customer or service agreement described in §31.3504–2(b)(2) between a CPEO and a client must—

(i) In the case of a contract that is a CPEO contract—

(A) Contain the name and EIN of the CPEO reporting, withholding, and paying any applicable federal employment taxes with respect to any remuneration paid to individuals covered by the contract or agreement;

(B) Require the CPEO to provide to the customer the notices and information required by paragraph (g)(4) of this section;

(C) Describe the information that the CPEO will provide that is necessary for the customer to claim the credits specified in paragraph (e)(2) of this section; and

(D) Require the CPEO to notify the customer that the customer may also be liable for federal employment taxes on remuneration remitted by the CPEO to covered employees if the work sites at which they perform services do not (or ever cease to) meet the 85 percent threshold described in §301.7705–1(b)(17) of this chapter; and

(ii) In the case of a service agreement described in §31.3504–2(b)(2) that is not a CPEO contract (and thus the individuals covered by that contract are not covered employees), or if this section does not apply to the contract under paragraph (f) of this section, notify, or be accompanied by a notification to, the client that the service agreement or contract is not covered by section 3511 and does not alter the client's liability for federal employment taxes on remuneration remitted by the CPEO to the employees covered by the service agreement or contract.

(h) *Penalties and additions to tax*—(1) *In general.* A CPEO that is treated as an employer of a covered employee under this section and that is required to meet the reporting requirements of an employer is subject to the same penalties and additions to tax as an employer with respect to such reporting requirements, including, but not limited to, penalties and additions to tax under sections 6651, 6656, 6672, 6721, 6722, and 6723.

(2) *Failures to timely make reports required under section 3511.* CPEOs are subject to penalty under section 6652(n) with respect to reports required to be made to the IRS in paragraphs (g)(1) and (3) of this section and reports required to be made to customers in paragraph (g)(4) of this section.

(3) *Failures to attach Schedule R.* A CPEO is subject to penalty under section 6652(n) for failure to attach Schedule R (or successor form) to Forms 941, 940, or 943 as required by paragraph (g)(3)(ii) of this section. A CPEO is also subject to penalty under section 6723 for failure to include the EIN of each customer on Schedule R of Form 941, 940, or 943. See §301.6723–1 of this chapter for the application of the section 6723 penalty in the case of multiple failures on a single document.

(4) *Failures to file on magnetic media.* With respect to the requirement in paragraph (g)(3)(ii) of this section that a CPEO must file Forms 940, 941, and 943, along with all required schedules, on magnetic media, a failure to file on magnetic media does not constitute a failure to file for purposes of section 6651(a)(1) nor does it constitute a failure to make a report for purposes of section 6652(n). Rather, the requirement to file Forms 940, 941, and 943 on magnetic media is a condition of maintaining certification as a CPEO.

(i) *Applicability date.* The rules in this section apply on and after May 3, 2019.

[T.D. 9869, 84 FR 24379, May 28, 2019]

Subpart G—Administrative Provisions of Special Application to Employment Taxes (Selected Provisions of Subtitle F, Internal Revenue Code of 1954)

§31.6001–1 Records in general.

(a) *Form of records.* The records required by the regulations in this part shall be kept accurately, but no particular form is required for keeping the records. Such forms and systems of accounting shall be used as will enable the district director to ascertain whether liability for tax is incurred and, if so, the amount thereof.

(b) *Copies of returns, schedules, and statements.* Every person who is required, by the regulations in this part or by instructions applicable to any form prescribed thereunder, to keep any copy of any return, schedule,

statement, or other document, shall keep such copy as a part of his records.

(c) *Records of claimants.* Any person (including an employee) who, pursuant to the regulations in this part, claims a refund, credit or abatement, shall keep a complete and detailed record with respect to the tax, interest, addition to the tax, additional amount, or assessable penalty to which the claim relates. Such record shall include any records required of the claimant by paragraph (b) of this section and by §§ 31.6001–2 to 31.6001–5, inclusive, which relate to the claim.

(d) *Records of employees.* While not mandatory (except in the case of claims), it is advisable for each employee to keep permanent, accurate records showing the name and address of each employer for whom he performs services as an employee, the dates of beginning and termination of such services, the information with respect to himself which is required by the regulations in this subpart to be kept by employers, and the statements furnished in accordance with the provisions of § 31.6051–1.

(e) *Place and period for keeping records.* (1) All records required by the regulations in this part shall be kept, by the person required to keep them, at one or more convenient and safe locations accessible to internal revenue officers, and shall at all times be available for inspection by such officers.

