

above are satisfied, A's employer may determine the tax to be withheld with respect to such benefit by using a flat percentage rate of 20 percent. The employer may also determine the tax to be withheld with respect to such benefit by use of the method described in §31.3402(g)-1(a)(2).

(Approved by the Office of Management and Budget under control numbers 1545-0074 and 1545-0907)

[T.D. 8004, 50 FR 756, Jan. 7, 1985, as amended by T.D. 8009, 50 FR 7046, Feb. 20, 1985; T.D. 9849, 84 FR 9238, Mar. 14, 2019]

§31.3502-1 Nondeductibility of taxes in computing taxable income.

For provisions relating to the nondeductibility, in computing taxable income under subtitle A, of the taxes imposed by sections 3101, 3201, and 3211, and of the tax deducted and withheld under chapter 24, see §§1.164-2 and 1.275-1 of this chapter (Income Tax Regulations). For provisions relating to the credit allowable to the recipient of the income in respect of the tax deducted and withheld under chapter 24, see §1.31-1 of this chapter (Income Tax Regulations).

[T.D. 6780, 29 FR 18148, Dec. 22, 1964]

§31.3503-1 Tax under chapter 21 or 22 paid under wrong chapter.

If, for any period, an amount is paid as tax—

(a) Under chapter 21 or corresponding provisions of prior law by a person who is not liable for tax for such period under such chapter or prior law, but who is liable for tax for such period under chapter 22 or corresponding provisions of prior law, or

(b) Under chapter 22 or corresponding provisions of prior law by a person who is not liable for tax for such period under such chapter or prior law, but who is liable for tax for such period under chapter 21 or corresponding provisions of prior law,

the amount so paid shall be credited against the tax for which such person is liable and the balance, if any, shall be refunded. Each claim for refund or credit under this section shall be made on Form 843 and in accordance with §31.6402(a)-2 and the applicable provisions of section 6402(a) and the regula-

tions thereunder in Part 301 of this chapter (Regulations on Procedure and Administration).

§31.3504-1 Designation of agent by application.

(a) *In general.* In the event wages as defined in chapter 21 or 24 of the Internal Revenue Code (Code), or compensation as defined in chapter 22 of the Code, of an employee or group of employees, employed by one or more employers, is paid by a fiduciary, agent, or other person (“agent”), or if that agent has the control, receipt, custody, or disposal of (collectively “pays”) wages or compensation, the Internal Revenue Service may, subject to the terms and conditions as it deems proper, authorize that agent to perform the acts required of the employer or employers under those provisions of the Code and the regulations that apply, for purposes of the taxes imposed by the chapter or chapters, with respect to wages or compensation paid by the agent. If the agent is authorized by the Internal Revenue Service to perform such acts, all provisions of law (including penalties) and of the regulations applicable to an employer with respect to such acts shall be applicable to the agent. However, each employer for whom the agent acts shall remain subject to all provisions of law (including penalties) and of the regulations applicable to an employer with respect to such acts. Any application to authorize an agent to perform such acts, signed by the agent and the employer, shall be made on the form prescribed by the Internal Revenue Service and shall be filed with the Internal Revenue Service as prescribed in the instructions to the form and other applicable guidance.

(b) *Special rule for home care service recipients.* (1) *In general.* In the event an agent is authorized pursuant to paragraph (a) of this section to perform the acts required of an employer under chapters 21 or 24 on behalf of one or more home care service recipients, as defined in paragraph (b)(3) of this section, the Internal Revenue Service may authorize that agent to perform the acts as are required of employers for purposes of the tax imposed by chapter 23 of the Code with respect to wages

paid by the agent for home care services, as defined in paragraph (b)(2) of this section, rendered to the home care service recipient. If the agent is authorized by the Internal Revenue Service to perform such acts, all provisions of law (including penalties) and of the regulations applicable to an employer in respect of such acts shall be applicable to the agent. However, each employer for whom the agent acts shall remain subject to all provisions of law (including penalties) and of the regulations applicable to an employer with respect to such acts.

(2) *Home care services.* For purposes of this section, the term *home care services* includes health care and personal attendant care services rendered to the home care service recipient.

(3) *Home care service recipient.* For purposes of this section, the term *home care service recipient* means any individual who receives home care services, as defined in paragraph (b)(2) of this section, while enrolled, and for the remainder of the calendar year after ceasing to be enrolled, in a program administered by a Federal, state, or local government agency that provides Federal, state, or local government funds, to pay, in whole or in part, for home care services for that individual.

(c) *Effective/applicability dates.* An authorization under paragraph (a) in effect prior to December 12, 2013 continues to be in effect after that date. Paragraph (b) of this section applies to wages paid on or after January 1, 2014. However, pursuant to section 7805(b), taxpayers may rely on paragraph (b) of this section for all taxable years for which a valid designation is in effect under paragraph (a) of this section.

[T.D. 9649, 78 FR 75474, Dec. 12, 2013]

§ 31.3504-2 Designation of payor to perform acts of an employer.

(a) *In general.* A person (as defined in section 7701(a)(1)) that pays wages or compensation (“payor”) to the individual(s) performing services for any client pursuant to a service agreement, except as provided in paragraph (d) of this section, is designated to perform the acts required of an employer with respect to the wages or compensation paid. For purposes of this section the term *wages* has the same meaning as

the term *wages* has for purposes of chapters 21, 23, and 24, and the term *compensation* has the same meaning as the term *compensation* has for purposes of chapter 22. This section is not applicable if the payor has been authorized as an agent of the employer under § 31.3504-1.

(b) *Definitions*—(1) *Client.* The term *client* means an individual or entity that enters into a service agreement with the payor.

(2) *Service agreement.* (i) The term *service agreement* means an agreement pursuant to which the payor—

(A) Asserts it is the employer (or “co-employer”) of the individual(s) performing services for the client;

(B) Pays wages or compensation to the individual(s) for services the individual(s) perform for the client; and

(C) Assumes responsibility to collect, report, and pay, or assumes liability for, any taxes applicable under subtitle C of the Code with respect to the wages or compensation paid by the payor to the individual(s) performing services for the client.

(ii) For purposes of paragraph (b)(2)(i)(A) of this section, the payor may implicitly or explicitly assert it is the employer (or “co-employer”) of the individual(s) performing services for the client, including by agreeing to—

(A) Recruit and hire employees for the client or assign employees as permanent or temporary members of the client’s work force, or participate with the client in these actions;

(B) Hire the client’s employees as its own and then provide them back to the client to perform services for the client; or

(C) File employment tax returns using its own employer identification number that include wages or compensation paid to the individual(s) performing services for the client.

(c) *Effects of designation.* If a payor is designated to perform the acts required of an employer under this section then the following rules apply—

(1) A payor must perform the acts required of an employer under each applicable chapter of the Code and the relevant regulations with respect to the wages or compensation paid by such payor. All provisions of law (including penalties) and the regulations