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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 2.5@ WITHHOLDING TAX ON WAGES

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Chapter 2@ WITHHOLDING AND PAYMENT OF TAX

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Section 4328.6-1@ Extension of Withholding of Income Tax to Payment of Sick Pay When Requested by Payee

4328.6-1 Extension of Withholding of Income Tax to Payment of Sick Pay When Requested by Payee

(a)

In General. Under Section 13028.6 of the code, the payee (as defined in paragraph (g)(2) of this regulation) may request the payer (as defined in paragraph (g)(3) of this regulation) of the sick pay to withhold income tax with respect to payments of sick pay made on or after July 1, 1986. If such a request is made, the payer shall deduct and withhold as requested in all cases where the payee had filed a similar request for federal purposes pursuant to the provisions of Section 3402(o) of the Internal Revenue Code of 1986. Where the payee has not furnished the payer a similar notice for federal purposes, the payer is not required to deduct and withhold personal income tax.

(b)

Manner of Making a Request and Amount to Withhold. A payee who wishes a payer to deduct and withhold income tax from sick pay shall file a written request with the payer to deduct and withhold a specific whole dollar amount from each sick pay payment. The payee must include his or her social security account number in the request. The specific whole dollar amount shall be at least \$5 per month and shall not reduce the net amount of any sick pay received by the payee below \$10 per month.

(c)

When Request Takes Effect. The payer must deduct and withhold the amount specified in the request with respect to payments made more than seven days after the date on which the request is received by the payer. At the election of the payer, the request may take effect before this.

(d)

Duration and Termination of Request. A request under this section shall continue in effect until changed or terminated by payee. The payee may change the request by filing a new written request that meets all the requirements of paragraph (b) of this regulation. The new request shall take effect as specified in paragraph (c) of this regulation and the prior request shall be deemed terminated when the new request takes effect. The payee may terminate the request by furnishing the payer a signed written notice of termination in all cases where the payee has furnished the payer a similar notice for federal purposes pursuant to Section 3402(o) of the Internal Revenue Code of 1986. Where the payee has not furnished the payer a similar notice for federal purposes, the payer is not required to terminate the withholding of personal income tax. This written notice of termination shall take effect with respect to payments made more than 7 days after the date on which the notice of termination is received by the payer. At the election of the payer, the request may take effect with respect to any payment made on or after the date on which such notice was received by payer.

(e)

Special Rules. For purposes of the Personal Income Tax Law: (1) An amount which is requested to be withheld pursuant to this section shall be deemed a tax required to be deducted and withheld under Section 13020 of the code. (2) An amount deducted and withheld pursuant to this section shall be deemed an amount deducted and withheld under Section 13020 of the code. (3) The term "wages"

includes the gross amount of sick pay payment with respect to which there is in effect a request for withholding under this section. (4) The term "employer" includes a payer with respect to whom a request for withholding is in effect under this section. (5) The term "employee" includes a payee with respect to whom a request for withholding is in effect under this section. (6) The term "payroll period" includes the period of accrual with respect to which payments of sick pay which are subject to withholding under this section are ordinarily made.

(1)

An amount which is requested to be withheld pursuant to this section shall be deemed a tax required to be deducted and withheld under Section 13020 of the code.

(2)

An amount deducted and withheld pursuant to this section shall be deemed an amount deducted and withheld under Section 13020 of the code.

(3)

The term "wages" includes the gross amount of sick pay payment with respect to which there is in effect a request for withholding under this section.

(4)

The term "employer" includes a payer with respect to whom a request for withholding is in effect under this section.

(5)

The term "employee" includes a payee with respect to whom a request for withholding is in effect under this section.

(6)

The term "payroll period" includes the period of accrual with respect to which payments of sick pay which are subject to withholding under this section are ordinarily made.

(f)

Statements Required to Be Furnished to Payees. See Section 13050 of the code and the regulations thereunder for requirements relating to statements required to be furnished to payees.

(g)

Definitions. For purposes of this section: (1) The term "sick pay" means any payment made to an individual, which does not constitute wages (determined without regard to subdivision (a) of Section 13028.6 of the code and this section), which is paid to an employee pursuant to a plan to which the employer is a party, and which constitutes remuneration or payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of personal injuries or sickness. The term "personal injuries or sickness" shall have the same meaning as ascribed thereto by Section 105(a) of the Internal Revenue Code and the regulations thereunder. The term "sick pay" does not include any amounts either excludable from gross income under Section 104(a)(1), (2), (4) or (5), or Section 105(b) or (c) of the Internal Revenue Code. An employer is not a party to the plan if the plan is a contract between employees only and a third party payer or the employer makes no contributions to provide sick pay benefits under the plan, even if the employer withholds amounts over to the third party payer. (2) The term "payee" means an individual who is a citizen or resident of the United States and who receives a sick pay payment. (3) The term "payer" means any person making a sick pay payment who is the employer (as defined in Section 13005 and in Section 13009 of the code and regulations thereunder [except the reference in Section 13009 to cash tips is not applicable]) of the payee. If, however, the person making the payment is acting solely as an agent for another person, the term "payer" shall mean the other person and not the person actually making the payment.

