

## Fiscal Service, Treasury

## §215.9

Withholding Agreement set forth in subpart C.

[71 FR 2150, Jan. 13, 2006]

### Subpart C—Withholding Agreement

#### §215.5 In general.

This subpart is the text of the Withholding Agreement between the Secretary and the State, city or county. The terms used in this agreement are defined in §215.2 of this part.

[42 FR 33731, July 1, 1977. Redesignated and amended at 71 FR 2150, Jan. 13, 2006]

#### §215.6 Parties.

The parties to this agreement are the Secretary and the State, city or county which has entered into this agreement pursuant to 5 U.S.C. 5516, 5517, or 5520 and Executive Order 11997 (June 22, 1977).

[42 FR 33731, July 1, 1977. Redesignated at 71 FR 2150, Jan. 13, 2006]

#### §215.7 Compliance by agencies.

(a) In the case of an agreement with a State, the head of each agency is required to withhold State income taxes from the compensation of:

(1) Employees of such agency who are subject to such taxes and whose regular place of Federal employment is within the State, and

(2) Members of the Armed Forces who are subject to such taxes and who are legal residents of the State.

The foregoing is also applicable with respect to a State whose statutes permit but do not require withholding by employers, provided the employee voluntarily elects to have such tax withheld.

(b) In the case of an agreement with a city or county, the head of each agency is required to withhold city or county income or employment taxes from the compensation of any employee of the agency who is subject to the tax, and

(1) Whose regular place of Federal employment is within the city or county, or

(2) Is a resident of the city or county.

(c) In withholding taxes, the head of each agency, except as otherwise pro-

vided in this agreement, shall comply with the withholding provisions of the State, city or county income or employment tax statute, regulations, procedural instructions and reciprocal agreements related thereto.

(Pub. L. 95-365, 92 Stat. 599 (5 U.S.C. 5520))

[42 FR 33731, July 1, 1977, as amended at 44 FR 4670, Jan. 23, 1979. Redesignated at 71 FR 2150, Jan. 13, 2006]

#### §215.8 Withholding certificates.

Each agency may require employees or members of the Armed Forces under its jurisdiction to complete a withholding certificate in order to calculate the amount to be withheld. The agency shall use the withholding certificate which the State, city or county has prescribed. Where the State, city or county has not prescribed a certificate, the agency may use a certificate approved by the Department of the Treasury. The agency may rely on the information in the certificate. Copies of completed certificates shall be provided to the taxing authority by agencies upon request.

[42 FR 33731, July 1, 1977. Redesignated at 71 FR 2150, Jan. 13, 2006]

#### §215.9 Change of legal residence by members of the Armed Forces.

(a) In determining the legal residence of a member of the Armed Forces for tax withholding purposes, the head of an agency at all times may rely on the agency's current records, which may include a certificate of legal residence. The form of the certificate of legal residence shall be approved by the Department of the Treasury. A change of legal residence of a member of the Armed Forces shall become effective for tax withholding purposes only after a member of the Armed Forces completes a certificate indicating a new legal residence and delivers it to the agency.

(b) Heads of agencies shall notify the State of prior legal residence of the member of the Armed Forces involved on a monthly basis concerning the change of the member's legal residence. The notification shall include the name, social security number, current mailing address and the new legal residence of such member of the Armed

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Forces. The effective date of the change in legal residence shall also be included in the notification.

[42 FR 33731, July 1, 1977. Redesignated at 71 FR 2150, Jan. 13, 2006]

### § 215.10 Agency withholding procedures.

(a) State income tax shall be withheld only on the entire compensation of Federal employees and members of the Armed Forces. Nonresident employees, who under the State income tax law are required to allocate at least three-fourths of their compensation to the State, shall be subject to withholding on their entire compensation. Nonresident employees, who under the State income tax law are required to allocate less than three-fourths of their compensation to the State, may elect to:

(1) Have State income tax withheld on their entire compensation, or

(2) Have no income tax withheld on their compensation.

(b) In calculating the amount to be withheld from an employee's or a member's compensation, each agency shall use the method prescribed by the State income tax statute or city or county ordinance or a method which produces approximately the tax required to be withheld:

(1) By the State income tax statute from the compensation of each employee or member of the Armed Forces subject to such income tax, or

(2) By the city or county ordinance from the compensation of each employee subject to such income or employment tax.

(c) Where it is the practice of a Federal agency under Federal tax withholding procedure to make returns and payment of the tax on an estimated basis, subject to later adjustment based on audited figures, this practice may be applied with respect to the State, city or county income or employment tax where the agency has made appropriate arrangements with the State, city or county income tax authorities.

