

26 CFR 31.3402(p)-1 - Voluntary withholding agreements.

(a) Employer-employee agreement. An employee and his employer may enter into an agreement under section 3402(p)(3)(A) to provide for the withholding of income tax upon payments of amounts described in paragraph (b)(1) of § 31.3401(a)-3, made after December 31, 1970. An agreement may be entered into under this section only with respect to amounts which are includible in the gross income of the employee under section 61, and must be applicable to all such amounts paid by the employer to the employee. The amount to be withheld pursuant to an agreement under section 3402(p)(3)(A) shall be determined under the rules contained in section 3402 and the regulations thereunder. See § 31.3405(c)-1, Q&A-3 concerning agreements to have more than 20-percent Federal income tax withheld from eligible rollover distributions within the meaning of section 402.

(b) Form and duration of employer-employee agreement. (1)(i) Except as provided in subdivision (ii) of this subparagraph, an employee who desires to enter into an agreement under section 3402(p)(3)(A) shall furnish his employer with Form W-4 (withholding exemption certificate) executed in accordance with the provisions of section 3402(f) and the regulations thereunder. The furnishing of such Form W-4 shall constitute a request for withholding.

(ii) In the case of an employee who desires to enter into an agreement under section 3402(p)(3)(A) with his employer, if the employee performs services (in addition to those to be the subject of the agreement) the remuneration for which is subject to mandatory income tax withholding by such employer, or if the employee wishes to specify that the agreement terminate on a specific date, the employee shall furnish the employer with a request for withholding which shall be signed by the employee, and shall contain -

(a) The name, address, and social security number of the employee making the request,

(b) The name and address of the employer,

(c) A statement that the employee desires withholding of Federal income tax, and applicable, of qualified State individual income tax (see paragraph (d)(3)(i) of § 301.6361-1 of this chapter (Regulations on Procedures and Administration)), and

(d) If the employee desires that the agreement terminate on a specific date, the date of termination of the agreement.

If accepted by the employer as provided in subdivision (iii) of this subparagraph, the request shall be attached to, and constitute part of, the employee's Form W-4. An employee who furnishes his employer a request for withholding under this subdivision shall also furnish such employer with Form W-4 if such employee does not already have a Form W-4 in effect with such employer.

(iii) No request for withholding under section 3402(p)(3)(A) shall be effective as an agreement between an employer and an employee until the employer accepts the request by commencing to withhold from the amounts with respect to which the request was made.

(2) An agreement under section 3402(p)(3)(A) shall be effective for such period as the employer and employee mutually agree upon. However, either the employer or the employee may terminate the agreement prior to the end of such period by furnishing a signed written notice to the other. Unless the employer and employee agree to an earlier termination date, the notice shall be effective with respect to the first payment of an amount in respect of which the agreement is in effect which is made on or after the first “status determination date” (January 1, May 1, July 1, and October 1 of each year) that occurs at least 30 days after the date on which the notice is furnished. If the employee executes a new Form W-4, the request upon which an agreement under section 3402(p)(3)(A) is based shall be attached to, and constitute a part of, such new Form W-4.

(c) Other payments. The Secretary may issue guidance by publication in the Internal Revenue Bulletin (IRB) (which will be available at www.IRS.gov) describing other payments for which withholding under a voluntary withholding agreement would be appropriate and authorizing payors to agree to withhold income tax on such payments if requested by the payee. Requirements regarding the form and duration of voluntary withholding agreements authorized by this paragraph (c) will be provided in the IRB guidance issued regarding specific types of payments.

(d) Effective/applicability date.

(1) This section applies on and after September 16, 2014.

(86 Stat. 944, 26 U.S.C. 6364; 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 7096, 36 FR 5216, Mar. 18, 1971, as amended by T.D. 7577, 43 FR 59359, Dec. 20, 1978; T.D. 8619, 60 FR 49215, Sept. 22, 1995; T.D. 9692, 79 FR 55363, Sept. 16, 2014]