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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 3@ WITHHOLDING EXEMPTIONS

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Section 4340-1@ Withholding Exemption Certificates

4340-1 Withholding Exemption Certificates

(a)

Federal W-4 Normally Used. On or before the date on which an individual commences employment with an employer, or on such other date as required by Internal Revenue Code regulations, the individual shall furnish the employer with a signed withholding exemption certificate relating to marital status and the number of withholding exemptions claimed. An individual may claim additional withholding exemptions to the extent continuing deductions or state income tax credits would result in over withholding. For the requirements regarding the exemption from wage withholding, see subdivision (f) below. A federal withholding exemption certificate (Federal Form W-4) or Employment Development Department Form DE-4, or substantially similar forms, shall be used. For the purposes of this regulation references to Forms DE-4 or W-4 include forms devised by an employer which are substantially similar to the DE-4 or W-4 or the combination thereof.

(b)

Federal Conformity. The terms of the Internal Revenue Code and the regulations issued thereunder as they apply to withholding exemption certificates shall also apply for state withholding purposes. An employer who reports certain withholding exemption certificates to the Internal Revenue Service pursuant to 26 CFR Section 31.3402-1 (in general reporting is required if the employee claims more than nine exemptions or claims a status exempting him or herself from withholding entirely)

need not report such certificates to the state. The reporting of the certificates to the Internal Revenue Service shall satisfy state reporting requirements. A federal determination that a withholding exemption certificate is invalid or incorrect shall also be effective for state withholding purposes. Thus, if an employer is instructed by the Internal Revenue Service to withhold as though an employee were a single person claiming no exemptions, the employer must do likewise for state withholding purposes. If the Internal Revenue Service specifies marital status and the permissible number of exemptions an employee may claim, such a federal determination shall also be effective for state withholding purposes.

(c)

If an employee has filed a federal Form W-4 for federal withholding purposes and Employment Development Department Form DE-4 for state withholding purposes and both forms meet the reporting requirements under 26 CFR Section 31.3402-1, the reporting of the federal form to the Internal Revenue Service shall satisfy the state reporting requirement. In the event the W-4 is not reportable to the Internal Revenue Service but the DE-4 does meet the reporting requirements of 26 CFR Section 31.3402-1, then such DE-4 shall be filed with the Employment Development Department at the time and as part of the employer's next Quarterly Wage Report (Form DE-6) due after receipt of said Form DE-4.

(d)

If the employee does not agree that the federal determination is correct for state withholding purposes, the employee may request a review of his or her state withholding status. Such a review shall be requested in writing and directed to the Franchise Tax Board, Sacramento, California 94240. The review shall be limited to whether the federal determination of withholding status or number of exemptions claimed is correct for state withholding purposes. The employee shall have the

burden of showing the federal determination is incorrect for state purposes. The Franchise Tax Board shall notify the employer and employee in writing of the decision on whether the federal determination as to withholding status is correct for state purposes. If state withholding status differs from the federal determination, the notification to the employer and employee shall reflect the withholding status to which the employee is entitled and the permissible number of withholding exemptions which may be claimed. The decision shall be issued promptly after receipt of the request for review. The employee may file a new certificate for state withholding purposes but such certificate shall be subject to Internal Revenue Code regulations which concern the filing of new certificates after a federal determination of proper federal withholding status.

(e)

The Franchise Tax Board or the Employment Development Department may, by special direction in writing, require an employer to submit a W-4 or DE-4 when such forms are necessary for the administration of the withholding tax programs.

(f)

The requirements for a complete exemption from state wage withholding are the same as the federal requirements. An employer shall not deduct and withhold any tax under this part upon a payment of wages made to an employee if there is in effect, for federal income tax purposes, with respect to the payment a withholding exemption certificate furnished to the employer by the employee, pursuant to Section 3402(n) of the Internal Revenue Code and the applicable federal regulation Section 26 CFR 31.3402(n)-1, which contains statements that: (A) The employee incurred no liability for federal income tax imposed under subtitle A of the Internal Revenue Code for his preceding taxable year; and (B) The employee anticipates that he will incur no liability for federal income tax imposed by subtitle A of the

Internal Revenue Code for his current taxable year.

(A)

The employee incurred no liability for federal income tax imposed under subtitle A of the Internal Revenue Code for his preceding taxable year; and

(B)

The employee anticipates that he will incur no liability for federal income tax imposed by subtitle A of the Internal Revenue Code for his current taxable year.