(2) Except as otherwise provided in the following sentence, every person required by the regulations in this part to keep records in respect of a tax (whether or not such person incurs liability for such tax) shall maintain such records for at least four years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is the later. The records of claimants required by paragraph (c) of this section shall be maintained for a period of at least four years after the date the claim is filed.

(f) *Cross reference.* See §§ 31.6001–2 to 31.6001–5, inclusive, for additional records required with respect to the Federal Insurance Contributions Act, the Railroad Retirement Tax Act, the Federal Unemployment Tax act, and the collection of income tax at source on wages, respectively.

§ 31.6001–2 Additional records under Federal Insurance Contributions Act.

(a) *In general.* (1) Every employer liable for tax under the Federal Insurance Contributions Act shall keep records of all remuneration, whether in cash or in a medium other than cash, paid to his employees after 1954 for services (other than agricultural labor which constitutes or is deemed to constitute employment, domestic service in a private home of the employer, or service not in the course of the employer's trade or business) performed for him after 1936. Such records shall show with respect to each employee receiving such remuneration—

(i) The name, address, and account number of the employee and such additional information with respect to the employee as is required by paragraph (c) of § 31.6011(b)–2 when the employee does not advise the employer what his account number and name are as shown on an account number card issued to the employee by the Social Security Administration.

(ii) The total amount and date of each payment of remuneration (including any sum withheld therefrom as tax or for any other reason) and the period of services covered by such payment.

(iii) The amount of each such remuneration payment which constitutes wages subject to tax. See §§ 31.3121(a)–1 to 31.3121(a)(12)–1, inclusive.

(iv) The amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected. See paragraph (b) of § 31.3102–1 for provisions relating to collection of amounts equivalent to employee tax.

(v) If the total remuneration payment (paragraph (a)(1)(ii) of this section) and the amount thereof which is taxable (paragraph (a)(1)(iii) of this section) are not equal, the reason therefor.

(2) Every employer shall keep records of the details of each adjustment or settlement of taxes under the Federal

Insurance Contributions Act made pursuant to the regulations in this part. The employer shall keep as a part of his records a copy of each statement furnished pursuant to paragraph (c) of § 31.6011(a)–1.

(3) Every employer shall keep records of all remuneration in the form of tips received by his employees after 1965 in the course of their employment and reported to him pursuant to section 6053(a). The employer shall keep as part of his records employee statements of tips furnished him pursuant to section 6053(a) (unless the information disclosed by such statements is recorded on another document retained by the employer pursuant to paragraph (a)(1) of this section) and copies of employer statements furnished employees pursuant to section 6053(b).

(b) *Agricultural labor, domestic service, and service not in the course of employer's trade or business.* (1) Every employer who pays cash remuneration after 1954 for the performance for him after 1950 of agricultural labor which constitutes or is deemed to constitute employment, of domestic service in a private home of the employer not on a farm operated for profit, or of service not in the course of his trade or business shall keep records of all such cash remuneration with respect to which he incurs, or expects to incur, liability for the taxes imposed by the Federal Insurance Contributions Act, or with respect to which amounts equivalent to employee tax are deducted pursuant to section 3102(a). See §§ 31.3101–3, 31.3111–3, and 31.3121(a)–2 for provisions relating, respectively, to the liability for employee tax which is incurred when wages are received, the liability for employer tax which is incurred when wages are paid, and the time when wages are paid and received. Such records shall show with respect to each employee receiving such cash remuneration—

(i) The name of the employee.

(ii) The account number of each employee to whom wages for such services are paid within the meaning of § 31.3121(a)–2, and such additional information as is required by paragraph (c) of § 31.6011(b)–2 when the employee does not advise the employer what his account number and name are as shown on an account number card issued to the employee by the Social Security Administration.

(iii) The amount of such cash remuneration paid to the employee (including any sum withheld therefrom as tax or for any other reason) for agricultural labor which constitutes or is deemed to constitute employment, for domestic service in a private home of the employer not on a farm operated for profit, or for service not in the course of the employer's trade or business; the calendar month in which such cash remuneration was paid; and the character of the services for which such cash remuneration was paid. When the employer incurs liability for the taxes imposed by the Federal Insurance Contributions Act with respect to any such cash remuneration which he did not previously expect would be subject to the taxes, the amount of any such cash remuneration not previously made a matter of record shall be determined by the employer to the best of his knowledge and belief.

(iv) The amount of employee tax, or any amount equivalent to employee tax, collected with respect to such cash remuneration and the calendar month in which collected. See paragraph (b) of § 31.3102–1 for provisions relating to collection of amounts equivalent to employee tax.

