

Internal Revenue Code Section 3405

(a) Periodic payments

(1) Withholding as if payment were wages

The payor of any periodic payment (as defined in subsection (e)(2)) shall withhold from such payment the amount which would be required to be withheld from such payment if such payment were a payment of wages by an employer to an employee for the appropriate payroll period.

(2) Election of no withholding

An individual may elect to have paragraph (1) not apply with respect to periodic payments made to such individual. Such an election shall remain in effect until revoked by such individual.

(3) When election takes effect

Any election under this subsection (and any revocation of such an election) shall take effect as provided by subsection (f)(3) of section 3402 for withholding allowance certificates.

(4) Amount withheld where no withholding allowance certificate in effect

In the case of any payment with respect to which a withholding allowance certificate is not in effect, the amount withheld under paragraph (1) shall be determined under rules prescribed by the Secretary.

(b) Nonperiodic distribution

(1) Withholding

The payor of any nonperiodic distribution (as defined in subsection (e)(3)) shall withhold from such distribution an amount equal to 10 percent of such distribution.

(2) Election of no withholding

(A) In general

An individual may elect not to have paragraph (1) apply with respect to any nonperiodic distribution.

(B) Scope of election

An election under subparagraph (A)—

(i) except as provided in clause (ii), shall be on a distribution-by-distribution basis, or

(ii) to the extent provided in regulations, may apply to subsequent nonperiodic distributions made by the payor to the payee under the same arrangement.

(c) Eligible rollover distributions

(1) In general

In the case of any designated distribution which is an eligible rollover distribution—

(A) subsections (a) and (b) shall not apply, and

(B) the payor of such distribution shall withhold from such distribution an amount equal to 20 percent of such distribution.

(2) Exception

Paragraph (1)(B) shall not apply to any distribution if the distributee elects under section 401(a)(31)(A) to have such distribution paid directly to an eligible retirement plan.

(3) Eligible rollover distribution

For purposes of this subsection, the term “eligible rollover distribution” has the meaning given such term by section 402(f)(2)(A).

(d) Liability for withholding

(1) In general

Except as provided in paragraph (2), the payor of a designated distribution (as defined in subsection (e)(1)) shall withhold, and be liable for, payment of the tax required to be withheld under this section.

(2) Plan administrator liable in certain cases

(A) In general

In the case of any plan to which this paragraph applies, paragraph (1) shall not apply and the plan administrator shall withhold, and be liable for, payment of the tax unless the plan administrator—

(i) directs the payor to withhold such tax, and

(ii) provides the payor with such information as the Secretary may require by regulations.

(B) Plans to which paragraph applies

This paragraph applies to any plan described in, or which at any time has been determined to be described in—

(i) section 401(a),

(ii) section 403(a),

(iii) section 301(d) of the Tax Reduction Act of 1975, or

(iv) section 457(b) and which is maintained by an eligible employer described in section 457(e)(1)(A).

(e) Definitions and special rules

For purposes of this section—

(1) Designated distribution

(A) In general

Except as provided in subparagraph (B), the term “designated distribution” means any distribution or payment from or under—

- (i) an employer deferred compensation plan,
- (ii) an individual retirement plan (as defined in section 7701(a)(37)), or
- (iii) a commercial annuity.

(B) Exceptions

The term “designated distribution” shall not include—

- (i) any amount which is wages without regard to this section,
 - (ii) the portion of a distribution or payment which it is reasonable to believe is not includible in gross income, and
 - (iii) any amount which is subject to withholding under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations) by the person paying such amount or which would be so subject but for a tax treaty, or
 - (iv) any distribution described in section 404(k)(2).
- For purposes of clause (ii), any distribution or payment from or under an individual retirement plan (other than a Roth IRA) shall be treated as includible in gross income.

(2) Periodic payment

The term “periodic payment” means a designated distribution which is an annuity or similar periodic payment.

(3) Nonperiodic distribution

The term “nonperiodic distribution” means any designated distribution which is not a periodic payment.

(4) [Repealed]

(5) Employer deferred compensation plan

The term “employer deferred compensation plan” means any pension, annuity, profit-sharing, or stock bonus plan or other plan deferring the receipt of compensation.

(6) Commercial annuity

The term “commercial annuity” means an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any State.

(7) Plan administrator

The term “plan administrator” has the meaning given such term by section 414(g).

(8) Maximum amount withheld

The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property (other than securities of the employer corporation) received in the distribution. No amount

shall be required to be withheld under this section in the case of any designated distribution which consists only of securities of the employer corporation and cash (not in excess of \$200) in lieu of financial shares. For purposes of this paragraph, the term “securities of the employer corporation” has the meaning given such term by section 402(e)(4)(E).

(9) Separate arrangements to be treated separately

If the payor has more than 1 arrangement under which designated distributions may be made to any individual, each such arrangement shall be treated separately.

(10) Time and manner of election

(A) In general

Any election and any revocation under this section shall be made at such time and in such manner as the Secretary shall prescribe.

(B) Payor required to notify payee of rights to elect

(i) Periodic payments

The payor of any periodic payment—

(I) shall transmit to the payee notice of the right to make an election under subsection (a) not earlier than 6 months before the first of such payments and not later than when making the first of such payments,

(II) if such a notice is not transmitted under subclause (I) when making such first payment, shall transmit such a notice when making such first payment, and

(III) shall transmit to payees, not less frequently than once each calendar year, notice of their rights to make elections under subsection (a) and to revoke such elections.

(ii) Nonperiodic distributions

The payor of any nonperiodic distribution shall transmit to the payee notice of the right to make any election provided in subsection (b) at the time of the distribution (or at such earlier time as may be provided in regulations).

(iii) Notice

Any notice transmitted pursuant to this subparagraph shall be in such form and contain such information as the Secretary shall prescribe.

(11) Withholding includes deduction

The terms “withholding”, “withhold”, and “withheld” include “deducting”, “deduct”, and “deducted”.

(12) Failure to provide correct TIN

If—

(A) a payee fails to furnish his TIN to the payor in the manner required by the Secretary,
or

(B) the Secretary notifies the payor before any payment or distribution that the TIN furnished by the payee is incorrect,

no election under subsection (a)(2) or (b)(2) shall be treated as in effect and subsection (a)(4) shall not apply to such payee.

(13) Election may not be made with respect to certain payments outside the United States or its possessions

(A) In general

Except as provided in subparagraph (B), in the case of any periodic payment or nonperiodic distribution which is to be delivered outside of the United States and any possession of the United States, no election may be made under subsection (a)(2) or (b)(2) with respect to such payment.

(B) Exception

Subparagraph (A) shall not apply if the recipient certifies to the payor, in such manner as the Secretary may prescribe, that such person is not—

- (i) a United States citizen or a resident alien of the United States, or
- (ii) an individual to whom section 877 applies.

(f) Withholding to be treated as wage withholding under section 3402 for other purposes

For purposes of this chapter (and so much of subtitle F as relates to this chapter)—

(1) any designated distribution (whether or not an election under this section applies to such distribution) shall be treated as if it were wages paid by an employer to an employee with respect to which there has been withholding under section 3402, and

(2) in the case of any designated distribution not subject to withholding under this section by reason of an election under this section, the amount withheld shall be treated as zero.

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