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(6) *Prospective employees.* While not mandatory, it is suggested that the employer advise any prospective employee who does not have an account number of the requirements of paragraphs (a) and (b) of this section.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6606, 27 FR 8517, Aug. 25, 1962]

§ 31.6051–1 Statements for employees.

(a) *Requirement if wages are subject to withholding of income tax*—(1) *General rule.* (i) Every employer, as defined in section 3401(d), required to deduct and withhold from an employee a tax under section 3402, or who would have been required to deduct and withhold a tax under section 3402 (determined without regard to section 3402(n)) if the employee had claimed no more than one withholding exemption, shall furnish to each such employee, in respect of the remuneration paid by such employer to such employee during the calendar year, the tax return copy and the employee's copy of a statement on Form W–2. For example, if the wage bracket method of withholding provided in section 3402(c)(1) is used, a statement on Form W–2 must be furnished to each employee whose wages during any payroll period are equal to or in excess of the smallest wage from which tax must be withheld in the case of an employee claiming one exemption. If the percentage method is used, a statement on Form W–2 must be furnished to each employee whose wages during any payroll period, reduced by the amount of one withholding exemption, are equal to or in excess of the smallest amount of wages from which tax must be withheld. See section 3402 (a) and (b) and the regulations thereunder. Each statement on Form W–2 shall show the following:

(a) The name, address, and identification number of the employer.

(b) The name and address of the employee, and his social security account number if wages as defined in section 3121(a) have been paid or if the Form W–2 is required to be furnished to the employee for a period commencing after December 31, 1962.

(c) The total amount of wages as defined in section 3401(a),

(d) The total amount deducted and withheld as tax under section 3402,

(e) The total amount of wages as defined in section 3121(a),

(f) The total amount of employee tax under section 3101 deducted and withheld (increased by any adjustment in the calendar year for overcollection, or decreased by any adjustment in such year for undercollection, of such tax during any prior year) and the proportion thereof (expressed either as a dollar amount, as a percentage of the total amount of wages as defined in section 3121(a), or as a percentage of the total amount of employee tax under section 3101) withheld as tax under section 3101(b) for financing the cost of hospital insurance benefits,

See paragraph (d) of this section for provisions relating to the time for furnishing the statement required by this subparagraph. See paragraph (f) of this section for an exception for employers filing composite returns from the requirement that statements for employees be on Form W–2. For the requirements relating to Form W–2 with respect to qualified State individual income taxes, see paragraphs (d)(3)(ii) of § 301.6361–1 of this chapter (regulations on Procedure and Administration).

(*g*) Such information relating to coverage the employee has earned under the Federal Insurance Contributions act, as may be required by Form W–2 or its instructions, and

(*h*) The total amount paid to the employee under section 3507 (relating to advance payment of earned income credit).

(ii) Payments made in 1955 under a wage continuation plan shall be reported on Form W–2 to the extent, and in the manner, provided in paragraph (b)(8)(i) of § 31.3401(a)–1.

(iii) In the case of statements furnished by the employer for whom services are performed, with respect to wages paid after December 31, 1955, ''the total amount of wages as defined in section 3401(a)'', as used in section 6051(a)(3), shall include all payments made directly by such employer under a wage continuation plan which constitute wages in accordance with paragraph (b)(8)(ii)(*a*) of § 31.3401(a)–1, without regard to whether tax has been withheld on such amounts.

(iv) Form W–2 is not required in respect of any wage continuation payment made to an employee by or on behalf of a person who is not the employer for whom the employee performs services but who is regarded as an employer under section 340(d)(1). See paragraph (b)(8) of §31.3401(a)–1.

(v) In the case of remuneration paid for service described in section 3121(m), relating to service in the uniformed services, performed after 1956, ''wages as defined in section 3121(a)'', as used in section 6051(a) (2) and (5), shall be determined in accordance with section 3121(i)(2) and section 3122.

