

## 26 CFR 31-3402(f)(2)-1

"(ii) The Internal Revenue Service may find that a copy of a withholding exemption certificate submitted contains a materially incorrect statement or it may determine, after written request to the employee for verification of the statements on the certificate, that it lacks sufficient information to determine if the certificate is correct.

[The IRS agent or officer responsible for reviewing an exempt W- 4 must either approve the certificate or comply with requirements of the Administrative Procedures Act (5 U.S.C. §§ 551 et seq.) in order to make an adverse determination. He must base his decision on "findings of fact and conclusions of law" (see the "based upon its findings" terminology in paragraph (iii) immediately following this (ii) paragraph.) The employee must be contacted and offered the opportunity to correct erroneous facts, if such exist, and the IRS decision-maker, who bears the burden of proving liability, must comply with provisions of 5 U.S.C. §§ 553 through 557 generally. The employee has the right to appeal adverse decisions prior to adverse IRS order being enforced. Simply sending notice to an employer claiming that an adverse decision has been made, without providing facts and law to support the claim, constitutes defective procedure, particularly if the employee hasn't been afforded the opportunity to dispute the decision via the administrative appeal process prescribed by the Administrative Procedures Act.]

... If the Internal Revenue Service so finds or determines and notifies the employer in writing that the certificate is defective, the employer shall then consider the certificate to be defective for purposes of computing amounts of withholding."

According to the law:

- 1) The Tax Examiner should have duly notified me that an adverse determination had been made.
- 2) The Examiner should have provided a "written request to the employee for verification of the statements on the certificate."
- 3) I should have been "contacted and offered the opportunity to correct erroneous facts."
- 4) I should have been notified of the Examiner's "findings of fact and conclusions of law" -- where the IRS has the burden of "proving liability.
- 5) I should have "been afforded the opportunity to dispute the decision via the administrative appeal process prescribed by the Administrative Procedures Act."

This material has been prepared for and presented in good faith as educational and informational purposes only. It is not meant to be legal advice or legal opinion on any specific matters – void where prohibited by law. NOTICE: If anything in this presentation is found to be in error a good faith effort will be made to correct it in timely fashion upon notification.