

§ 31.3403-1

(5) *Additional withholding permitted.* Consistent with the provisions of section 3402(p), a tribal member and a tribe may enter into an agreement to provide for the deduction and withholding of additional amounts from payments in order to satisfy the anticipated tax liability of the tribal member. The agreement may be made in a manner similar to that described in § 31.3402(p)-1 (with respect to voluntary withholding agreements between employees and employers).

(b) *Effective date.* This section applies to payments made after December 31, 1994.

[T.D. 8634, 60 FR 65238, Dec. 19, 1995]

§ 31.3403-1 Liability for tax.

Every employer required to deduct and withhold the tax under section 3402 from the wages of an employee is liable for the payment of such tax whether or not it is collected from the employee by the employer. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. See, however, § 31.3402(d)-1. The employer is relieved of liability to any other person for the amount of any such tax withheld and paid to the district director or deposited with a duly designated depository of the United States.

§ 31.3404-1 Return and payment by governmental employer.

If the United States, or a State, Territory, Puerto Rico, or a political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, is an employer required to deduct and withhold tax under Chapter 24, the return of the amount deducted and withheld as such tax may be made by the officer or employee having control of the payment of the wages or other officer or employee appropriately designated for that purpose. (For provisions relating to the execution and filing of returns, see Subpart G of the regulations in this part.)

26 CFR Ch. I (4-1-06 Edition)

§ 31.3405(c)-1 Withholding on eligible rollover distributions; questions and answers.

The following questions and answers relate to withholding on eligible rollover distributions under section 3405(c) of the Internal Revenue Code of 1986, as added by section 522(b) of the Unemployment Compensation Amendments of 1992 (Public Law 102-318, 106 Stat. 290) (UCA). For additional UCA guidance under sections 401(a)(31), 402(c), 402(f), and 403(b)(8) and (10), see §§ 1.401(a)(31)-1, 1.402(c)-2, 1.402(f)-1, and 1.403(b)-2 of this chapter, respectively.

LIST OF QUESTIONS

Q-1: What are the withholding requirements under section 3405 for distributions from qualified plans and section 403(b) annuities?

Q-2: May a distributee elect under section 3405(c) not to have Federal income tax withheld from an eligible rollover distribution?

Q-3: May a distributee be permitted to elect to have more than 20-percent Federal income tax withheld from an eligible rollover distribution?

Q-4: Who has responsibility for complying with section 3405(c) relating to the 20-percent income tax withholding on eligible rollover distributions?

Q-5: May the plan administrator shift the withholding responsibility to the payor and, if so, how?

Q-6: How does the 20-percent withholding requirement under section 3405(c) apply if a distributee elects to have a portion of an eligible rollover distribution paid to an eligible retirement plan in a direct rollover and to have the remainder of that distribution paid to the distributee?

Q-7: Will the plan administrator be subject to liability for tax, interest, or penalties for failure to withhold 20 percent from an eligible rollover distribution that, because of erroneous information provided by a distributee, is not paid to an eligible retirement plan even though the distributee elected a direct rollover?

Q-8: Is an eligible rollover distribution that is paid to a qualified defined benefit plan subject to 20-percent withholding?

Q-9: If property other than cash, employer securities, or plan loans is distributed, how is the 20-percent income tax withholding required under section 3405(c) accomplished?

Q-10: What assumptions may a plan administrator make regarding whether a benefit is an eligible rollover distribution for purposes of determining the amount of a distribution that is subject to 20-percent mandatory withholding?