(vi) In the case of remuneration in the form of tips received by an employee in the course of his employment, the amounts required to be shown by paragraphs (3) and (5) of section 6051(a) (see paragraph (a)(1)(i) (*c*) and (*e*) of this section) shall include only such tips as are reported by the employee to the employer in a written statement furnished to the employer pursuant to section 6053(a).

(2) *Statements for members of the Armed Forces of the United States.* Section 6051(b) contains certain special provisions which are applicable in the case of members of the Armed Forces of the United States in active service. In such case, Form W–2 shall be furnished to each such member of the Armed Forces if any tax has been withheld under section 3402 during the calendar year from the remuneration of such member or if any of the remuneration paid during the calendar year for such active service is includible under chapter 1 of the Code in the gross income of such member. Form W–2, in the case of such member, shall show, as ''the total amount of wages as defined in section 3401(a)'' as used in section 6051(a)(3), the amount of the remuneration paid during the calendar year which is not excluded under chapter 1 from the gross income of such member, whether or not such remuneration constitutes wages as defined in section 3401(a) and whether or not paid for such active service.

(3) *Undelivered statements for employees.* The Internal Revenue Service copy and the employee's copy of each withholding statement for the calendar year which the employer is required to furnish to the employee and which after reasonable effort he is unable to deliver to the employee shall be retained by the employer for the 4-year period prescribed in paragraph (e)(2) of §31.6001–1.

(b) *Requirement if wages are not subject to withholding of income tax*— (1) *General rule.* If during the calendar year an employer pays to an employee wages subject to the employee tax imposed by section 3101, but not subject to income tax withholding under section 3402, the employer shall furnish to such employee the tax return copy and the employee's copy of a statement on Form W–2 for such calendar year. Such statement shall show the following:

(i) The name and address of the employer,

(ii) The name, address, and social security account number of the employee,

(iii) The total amount of wages as defined in section 3121(a),

(iv) The total amount of employee tax deducted and withheld from such wages (increased by any adjustment in such year for overcollection, or decreased by any adjustment in such year for undercollection, of employee tax during any prior year) and the proportion thereof (expressed either as a dollar amount, as a percentage of the total amount of wages as defined in section 3121(a), or as a percentage of the total amount of employee tax under section 3101) withheld as tax under section 3101(b) for financing the cost of hospital insurance benefits, and

(v) Such information relating to coverage the employee has earned under the Federal Insurance Contributions Act, as may be required by Form W–2 or its instructions, and

(vi) The total amount paid to the employee under section 3507 (relating to advance payment of earned income credit).

See paragraph (d) of this section for provisions relating to the time for furnishing the statement required by this paragraph.

(2) *Uniformed services.* In the case of remuneration paid for service described in section 3121(m), relating to service in the uniformed services, performed after 1956, ''wages as defined in section 3121(a)'', as used in section 6051(a)(5),

shall be determined in accordance with section 3121(i)(2) and section 3122.

(c) *Correction of statements*—(1) *Federal Insurance Contributions Act.* If (i) the amount of employee tax under section 3101 deducted and withheld in the calendar year from the wages, as defined in section 3121(a), paid during such year was less or greater than the tax imposed by section 3101 on such wages by reason of the adjustment in such year of an overcollection or undercollection of the tax in any prior year, or (ii) regardless of the reason for the error or the method of its correction, the amount of wages as defined in section 3121(a), or tax under section 3101, entered on a statement furnished pursuant to this section to an employee for a prior year was incorrect, a corrected statement for such prior year reflecting the adjustment or the correct data shall be furnished to the employee. Such statement shall be marked ''Corrected by Employer''.

(2) *Income tax withholding.* A corrected statement shall be furnished to the employee with respect to a prior calendar year (i) to show the correct amount of wages, as defined in section 3401(a), paid during the prior calendar year if the amount of such wages entered on a statement furnished to the employee for such prior year is incorrect, or (ii) to show the amount actually deducted and withheld as tax under section 3402 if such amount is less or greater than the amount entered as tax withheld on the statement furnished the employee for such prior year. Such statement shall be indicated as corrected.

