wage payment and the error is ascertained prior to the making of the return on Form W-1 for the quarter in which such wage payments were made, the employer shall not report any overcollection of tax to the employer only to the extent that the amount of the overpayment was not deducted and withheld under such subchapter by the employer.

§ 405.702 Refunds or credits. Where there has been an overpayment of tax under Subchapter D, Chapter 9, Internal Revenue Code, refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under such subchapter by the employer.

SUBPART F—MISCELLANEOUS PROVISIONS

SEC. 1627. OTHER LAWS APPLICABLE (AS ADDED BY SEC. 2 (a), CURRENT TAX PAYMENT ACT OF 1943)

All provisions of law, including penalties, applicable with respect to the tax imposed by section 1401 shall, insofar as applicable, be interpreted as if such provisions were contained in this subchapter [Subchapter D of Chapter 9], be applicable with respect to the tax under this subchapter.

Section 3770 (a) of the Internal Revenue Code—Authority to Make Abatements

(a) If the Commissioner believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal-revenues laws will be jeopardized or forestalled by any action or the omission of any action of the taxpayer, he may, in the discretion of the Commissioner, authorize the taxpayer, by agreement, to avoid the collection of the tax by paying the tax to the collector without interest and without demand; nor shall any adjustment, without interest, be made, without demand for payment thereof based upon such agreement, or in any manner wrongfully collected.

(b) The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and
Jeopardy assessments. Whenever, in the opinion of the collector, the collection of the tax will be jeopardized by delay, he should report the case promptly to his superior by telegram or letter. The communication should recite the full name and address of the person involved, the tax-return period or periods for which the tax is due, the amount of tax due for each period, the date any return was filed by or for the taxpayer for such period, a reference to any prior assessment made for such period against the taxpayer and statement as to the reason for the recommendation, which will enable the Commissioner to assess the tax, together with all penalties and interest due. Upon assessment such tax, penalty, and interest shall become immediately due and payable, whereupon the collector will issue immediately a notice and demand for payment of the tax, penalty, and interest.

The assessment in whole or any part of the amount of the jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired, and with such sureties as the collector deems necessary. Such bond shall be conditioned upon the payment of the amount of the assessment, which is stayed, at the time at which, but for the jeopardy assessment, such amount would be due. In lieu of sureties or sureties the taxpayer may deposit with the collector negotiable bonds or notes of the United States, or negotiable bonds or notes fully guaranteed by the United States, having a par value not less than the amount of the bond required to be furnished, together with, and agreement adequate to become the collector in case of default to collect or sell such bonds or notes so deposited.

Upon refusal to pay, or failure to pay or give bond, the collector will proceed to distraint or levy on all personal property of the taxpayer in his possession, or by distraint upon the real estate of the taxpayer. The amount due to the collector on or before the date prescribed in § 405.601 is not added under § 405.701, interest accrues at the rate of 5 percent per annum, subject to the minimum addition to the tax provided by section 1262 (c). See § 405.805.

Addition to tax for failure to pay an assessment after notice and demand. (a) If tax, penalty, or interest is assessed and the entire amount thereof is not paid within 10 days after the date of issuance of notice and demand for payment thereof, based on such assessment, there accrues under section 1262 (c) (1) a 5 percent penalty with respect to the amount remaining unpaid at the expiration of such period. (b) If, within 10 days after the date of issuance of notice and demand, a claim for abatement of any amount of the assessment is filed with the collector, the 5 percent penalty does not attach with respect to such amount. If the claim is rejected in whole or in part, and the amount rejected is not paid, the collector shall issue notice and demand for such amount. If payment is not made within 10 days after the date the collection is issued, the 5 percent penalty attaches with respect to the amount rejected. The filing of the claim does not stay the running of interest.

Section 1420 (b) of the Internal Revenue Code—Addition to tax in case of delinquency

If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 1401 (c) and 1411) at the rate of 5 per centum per annum from the date the tax became due until paid.

Section 3655 of the Internal Revenue Code—Addition for delinquent return or list

(a) Delivery. Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner, give notice to the person to pay and demanded by the notice to pay and demanded therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the tax or taxes and demanding payment thereof.

(b) Addition for nonpayment. If such person does not pay the taxes, within ten days after the service of the notice or demand by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of 5 per centum additional upon the amount of taxes, and interest at the rate of 5 per centum per annum from the date of such notice to the date of payment.