(1)

The term "sick pay" means any payment made to an individual, which does not constitute wages (determined without regard to subdivision (a) of Section 13028.6 of the code and this section), which is paid to an employee pursuant to a plan to which the employer is a party, and which constitutes remuneration or payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of personal injuries or sickness. The term "personal injuries or sickness" shall have the same meaning as ascribed thereto by Section 105(a) of the Internal Revenue Code and the regulations thereunder. The term "sick pay" does not include any amounts either excludable from gross income under Section 104(a)(1), (2), (4) or (5), or Section 105(b) or (c) of the Internal Revenue Code. An employer is not a party to the plan if the plan is a contract between employees only and a third party payer or the employer makes no contributions to provide sick pay benefits under the plan, even if the employer withholds amounts over to the third party payer.

(2)

The term "payee" means an individual who is a citizen or resident of the United States and who receives a sick pay payment.

(3)

The term "payer" means any person making a sick pay payment who is the employer (as defined in Section 13005 and in Section 13009 of the code and regulations thereunder [except the reference in Section 13009 to cash tips is not applicable]) of the payee. If, however, the person making the payment is acting solely as an agent for another person, the term "payer" shall mean the other person and not the person actually making the payment.

(h)

Special Rules for Sick Pay Pursuant to Certain Collective Bargaining Agreements.

(1) In the case of any sick pay paid pursuant to a collective bargaining agreement between employee representatives and one or more employers which contains a provision specifying that Section 13028.6(c)(2) of the code is to apply to sick pay paid pursuant to such agreement and contains a provision for determining the amount to be deducted and withheld from each payment of sick pay, the following shall apply: (A) The requirements of Section 13028.6(a) of the code and this section that a request for withholding be in effect shall not apply. (B) The amount to be deducted and withheld from sick pay shall be determined according to the provisions of the agreement and not according to this section. This rule shall not, however, apply to payments enumerated in Section 13026 of the code (relating to employees incurring no income tax liability) and the regulations thereunder. (2) This section shall not apply unless the following are met: (A) Payer must be provided with the social security number of payee. The collective bargaining agreement may provide that employer furnish payer with this information, or payee may provide it to payer himself or herself. (B) Payer must be furnished with adequate information enabling him or her to determine whether payments under this section are subject to a collective bargaining agreement and the amount to be deducted and withheld pursuant to said agreement.

(1)

In the case of any sick pay paid pursuant to a collective bargaining agreement between employee representatives and one or more employers which contains a provision specifying that Section 13028.6(c)(2) of the code is to apply to sick pay paid pursuant to such agreement and contains a provision for determining the amount to be deducted and withheld from each payment of sick pay, the following shall apply: (A) The requirements of Section 13028.6(a) of the code and this section that a request for withholding be in effect shall not apply. (B) The amount to be deducted and withheld

from sick pay shall be determined according to the provisions of the agreement and not according to this section. This rule shall not, however, apply to payments enumerated in Section 13026 of the code (relating to employees incurring no income tax liability) and the regulations thereunder.

(A)

The requirements of Section 13028.6(a) of the code and this section that a request for withholding be in effect shall not apply.

(B)

The amount to be deducted and withheld from sick pay shall be determined according to the provisions of the agreement and not according to this section. This rule shall not, however, apply to payments enumerated in Section 13026 of the code (relating to employees incurring no income tax liability) and the regulations thereunder.

(2)

This section shall not apply unless the following are met: (A) Payer must be provided with the social security number of payee. The collective bargaining agreement may provide that employer furnish payer with this information, or payee may provide it to payer himself or herself. (B) Payer must be furnished with adequate information enabling him or her to determine whether payments under this section are subject to a collective bargaining agreement and the amount to be deducted and withheld pursuant to said agreement.

(A)

Payer must be provided with the social security number of payee. The collective bargaining agreement may provide that employer furnish payer with this information, or payee may provide it to payer himself or herself.

(B)

Payer must be furnished with adequate information enabling him or her to determine whether

payments under this section are subject to a collective bargaining agreement and the amount to be deducted and withheld pursuant to said agreement.