(3) *Cross reference.* For provisions relating to the disposition of the Internal Revenue Service copy of a corrected statement, see paragraph (b)(2) of §31.6011(a)–4 and paragraph (b) of §31.6051–2.

(d) *Time for furnishing statements*—(1)(i) *In general.* Each statement required by this section for a calendar year and each corrected statement required for the year shall be furnished to the employee on or before January 31 of the year succeeding such calendar year. If an employee's employment is terminated before the close of such calendar year, the employer, at his option, shall furnish the statement to the employee at any time after the termination but no later than January 31 of the year succeeding such calendar year. However, if an employee whose employment is terminated before the close of such calendar year requests the employer to furnish him the statement at an earlier time, and if there is no reasonable expectation on the part of both employer and employee of further employment during the calendar year, then the employer shall furnish the statement to the employee on or before the later of the 30th day after the day of the request or the 30th day after the day on which the last payment of wages is made. For provisions relating to the filing of the Internal Revenue Service copies of the statement, see §31.6051–2.

(ii) *Expedited furnishing*—(A) *General rule.* If an employer is required to make a final return under §31.6011(a)–6(a)(1) (relating to the final return for Federal Insurance Contributions Act taxes and income tax withholding from wages) on Form 941, or a variation thereof, the employer must furnish the statement required by this section on or before the date required for filing the final return. See §31.6071(a)–1(a)(1). However, if the final return under §31.6011(a)–6(a)(1) is a monthly return, as described in §31.6011(a)–5, the employer must furnish the statement required by this section on or before the last day of the month in which the final return is required to be filed. See §31.6071(a)–1(a)(2). Except as provided in paragraph (d)(2)(i) of this section, in no event may an employer furnish the statement required by this section later than January 31 of the year succeeding the calendar year to which it relates. The requirements set forth in this paragraph (d)(1)(ii) do not apply to employers with respect to employees whose wages are for domestic service in the private home of the employer. See §31.6011(a)–1(a)(3).

(B) *Requests by employees.* An employer is not permitted to furnish a statement pursuant to the provisions of the third sentence of paragraph (d)(1)(i) of this section (relating to written requests by terminated employees for Form W–2) at a time later than that required by the provisions of paragraph (d)(1)(ii)(A) of this section.

(C) *Effective date.* This paragraph (d)(1)(ii) is effective January 1, 1997.

(2) *Extensions of time*—(i) *In general* (*a*) The Director, Martinsburg Computing Center, may grant an extension of time in which to furnish to employees the statements required by this section. A request may be made by a letter to the Director, Martinsburg Computing Center. The request must contain:

(*1*) The employer's name and address;

(*2*) The employer's taxpayer identification number;

(*3*) The type of return (i.e., Form W–2); and

(*4*) A concise statement of the reasons for requesting the extension.

(*b*) The application must be mailed or delivered on or before the applicable due date prescribed in paragraph (d)(1) of this section for furnishing the statements required by this section.

(*c*) In any case in which an employer is unable, by reason of illness, absence, or other good cause, to sign a request for an extension, any person standing in close personal or business relationship to the employer may sign the request on his behalf, and shall be considered as a duly authorized agent for this purpose, provided the request sets forth a reason for a signature other than the employer's and the relationship existing between the employer and the signer. For provisions relating to extensions of time for filing the Social Security Administration copies of the statement, see §31.6081(a)–1(a)(3).

(ii) *Automatic Extension of Time.* The Commissioner may, in appropriate cases, publish procedures for automatic extensions of time to furnish Forms W–2 where the employer is required to furnish the Form W–2 on an expedited basis.