(v) To the extent material to a determination of tax liability, the number of days during each calendar year after 1956 on which agricultural labor which constitutes or is deemed to constitute employment is performed by the employee for cash remuneration computed on a time basis.

(2) Every person to whom a ''crew leader'', as that term is defined in section 3121(i), furnishes individuals for the performance of agricultural labor after December 31, 1958, shall keep records of the name; permanent mailing address, or if none, present address; and identification number, if any, of such ''crew leader''.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7001, 34 FR 1003, Jan. 23, 1969]

§ 31.6001–3 Additional records under Railroad Retirement Tax Act.

(a) *Records of employers.* (1) Every employer liable for tax under the Railroad Retirement Tax Act shall keep records of all remuneration (whether in money or in something which may be used in lieu of money), other than tips, paid to his employees after 1954 for services rendered to him (including ''time lost'') after 1954. Such records shall show with respect to each employee—

(i) The name and address of the employee.

(ii) The total amount and date of each payment of remuneration to the employee (including any sum withheld therefrom as tax or for any other reason) and the period of service (including any period of absence from active service) covered by such payment.

(iii) The amount of such remuneration payment with respect to which the tax is imposed.

(iv) The amount of employee tax collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected.

(v) If the total payment of remuneration (paragraph (a)(1)(ii) of this section) and the amount thereof with respect to which the tax is imposed (paragraph (a)(1)(iii) of this section) are not equal, the reason therefor.

(2) The employer shall keep records of the details of each adjustment or settlement of taxes under the Railroad Retirement Tax Act made pursuant to the regulations in this part.

(b) *Records of employee representatives.* Every individual liable for employee representative tax under the Railroad Retirement Tax Act shall keep records of all remuneration (whether in money or in something which may be used in lieu of money) paid to him after 1954 for services rendered (including ''time lost'') by him as an employee representative after 1954. Such records shall show—

(1) The name and address of each employee organization employing him.

(2) The total amount and date of each payment of remuneration for services rendered as an employee representative (including any sum withheld therefrom as tax or for any other reason) and the period of service (including any period of absence from active service) covered by such payment.

(3) The amount of such remuneration payment with respect to which the employee representative tax is imposed.

(4) If the total payment of remuneration (paragraph (a)(2) of this section) and the amount thereof with respect to which the employee representative tax is imposed (paragraph (a)(3) of this section) are not equal, the reason therefor.

§ 31.6001–4 Additional records under Federal Unemployment Tax Act.

(a) *Records of employers.* Every employer liable for tax under the Federal Unemployment Tax Act for any calendar year shall, with respect to each such year, keep such records as are necessary to establish—

(1) The total amount of remuneration (including any sum withheld therefrom as tax or for any other reason) paid to his employees during the calendar year for services performed after 1938.

(2) The amount of such remuneration which constitutes wages subject to the tax. See § 31.3306(b)–1 through § 31.3306(b)(8)–1.

(3) The amount of contributions paid by him into each State unemployment fund, with respect to services subject to the law of such State, showing separately (i) payments made and neither deducted nor to be deducted from the remuneration of his employees, and (ii) payments made and deducted or to be deducted from the remuneration of his employees.

(4) The information required to be shown on the prescribed return and the extent to which the employer is liable for the tax.

(5) If the total remuneration paid (paragraph (a)(1) of this section) and the amount thereof which is subject to the tax (paragraph (a)(2) of this section) are not equal, the reason therefor.

(6) To the extent material to a determination of tax liability, the dates, in each calendar quarter, on which each 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 § 31.3306(c)(3)–1.

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. See § 31.3306(b)(7)–1.

(b) *Records of persons who are not employers.* Any person who employs individuals in employment (see §§ 31.3306(c)–1 to 31.3306(c)–3, inclusive) during any calendar year but who considers that he is not an employer subject to the tax (see § 31.3306(a)–1) shall, with respect to each such year, be prepared to establish by proper records (including, where necessary, records of the number of employees employed each day) that he is not an employer subject to the tax.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6658, 28 FR 6642, June 27, 1963]

§ 31.6001–5 Additional records in connection with collection of income tax at source on wages.

(a) Every employer required under section 3402 to deduct and withhold income tax upon the wages of employees shall keep records of all remuneration paid to (including tips reported by) such employees. Such records shall show with respect to each employee—

(1) The name and address of the employee, and after December 31, 1962, the account number of the employee.

(2) The total amount and date of each payment of remuneration (including any sum withheld therefrom as tax or for any other reason) and the period of services covered by such payment.

(3) The amount of such remuneration payment which constitutes wages subject to withholding.

