

## Voluntary Withholding on Dividends and Other Distributions by Alaska Native Corporations

Notice 2013-77

### PURPOSE

Under this Notice, dividends and other distributions made by an Alaska Native Corporation to its shareholders are eligible for voluntary withholding under section 3402(p)(3)(B) of the Internal Revenue Code (Code) and § 31.3402(p)-1T of the Employment Tax Regulations.

### BACKGROUND

The Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601, *et seq*, was enacted as a means to resolve the issue of aboriginal land claims in Alaska. See 43 U.S.C. § 1601. The ANCSA required the division of Alaska into geographic regions and the incorporation of a Regional Corporation for each region. 43 U.S.C. §§ 1606(a) and (d). The ANCSA also authorized the incorporation of other corporations, including Village Corporations, Urban Corporations, and Group Corporations. 43 U.S.C. § 1607. Alaska Native Corporation (ANC) means any Regional, Village, Urban, or Group Corporation. 43 U.S.C. § 1602(m). ANCs are incorporated under the laws of Alaska to conduct business for profit, and are expressly authorized to promote the health, education, and welfare of their shareholders. 43 U.S.C. §§ 1606(d) and (r). To achieve these goals, the ANCSA authorizes the issuance of stock in ANCs to Natives as defined in 43 U.S.C. § 1602(b). The ANSCA permits the Native shareholders to receive dividends and other distributions from the ANCs. 43 U.S.C. §§ 1606(g) and (h)(1)(A)(ii).

Section 3402(p) of the Code allows for voluntary income tax withholding agreements in certain circumstances. Under section 3402(p)(3)(B), the Secretary may prescribe regulations to allow income tax withholding from any payment which the Secretary finds that withholding would be appropriate if the person making and the person receiving the payment agree to the withholding. The agreement must be in the form and manner that the Secretary prescribes. For purposes of the income tax withholding provisions and the related procedural provisions in subtitle F of the Code, payments made during the period for which a voluntary withholding agreement is in effect are treated as if they were wages paid by an employer to an employee.

The Internal Revenue Service (IRS) has become aware that ANCs and their shareholders may benefit from the ability to enter into voluntary withholding agreements. Specifically, expanding the use of voluntary withholding agreements to dividends and other distributions made by an ANC to its shareholders will permit the shareholders to use the withholding regime (rather than the estimated tax payment process) to meet their tax payment obligations on a timely basis, will minimize the risk of underpayment of taxes, and will achieve administrative simplification for the

shareholders and the IRS.

Section 31.3402(p)-1T(c), which is effective on November 27, 2013, allows the Secretary to describe payments subject to voluntary withholding agreements in guidance to be published in the Internal Revenue Bulletin (IRB). The temporary regulations also provide that the requirements regarding the form and duration of the authorized voluntary withholding agreements will be provided in the IRB guidance issued regarding specific types of payments. This Notice is guidance meeting the requirements of § 31.3402(p)-1T(c).

#### ANC PAYMENTS SUBJECT TO VOLUNTARY WITHHOLDING

An ANC and any shareholder of the ANC may enter into an agreement for voluntary withholding under section 3402(p)(3)(B). Thus, dividends and other distributions paid by an ANC to a shareholder will be subject to voluntary income tax withholding under section 3402(p)(3)(B) if the shareholder requests the withholding and the ANC agrees to withhold.

The IRS designates Form W-4V, Voluntary Withholding Request, as the form a shareholder of an ANC should use to request income tax withholding from dividends or other distributions made to the shareholder by an ANC. Accordingly, a shareholder of an ANC who desires to enter into a voluntary withholding agreement under section 3402(p)(3)(B) should furnish the ANC with a completed Form W-4V. The shareholder should select the applicable percentage of withholding from those specified on line 6 of the Form W-4V (currently, 7 percent, 10 percent, 15 percent, or 25 percent). The furnishing of a completed Form W-4V constitutes a request for withholding.

The IRS intends to revise Form W-4V to specifically reflect the withholding authorized by this Notice. In the interim, shareholders of an ANC may use the current Form W-4V available at [www.irs.gov](http://www.irs.gov) annotated as appropriate, or any other written instrument containing the necessary information.

No request for withholding under section 3402(p)(3)(B) is effective as an agreement between an ANC and its shareholder until the ANC indicates to the shareholder that it accepts the request, whether by providing a written notice of acceptance or by commencing withholding. Under section 3403 of the Code, the ANC will be liable for any tax it is required to deduct and withhold pursuant to a voluntary withholding agreement. An agreement under section 3402(p)(3)(B) applies for such period as the ANC and its shareholder mutually agree upon or until either the ANC or the shareholder terminate the agreement by furnishing a signed written notice to the other. For purposes of the preceding sentence, a shareholder should submit a revised Form W-4V to the ANC to effectuate a termination.

#### EFFECTIVE DATE

This Notice applies on and after November 27, 2013.

## DRAFTING INFORMATION

The principal author of this Notice is Linda L. Conway-Hataloski of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For questions regarding this Notice, contact Linda L. Conway-Hataloski at (202) 317-6798 (not a toll-free call).