(e) *Reporting of reimbursements of or payments of expenses of moving from one residence to another residence after July 23, 1971.* Every employer who after July 23, 1971, makes reimbursement to, or payment to (other than direct cash reimbursement), an employee for his expenses of moving from one residence to another residence which is includable in gross income under section 82 shall furnish to the best of his ability to such employee information sufficient to assist the employee in the computation of any deduction allowable under section 217 with respect to such reimbursement or payment. The information required under this paragraph may be furnished on Form 4782 provided by the Internal Revenue Service or may be furnished on forms provided by the employer so long as the employee receives the same information he would have received had he been furnished with a completed Form 4782. The information shall include the amount of the reimbursement or payment and whether the reimbursement or payment was made directly to a third party for the benefit of an employee or furnished in kind to the employee. In addition, information shall be furnished as to whether the reimbursement or payment represents and expense described in subparagraphs (A) through (E) of section 217(b)(1), and if so, the amount and nature of the expenses described in each such subparagraph. The information described in this paragraph shall be furnished at the same time or before the written statement required by section 6051(a) is furnished in respect of the calendar year for which the information provided under this paragraph is required. The information required under this paragraph shall be provided for the taxable year in which the payment or reimbursement is received by the employee. For determining the taxable year in which a payment or reimbursement is received, see section 82 and §1.82–1.

(f) *Statements with respect to compensation, as defined in the Railroad Retirement Tax Act, paid after December 31, 1967*—(1) *Required information relating to excess medicare tax on compensation paid after December 31, 1971*—(i) *Notification of possible credit or refund.* With respect to compensation (as defined in section 3231(e)) paid after December 31, 1971, every employer (as defined in section 3231(a)) who is required to deduct and withhold from an employee (as defined in section 3231(b)) a tax under section 3201, shall include on or with the statement required to be furnished such employee under section 6051(a), a notice concerning the provisions of this title with respect to the allowance of a credit or refund of the tax on wages imposed by section 3101(b) and the tax on compensation imposed by section 3201 or 3211 which is treated as a tax on

wages imposed by section 3101(b). Such notice shall inform such employee of the eligibility of persons having a second employment, in addition to railroad employment, for a credit or refund of any excess hospital insurance tax which such persons have paid because of employment under both social security (including employee and self-employment coverage) and railroad retirement. See section 6413(c)(3) and paragraph (c) of §31.6413(c)–1, relating to special refunds with respect to compensation as defined in the Railroad Retirement Tax Act.

(ii) *Information to be supplied to employees upon request.* With respect to compensation (as defined in section 3231(e)) paid after December 31, 1971, every employer (as defined in section 3231(a)) who is required to deduct and withhold tax under section 3201 from an employee (as defined in section 3231(b)) who has also received wages during such year subject to the tax imposed by section 3101(b), shall upon request of such employee furnish to him a written statement showing—

(a) The total amount of compensation with respect to which the tax imposed by section 3101(b) was deducted.

(b) The total amount of employee tax under section 3201 deducted and withheld (increased by any adjustment in the calendar year for overcollection, or decreased by any adjustment in such year for undercollection, of such tax during any prior year), and

(c) The proportion thereof (expressed either as a dollar amount, or a percentage of the total amount of compensation as defined in section 3231(e), or as a percentage of the total amount of employee tax under section 3201) withheld as tax under section 3201 for financing the cost of hospital insurance benefits.

(2) *Statements on Form W–2 (RR).* (i) *Compensation paid during 1970 or 1971.* With respect to compensation (as defined in section 3231(e)) paid during 1970 or 1971, every employer (as defined in section 3231(a)) who is required to deduct and withhold from an employee (as defined in section 3231(b)) a tax under section 3402 with respect to compensation, or who would have been required to deduct and withhold a tax under section 3402 (determined without regard to section 3402(n)) if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of such compensation the tax return copy and the employee's copy of a statement on Form W–2 (RR) instead of Form W–2, unless such employers are permitted by the Internal Revenue Service to continue to use Form W–2 in lieu of Form W–2 (RR). If the wage bracket method of withholding provided in section 3402(c)(1) is used in respect of such compensation, a statement on Form W–2 (RR) must be furnished to each employee whose wages during any payroll period are equal to or in excess of the smallest wage from which tax must be withheld in the case of an employee claiming one exemption. If the percentage method is used, a statement on Form W–2 (RR) must be furnished to each employee whose wages during any payroll period are in excess of one withholding exemption for such payroll period as shown in the percentage method withholding table contained in section 3402(b)(1). Each statement on Form W–2 (RR) shall show the following:

(a) The name, address, and identification number of the employer,

(b) The name and address of the employee and his social security account number,

(c) The total amount of wages as defined in section 3401(a),

(d) The total amount deducted and withheld as tax under section 3402,

(e) The total amount of compensation as defined in section 3231(e), and

(f) The total amount of employee tax under section 3201 deducted and withheld (increased by any adjustment in the calendar year for overcollection, or decreased by any adjustment in such year for undercollection, of such tax during any prior year) and the proportion thereof (expressed either as a dollar amount, as a percentage of the total amount of compensation as defined in section 3231(e), or as a percentage of the total amount of employee tax under section 3201) withheld as tax under section 3201 for financing the cost of hospital insurance benefits.

The provisions of this chapter applicable to Form W–2, other than those relating solely to the Federal Insurance

Contributions Act, are hereby made applicable to Form W–2 (RR). See paragraph (d) of this section for provisions relating to the time and place for furnishing the statement required by this subparagraph.

(ii) *Compensation paid during 1968 or 1969.* At the option of the employer, the provisions of paragraph (f)(1)(i) of this section may apply with respect to compensation paid during 1968 or 1969.

(iii) Every employer who, pursuant to paragraph (i) or (ii) of this section, does not provide Form W–2 (RR) with respect to compensation must furnish the additional information required by Form W–2 (RR) upon request by the employee.

(g) *Employers filing composite returns.* Every employer who files a composite return pursuant to §31.6011(a)–8 shall furnish to his employees the statements required under this section, except that in lieu of Form W–2 the statements may be in any form which is suitable for retention by the employee and which contains all information required to be shown on Form W–2.

(h) *Statements with respect to the refundable earned income credit*—(1) *In general.* In respect of remuneration paid in any calendar year beginning after December 31, 1986, for services performed after December 31, 1986, every employer shall furnish Notice 797 (You May be Eligible for a Refund on Your Federal Income Tax Return Because of the Earned Income Credit (EIC)), or a written statement that contains an exact reproduction of the wording contained in Notice 797, to each employee with respect to whom the employer paid wages (within the meaning of section 3401(a)) during the calendar year and who did not have any income tax withheld by the employer during the calendar year. Notwithstanding the preceding sentence, no such statement need be furnished to an employee who claimed exemption from withholding pursuant to section 3402(n) for the calendar year.

(2) *Time for furnishing statement*—(i) *General rule.* Except as otherwise provided in paragraph (h)(2)(ii) of this section, the statement required by this paragraph (h) for a calendar year shall be furnished—

(A) In the case of an employee who is required to be furnished a Form W–2, Wage and Tax Statement, for the calendar year, within one week of (before or after) the date that the employee is furnished a timely Form W–2 for the calendar year (or, if a Form W–2 is not so furnished, on or before the date by which it is required to be furnished), and

(B) In the case of an employee who is not required to be furnished a Form W–2 for the calendar year, on or before February 7 of the year succeeding the calendar year.

(ii) *Special rule with respect to certain Forms W–2 for 1987 and 1988.* With respect to an employee who is not furnished a Form W–2 for calendar year 1987 before October 24, 1988, or who was furnished such form on or before June 11, 1987, the statement required by this paragraph (h) shall be furnished on or before October 24, 1988. With respect to an employee who is furnished a Form W–2 after June 11, 1987, and before October 24, 1988, the statement required by this paragraph (h) shall be furnished within one week of (before or after) the date the employee is furnished the Form W–2. With respect to an employee who is required to be furnished a Form W–2 for calendar year 1988 before October 24, 1988, but is not so furnished, the statement required by this paragraph (h) shall be furnished on or before that date.