(4) The amount of tax collected with respect to such remuneration payment, and, if collected at a time other than the time such payment was made, the date collected.

(5) If the total remuneration payment (paragraph (a)(2) of this section) and the amount thereof which is taxable (paragraph (a)(3) of this section) are not equal, the reason therefor.

(6) Copies of any statements furnished by the employee pursuant to paragraph (b)(12) of § 31.3401(a)–1 (relating to permanent residents of the Virgin Islands).

(7) Copies of any statements furnished by the employee pursuant to §§ 31.3401(a)(6)–1 and 31.3401(a)(7)–1, relating to nonresident alien individuals.

(8) Copies of any statements furnished by the employee pursuant to § 31.3401(a)(8)(A)–1 (relating to residence or physical presence in a foreign country).

(9) Copies of any statements furnished by the employee pursuant to § 31.3401(a)(8)(C)–1 (relating to citizens resident in Puerto Rico).

(10) The fair market value and date of each payment of noncash remuneration, made to an employee after August 9, 1955, for services performed as a retail commission salesman, with respect to which no income tax is withheld by reason of § 31.3402(j)–1.

(11) [Reserved]

(12) In the case of the employer for whom services are performed, with respect to payments made directly by him after December 31, 1955, under an accident or health plan (as defined in section 105 and the regulations thereunder)—

(i) The beginning and ending dates of each period of absence from work for which any such payment was made; and

(ii) Sufficient information to establish the amount and weekly rate of each such payment.

(13) The withholding exemption certificates (Forms W–4 and W–4E) filed with the employer by the employee.

(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) *In general.* Except as otherwise provided in paragraphs (a)(3) and (a)(5) of this section and in §31.6011(a)–5 every employer is required to make a return for the first calendar quarter in which the employer pays wages, other than wages for agricultural labor, subject to the tax imposed by the Federal Insurance Contributions Act, and is required to make a return for each subsequent calendar quarter (whether or not wages are paid therein) until the employer has filed a final return in accordance with §31.6011(a)–6. Except as otherwise provided in §31.6011(a)–8 and in paragraphs (a)(3), (a)(4), and (a)(5) of this section, Form 941, ''Employer's QUARTERLY Federal Tax Return,'' is the form prescribed for making the return required by this paragraph (a)(1). Such return shall not include wages for agricultural labor required to be reported on any return prescribed by paragraph (a)(2) of this section. 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).

(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 Agrícolas.'' 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.* Except as otherwise provided in paragraph (a)(5), Form 941–PR, ''Planilla para la Declaracion Federal TRIMESTRAL del Patrono,'' is the form prescribed for use in making the return required under paragraph (a)(1) 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. Except as otherwise provided in paragraph (a)(5), 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),'' is the form prescribed for use in making the return required under paragraph (a)(1) 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. Form 941 (or Form 944, as described under paragraph (a)(5) of this section, if the IRS notified the employer that Form 944 must be filed in lieu of Form 941) is the form prescribed for making the return in the case of every employer who is required pursuant to §31.6011(a)–4 to make a return of income tax withheld from wages.

(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 (or Form 941–SS or Form 941–PR under paragraph (a)(4) of this section) to make a return as required by paragraph (a)(1) of this section. Upon proper request by the employer, the IRS will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). The IRS will notify employers when they no longer qualify for the Employers' Annual Federal Tax Program (Form 944) and must file Forms 941 instead. 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 employers required under—

(A) Paragraph (a)(2) of this section to make a return on Form 943, ''Employer's Annual Federal Tax Return for Agricultural Employees''; or

(B) Paragraph (a)(3) of this section to make a return on Schedule H (Form 1040), ''Household Employment Taxes.''

(ii) *Requests to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).* The IRS has established procedures in Revenue Procedure 2009–51 published in the Internal Revenue Bulletin for employers to follow to request to participate in the Employers' Annual Federal Tax Program (Form 944) (to opt in) and to request to be removed from the Employers' Annual Federal Tax Program (Form 944) after becoming a participant in order to file Forms 941 instead (to opt out). The IRS will notify employers that their filing requirements have changed to Form 944 or Forms 941. Employers must follow the procedures in Revenue Procedure 2009–51 or its successor to request to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).

(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.

(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) *Returns by employees in respect of Additional Medicare Tax.* An employee who is paid wages, as defined in section 3121(a), subject to the tax under section 3101(b)(2) (Additional Medicare Tax), must make a return for the taxable year in respect of such tax. The return shall be made on Form 1040, ''U.S. Individual Income Tax Return.'' The form to be used by residents of the U.S. Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands is Form 1040–SS, ''U.S. Self-Employment Tax Return (Including Additional Child Tax Credit for Bona Fide Residents of Puerto Rico).'' The form to be used by residents of Puerto Rico is either Form 1040–SS or Form 1040–PR, ''Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico).''