(d) Copies of Federal Form W-2, "Wage and Tax Statement", may be used for reporting withheld taxes to the State, city or county.

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(e) Withholding shall not be required on wages earned but unpaid at the date of an employee's or member's death.

(f) Withholding of District of Columbia income tax shall not apply to pay of employees who are not residents of the District of Columbia as defined in 47 District of Columbia Code, chapter 15, subchapter II.

[42 FR 33731, July 1, 1977. Redesignated at 71 FR 2150, Jan. 13, 2006]

### § 215.11 Miscellaneous provisions.

Nothing in this agreement shall be deemed:

(a) To require collection by agencies of the United States of delinquent tax liabilities of Federal employees or members of the Armed Forces, or

(b) To consent to the application of any provision of law of the State, city or county which has the effect of:

(1) Imposing more burdensome requirements upon the United States than it imposes on other employers, or

(2) Subjecting the United States or any of its officers or employees to any penalty or liability, or

(c) To consent to procedures for withholding, filing of returns, and payment of the withheld taxes to a State, city or county that do not conform to the usual fiscal practices of agencies, or

(d) To permit withholding of a city or county tax from the pay of a Federal employee who is not a resident of, or whose regular place of Federal employment is not within, the State in which the city or county is located, unless the employee consents to the withholding, or

(e) To permit the withholding of city or county income or employment taxes from the pay of members of the Armed Forces of the United States, or

(f) To allow agencies to accept compensation from a State, city or county for services performed in withholding of State or city or county income or employment taxes.

(Pub. L. 95-365, 92 Stat. 599 (5 U.S.C. 5520))

[42 FR 33731, July 1, 1977, as amended at 44 FR 4670, Jan. 23, 1979. Redesignated at 71 FR 2150, Jan. 13, 2006]

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### § 215.12 Supersession, amendment and termination provisions.

(a) This agreement supersedes any prior agreement between the Secretary of the Treasury and a State or city pursuant to 5 U.S.C. 5516, 5517, or 5520.

(b) This agreement shall be subject to any amendment of 5 U.S.C. 5516, 5517, 5520 or Executive Order 11997, and any rules and regulations issued pursuant to them and amendments thereto.

(c) This agreement may be terminated as to a specific State or city or county which is a party to this agreement by providing written notice to that effect to the Secretary at least 90 days prior to the proposed termination.

[42 FR 33731, July 1, 1977. Redesignated at 71 FR 2150, Jan. 13, 2006]

## PART 223—SURETY COMPANIES DOING BUSINESS WITH THE UNITED STATES

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AUTHORITY: 80 Stat. 379; 5 U.S.C. 301; 6 U.S.C. 8.

### § 223.1 Certificate of authority.

The regulations in this part will govern the issuance by the Secretary of the Treasury of certificates of author-

ity to bonding companies to do business with the United States as sureties on, or reinsurers of, recognizances, stipulations, bonds, and undertakings, hereinafter sometimes called obligations, under the provisions of the Act of July 30, 1947 (61 Stat. 646, as amended; 6 U.S.C. 6-13), and the acceptance of such obligations from such companies so long as they continue to hold said certificates of authority.

[28 FR 1039, Feb. 2, 1963, as amended at 40 FR 6499, Feb. 12, 1975; 40 FR 8335, Feb. 27, 1975]

### § 223.2 Application for certificate of authority.

Every company wishing to apply for a certificate of authority shall address the Assistant Commissioner, Comptroller, Financial Management Service, U.S. Department of Treasury, Washington, DC 20226, who will notify the company of the data which the Secretary of the Treasury determines from time to time to be necessary to make application. In accord with 6 U.S.C. 8 the data will include a copy of the applicant's charter or articles of incorporation and a statement, signed and sworn to by its president and secretary, showing its assets and liabilities. A fee shall be transmitted with the application in accordance with the provisions of § 223.22(a)(i).

[34 FR 20188, Dec. 24, 1969, as amended at 37 FR 1232, Jan. 27, 1972; 40 FR 6499, Feb. 12, 1975; 43 FR 12678, Mar. 27, 1978; 49 FR 47002, Nov. 30, 1984]

### § 223.3 Issuance of certificates of authority.

(a) If, from the evidence submitted in the manner and form herein required, subject to the guidelines referred to in § 223.9 the Secretary of the Treasury shall be satisfied that such company has authority under its charter or articles of incorporation to do the business provided for by the Act referred to in § 223.1, and if the Secretary of the Treasury shall be satisfied from such company's financial statement and from any further evidence or information he may require, and from such examination of the company, at its own expense, as he may cause to be made, that such company has a capital fully paid up in cash of not less than \$250,000,