(3) *Manner of furnishing statement.* If an employee is furnished a Form W–2 in a timely manner, the statement required by this paragraph (h) may be furnished with the employee's Form W–2. Any statement not so furnished shall be furnished by direct, personal delivery to the employee or by first class mail addressed to the employee at his or her current or last known address. For purposes of the preceding sentence, direct, personal delivery means hand delivery to the employee. Thus, for example, an employer does not meet the requirements of this paragraph (h) if the statement is sent through inter-office mail or is posted on a bulletin board.

(i) *Cross references.* For provisions relating to the penalties provided for the

willful furnishing of a false or fraudulent statement, or for the willful failure to furnish a statement, see §31.6674–1 and section 7204. For additional provisions relating to the inclusion of identification numbers and account numbers in statements on Form W–2, see §31.6109–1. For provisions relating to the penalty for failure to report an identification number or an account number, as required by §31.6109–1, see §301.6676–1 of this chapter (Regulations on Procedure and Administration). For the penalties applicable to information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1989, see sections 6721–6724 as amended by section 7711 of the Omnibus Budget Reconciliation Act of 1989. See section 6723 (prior to its amendment by section 7711 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106 (1989)) and §31.6723–1A of this chapter (as issued thereunder) for provisions relating to the penalty for failure to include correct information on an information return or a payee statement and for the exceptions to the penalty, particularly the exception for timely correction, with respect to information returns and payee statements the due date for which, determined without regard to extensions, is after December 31, 1986, and before January 1, 1990.

(86 Stat. 944, 26 U.S.C. 6364; 68A Stat. 917, 26 U.S.C. 7805; 68A Stat. 747, 26 U.S.C. 6051(c))

[T.D. 6516, 25 FR 13032, Dec. 20, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations to §31.6051–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§31.6051–2 Information returns on Form W–3 and Internal Revenue Service copies of Forms W–2.

(a) *In general.* Every employer who is required to make a return of tax under §31.6011(a)–1 (relating to returns under the Federal Insurance Contributions Act), §31.6011(a)–4 (relating to returns of income tax withheld from wages), or §31.6011(a)–5 (relating to monthly returns) for a calendar year or any period therein shall file the Social Security Administration copy of each Form W–2 required under §31.6051–1 to be furnished by the employer with respect to wages paid during the calendar year. Each Form W–2 and the transmittal Form W–3 shall together constitute an information return to be filed with the Social Security Administration office indicated on the instructions to such forms. However, in the case of an employer who elects to file a composite return pursuant to §31.6011(a)–8, the information return required by this section shall consist of magnetic tape (or other approved media) containing all information required to be on the employee statement, together with transmittal Form 4804.

(b) *Corrected returns.* The Social Security Administration copies of corrected Forms W–2 (or magnetic tape or other approved media) for employees for the calendar year shall be submitted with Form W–3 (or Form 4804), on or before the date on which information returns for the period in which the correction is made would be due under paragraph (a)(3)(ii) of §31.6071(a)–1, to the Social Security Administration office with which Forms W–2 are required to be filed.

(c) *Cross references.* For provisions relating to the time for filing the information returns required by this section and to extensions of the time for filing, see §§31.6071(a)–1(a)(3) and 31.6081(a)–1(a)(3), respectively. For the penalty provided in case of each failure to file, see paragraph (a) of §301.6652–1 of this chapter (Regulations on Procedure and Administration). For the penalties applicable to information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1989, see sections 6721–6724 as amended by section 7711 of the Omnibus Budget Reconciliation Act of 1989 (Publ. L. 101–239, 103 Stat. 2106 (1989). See section 6723 (prior to its amendment by section 7211 of the Omnibus Reconciliation Act of 1989) and §301.6723–1A of this chapter for provisions relating to the penalty for failure to include correct information on an information return or a payee statement and for the exceptions to the penalty, particularly the exception for timely correction, with respect to information returns and payee statements the due date for which, determined without regard to extensions,