

§ 31.6001-6

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(14) The agreement, if any, between the employer and the employee for the withholding of additional amounts of tax pursuant to § 31.3402(i)-1.

(15) To the extent material to a determination of tax liability, the dates, in each calendar quarter, on which the employee performed services not in the course of the employer's trade or business, and the amount of cash remuneration paid at any time for such services performed within such quarter. (See § 31.3401(a)(4)-1.)

(16) In the case of tips received by an employee after 1965 in the course of his employment, copies of any statements furnished by the employee pursuant to section 6053(a) unless the information disclosed by such statements is recorded on another document retained by the employer pursuant to the provisions of this paragraph.

(17) Any request of an employee under section 3402(h)(3) and § 31.3402(h)(3)-1 to have the amount of tax to be withheld from his wages computed on the basis of his cumulative wages, and any notice of revocation thereof.

The term "remuneration," as used in this paragraph, includes all payments whether in cash or in a medium other than cash, except that the term does not include payments in a medium other than cash for services not in the course of the employer's trade or business, and does not include tips received by an employee in any medium other than cash or in cash if such tips amount to less than \$20 for any calendar month. See §§ 31.3401(a)(11)-1 and 31.3401(a)(16)-1, respectively.

(b) The employer shall keep records of the details of each adjustment or settlement of income tax withheld under section 3402 made pursuant to the regulations in this part.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6606, 27 FR 8516, Aug. 25, 1962; T.D. 6908, 31 FR 16776, Dec. 31, 1966; T.D. 7001, 34 FR 1003, Jan. 23, 1969; T.D. 7048, 35 FR 10292, June 24, 1970; T.D. 7053, 35 FR 11628, July 21, 1970; T.D. 7888, 48 FR 17588, Apr. 25, 1983]

§ 31.6001-6 Notice by district director requiring returns, statements, or the keeping of records.

The district director may require any person, by notice served upon him, to

make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for any of the taxes to which the regulations in this part have application.

§ 31.6011-4 Requirement of statement disclosing participation in certain transactions by taxpayers.

(a) *In general.* If a transaction is identified as a *listed transaction* or a *transaction of interest* as defined in § 1.6011-4 of this chapter by the Commissioner in published guidance (see § 601.601(d)(2)(ii)(b) of this chapter), and the listed transaction or transaction of interest involves an employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, the transaction must be disclosed in the manner stated in such published guidance.

(b) *Effective/applicability date.* This section applies to listed transactions entered into on or after January 1, 2003. This section applies to transactions of interest entered into on or after November 2, 2006.

[T.D. 9350, 72 FR 43154, Aug. 3, 2007]

§ 31.6011(a)-1 Returns under Federal Insurance Contributions Act.

(a) *Requirement*—(1) [Reserved] For further guidance, see § 31.6011(a)-1T(a)(1).

(2) *Employers of agricultural workers.* Every employer who pays wages for agricultural labor with respect to taxes imposed by the Federal Insurance Contributions Act must make a return for the first calendar year in which the employer pays such wages and for each subsequent calendar year (whether or not wages are paid) until the employer has filed a final return in accordance with § 31.6011(a)-6. Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees," is the form prescribed for making the annual return required by this section, except that, if the employer's principal place of business is in Puerto Rico, or if the employer has employees who are subject to income tax withholding for Puerto Rico, the return must be made on Form 943-PR, "Planilla para la Declaración ANUAL de la Contribución

Federal del Patrono de Empleados Agricolas.” However, Form 943 is the form prescribed for making such return in the case of every employer of agricultural workers who is required pursuant to § 31.6011(a)-4 to make a return of income tax withheld from wages.

(3) *Employers of domestic workers.* Schedule H (Form 1040), “Household Employment Taxes,” is the form prescribed for use by every employer in making a return as required under paragraph (a)(1) of this section in respect of wages, as defined in the Federal Insurance Contributions Act, paid by the employer in any calendar year for domestic service as defined in section 3510. Schedule H (Form 1040) is generally filed as an attachment to an income tax return; however, if the employer does not otherwise have an obligation to file an income tax return, Schedule H (Form 1040) may be filed as a separate return. If, however, the employer is required under paragraph (a)(1) of this section to make a return on Form 941, “Employer’s QUARTERLY Federal Tax Return,” or under paragraph (a)(2) of this section to make a return on Form 943, “Employer’s Annual Federal Tax Return For Agricultural Employees,” or under paragraph (a)(5) of this section to make a return on Form 944, “Employer’s ANNUAL Federal Tax Return,” the employer may choose instead to report wages with respect to domestic workers on such Form 941, Form 943, or Form 944. If such wages are included on Form 941, Form 943, or Form 944, the employer must also include Federal unemployment tax for the employee(s) on Form 940, “Employer’s Annual Federal Unemployment (FUTA) Tax Return,” under the provisions of § 31.6011(a)-3.