Additions to tax for delinquent or false returns—Delinquent returns. If a person fails to make and file a return required by these regulations within the prescribed time, unless it is shown that a certain percent of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to be due to reasonable cause and not due to willful neglect. The amount to be added to the tax is 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days during which failure continues, but not exceeding in the aggregate 25 percent of the tax, subject, however, to the minimum addition to the tax provided by section 1262 (c). See § 405.805. In computing the period of delinquency all Sundays and holidays after the due date are counted. Two classes of delinquents are subject to this addition to the tax:

(1) Those who do not file returns and for whom returns are made by a collector, a deputy collector, or the Commissioner; and

(2) Those who file tardy returns and are unable to show reasonable cause for the delay.

A person who files a tardy return and wishes to avoid the addition to the tax for delinquency must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of a statement which should be attached to the return as a part thereof.

False returns. If a false or fraudulent return is willfully made, the addition to tax under section 3612 (d) (2) is 50 percent of the total tax due for the entire period involved, including any tax previously paid.

§ 405.803 Minimum addition to the tax. If an employer fails to file a return or pay the tax required to be withheld within the prescribed time in §§ 405.001 and 405.002, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, the addition to the tax shall not be less than $10.

§ 405.804 Additions to tax for fraudulent return or list willfully made. The Commissioner shall add to the tax 50 percent of the amount of such return or list willfully made, the Commissioner shall add to the tax 50 percent of its amount.

(1) Provisions under this section are to be applied in accordance with the following rules:

(a) In the case of failure to file a return or pay the tax required to be withheld within the prescribed time in §§ 405.001 and 405.002, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, the addition to the tax shall not be less than $10. This provision is to be applied in accordance with the following rules:

(1) In the case of failure to file a Return of Income Tax Withheld on Wages (Form W-1) within the prescribed time, the addition to the tax shall be computed as provided by section 3612 (d) and if less than $10 shall be increased to that amount.

(2) Where the failure to pay the tax when due, the addition to the tax shall be computed as provided by section 1420 (b) and if less than $10 shall be increased to that amount.
Section 2429 of the Internal Revenue Code—
Rules and Regulations

(a) Authorization.—(1) In general.—
* * * The Commissioner, with the approval of the Secretary, shall make and publish rules and regulations for the enforcement of this subsection.

(2) In case of change in law.—The Commissioner may make all such regulations, not inconsistent with the provisions of this title, as the Commissioner may deem necessary by reason of any alteration of law in relation to internal revenue.

(b) Retrospective of regulations or rulings.—The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, registration, or requirement relating to the internal revenue laws, shall be applied without retrospective effect.

§ 405.808 Promulgation of regulations.

In pursuance of the Internal Revenue Code and other internal revenue laws, the regulations prescribed under Section 1429 of the Internal Revenue Code are hereby prescribed. Regulations 115, as amended, are hereby superseded with respect to wages paid on or after January 1, 1945.

[Seal]
Joseph D. Nutting, Jr.,
Commissioner of Internal Revenue.

Approved: December 9, 1944.

Joseph J. O'Connell, Jr.,
Acting Secretary of the Treasury.

[F. R. Doc. 44-18222; Filed, Dec. 12, 1944; 11:41 a.m.]

TITLE 32—NATIONAL DEFENSE

Chapter IX—War Production Board


PART 1010—SUSPENSION ORDERS

[Suspension Order 8-62]

I. L. Guss

I. L. Guss, of 207 North 5th Street, Pasco, Washington, is engaged in the business of general contracting and construction. In November, 1943, he began construction of, and thereafter completed, a warehouse with a production floor area less than 10,000 square feet for his own account in block 22, Gerry's Addition, Pasco, Washington, at an estimated cost of $2000, without authorization of the War Production Board and in violation of Conservation Order L-41; this violation was the result of gross negligence. In January of 1944, he entered into a contract for the construction of a theater building (not the warehouse) which was authorized by the War Production Board, but he used only lumber, new lumber, and steel bars, with no alteration in such construction; however, he purchased in his own name new lumber, a large part of which was restricted Douglass fir and received reinforcing steel bars and incorporated them in such construction, a grossly negligent violation of Conservation Order L-41. In January of 1944, respondent placed a purchase order for 9500 pounds of reinforcing steel bars for which no approval was required by the Council of the Council of National Defense and the Federal Trade Commission, and used a preference rating of AA-3 and an allotment symbol which had been assigned to a defense