(4) *Employers in Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.* Form 941-PR, “Planilla para la Declaración Federal TRIMESTRAL del Patrono,” (or Form 944-PR, “Planilla para la Declaración Federal ANUAL del Patrono,” if the IRS notified the employer that the Form 944-PR must be filed in lieu of Form 941-PR) is the form prescribed for use in making the return required under paragraph (a)(1) (or (a)(5)) of this section in the case of every employer

whose principal place of business is in Puerto Rico, or if the employer has employees who are subject to income tax withholding for Puerto Rico. Form 941-SS, “Employer’s QUARTERLY Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands),” (or Form 944-SS, “Employer’s ANNUAL Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands),” if the IRS notified the employer that Form 944-SS must be filed in lieu of Form 941-SS) is the form prescribed for use in making the return required under paragraph (a)(1) (or (a)(5)) of this section in the case of every employer whose principal place of business is in the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, or if the employer has employees who are subject to income tax withholding for these U.S. possessions. However, Form 941 (or Form 944 if the IRS notified the employer that Form 944 must be filed in lieu of Form 941) is the form prescribed for making such return in the case of every such employer who is required pursuant to § 31.6011(a)-4 to make a return of income tax withheld from wages.

(5) [Reserved]. For further guidance, see § 31.6011(a)-1T(a)(5).

(b) *When to report wages.* Wages with respect to which taxes are imposed by the Federal Insurance contributions Act shall be reported in the return of such taxes required under this section or § 31.6011(a)-5 for the return period in which they are actually paid unless they were constructively paid in a prior return period, in which case such wages shall be reported only in the return for such prior period. However, if such wages are deemed to be paid in a later return period, they shall be reported only in the return for such later period. See § 31.3121(a)-2 relating to the time when wages are paid or deemed to be paid.

(c) *Adjustments and refunds.* For rules applicable to adjustments and refunds of employment taxes, see sections 6205, 6402, 6413, and 6414, and the applicable regulations.

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(d) *Returns by employees in respect of tips.* If—

(1) An employee, during a calendar year, is paid wages in the form of tips which are subject to the tax under section 3101, and

(2) Any portion of the tax under section 3101 in respect of such wages cannot be collected by the employer from wages (exclusive of tips) of such employee or from funds turned over by the employee to the employer,

the employee shall make a return for the calendar year in respect of the employee tax not collected by the employer. Except as otherwise provided in this subparagraph, the return shall be made on Form 1040. The form to be used by residents of the Virgin Islands, Guam, or American Samoa is Form 1040SS. In the case of a resident of Puerto Rico who is not required to make a return of income under section 6012(a), the form to be used is Form 1040SS, except that Form 1040PR shall be used if it is furnished by the Internal Revenue Service to such resident for use in lieu of Form 1040SS.

(e) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071(a)-1 and 31.6091-1, respectively.

(f) *Wages paid in nonconvertible foreign currency.* For provisions relating to returns filed by certain employers who pay wages in nonconvertible foreign currency, see § 301.6316-7 of this chapter (Regulations on Procedure and Administration).

(g) [Reserved] For further guidance, see § 31.6011(a)-1T(g).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7001, 34 FR 1004, Jan. 23, 1969; T.D. 7001, 34 FR 1826, Feb. 7, 1969; T.D. 7200, 37 FR 16544, Aug. 16, 1972; T.D. 7351, 40 FR 17144, Apr. 17, 1975; T.D. 7396, 41 FR 1903, Jan. 13, 1976; T.D. 9239, 71 FR 14, Jan. 3, 2006; T.D. 9405, 73 FR 37375, July 1, 2008; T.D. 9440, 73 FR 79357, Dec. 29, 2008]

§ 31.6011(a)-1T Returns under Federal Insurance Contributions Act (temporary).

(a) *Requirement*—(1) *In general.* Except as otherwise provided in § 31.6011(a)-5, every employer required to make a return under the Federal Insurance Contributions Act, as in effect prior to 1955, for the calendar quarter ended De-

ember 31, 1954, in respect of wages other than wages for agricultural labor, shall make a return for each subsequent calendar quarter (whether or not wages are paid in such quarter) until he has filed a final return in accordance with § 31.6011(a)-6. Except as otherwise provided in § 31.6011(a)-5, every employer not required to make a return for the calendar quarter ended December 31, 1954, shall make a return for the first calendar quarter thereafter in which he pays wages, other than wages for agricultural labor, subject to the tax imposed by the Federal Insurance Contributions Act as in effect after 1954, and shall make a return for each subsequent calendar quarter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)-6. Except as otherwise provided in § 31.6011(a)-8 and in § 31.6011(a)-1(a)(3), (a)(4), and (a)(5), Form 941, “Employer’s QUARTERLY Federal Tax Return,” is the form prescribed for making the return required by this subparagraph. Such return shall not include wages for agricultural labor required to be reported on any return prescribed by § 31.6011(a)-1(a)(2). The return shall include wages received by an employee in the form of tips only to the extent of the tips reported by the employee to the employer in a written statement furnished to the employer pursuant to section 6053(a).

(a)(2) through (a)(4) [Reserved] For further guidance, see § 31.6011(a)-1(a)(2) through (a)(4).

(5) *Employers in the Employers’ Annual Federal Tax Program (Form 944)*—(i) *In general.* Employers notified of their qualification for the Employers’ Annual Federal Tax Program (Form 944) are required to file Form 944, “Employer’s ANNUAL Federal Tax Return,” instead of Form 941 to make a return as required by paragraph (a)(1) of this section. Upon proper request by the employer, the Internal Revenue Service (IRS) will notify employers in writing of their qualification for the Employers’ Annual Federal Tax Program (Form 944). Qualified employers are those with an estimated annual employment tax liability (that is, social security, Medicare, and withheld Federal income taxes) of \$1,000 or less for the entire calendar year, except