(h) *Effective/applicability dates.* Paragraphs (a)(1) and (a)(5)(i) of this section apply to taxable years beginning on or

after December 30, 2008. Paragraph (a)(4) of this section applies to taxable years beginning on or after January 1, 2012. Paragraph (a)(5)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in §31.6011(a)–1 as in effect prior to December 30, 2008. The rules of paragraph (a)(4) of this section that apply to taxable years beginning before January 1, 2012, are contained in §31.6011(a)–1 as in effect prior to January 1, 2012. The rules of paragraph (a)(5)(ii) of this section that apply to taxable years beginning before January 1, 2010, but on or after December 30, 2008, are contained in §31.6011(a)–1T as in effect on or after December 30, 2008. The rules of paragraph (a)(5) of this section that apply to taxable years beginning before December 30, 2008, are contained in §31.6011(a)–1T as in effect prior to December 30, 2008. Paragraph (g) of this section applies to taxable years beginning on or after November 29, 2013.

[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; T.D. 9566, 76 FR 77674, Dec. 14, 2011; T.D. 9645, 78 FR 71473, Nov. 29, 2013; T.D. 9645, 79 FR 4623, Jan. 29, 2014]

§31.6011(a)–2 Returns under Railroad Retirement Tax Act.

(a) *Requirement*—(1) *Employers.* Every employer shall make a return for the first return period after 1954 within which compensation taxable under the Railroad Retirement Tax Act is paid to his employee or employees for services rendered after 1954, and for each subsequent return period (whether or not taxable compensation is paid therein) until he has filed a final return in accordance with §31.6011(a)–6. For calendar years after 1975, the return period shall be the calendar year; for calendar years prior to 1976, the return period shall be the calendar quarter. Form CT–1 is the form prescribed for making the return required under this paragraph. One original and a duplicate of each return on Form CT–1 shall be filed with the director of the service center.

(2) *Employee representatives.* Every employee representative shall make a return for the first calendar quarter after 1954 within which he is paid taxable compensation for services rendered after 1954 as an employee representative, and for each subsequent calendar quarter (whether or not he is paid taxable compensation therein) until he has filed a final return in accordance with §31.6011(a)–6. Form CT–2 is the form prescribed for making the return required under this subparagraph. One original and a duplicate of each return on Form CT–2 shall be filed with the director of the service center.

(b) *When to report compensation*—(1) *In general.* Except as otherwise provided in subparagraph (2) of this paragraph, compensation taxable under the Railroad Retirement Tax Act shall be reported in the return required under this section for the period in which it is deemed, under paragraph (d) of §31.3231(e)–1 to be paid, unless under such section the compensation may be deemed to be paid in more than one return period, in which case it shall be reported only in the return for the first return period in which it is deemed to be paid.

(2) *Pre-1976 returns of employers required by State law to pay compensation on weekly basis*—(i) *In general.* If any employer is required by the laws of any State to pay compensation weekly in any calendar year prior to 1976, the return of tax with respect to such compensation may, at the election of such employer, cover all payroll weeks which, or the major part of which, fall within the period for which a return of tax is required by paragraph (a)(1) of this section. This provision shall not apply, however, to any payroll week which falls in two calendar years. Any employer who elects to file a return as provided in this subparagraph shall notify the district director in writing of such election and shall include therein a statement setting forth the facts which entitle him to make the election. Such notice shall be in duplicate and shall be attached to the original and duplicate of the return for the first period to which such election applies.

Any election so made shall be binding upon the employer with respect to all returns subsequently made by him until the director of the service center authorizes or directs the employer to make a return on a different basis. For the purpose of determining the time when compensation is deemed to be paid in accordance with paragraph (d) of §31.3231(e)–1 and of determining the due date of a return in accordance with paragraph (b) of §31.6071(a)–1, the calendar month following the period covered by the return of an employer making such election is the same calendar month which would be determinative for such purposes if the employer had not made the election.

(ii) *Prior elections.* An election made by an employer, pursuant to the provisions of 26 CFR (1939) 410.501(b) (Regulations 100) or of 26 CFR (1939) 411.601 (b) (Regulations 114), which is in force and effect at the time the employer makes his first return under this section shall satisfy the requirements of paragraph (b)(2)(i) of this section with respect to the making of an election and shall be binding upon the employer with respect to all returns made by him under this section until the director of the service center authorizes or directs the employer to make a return on a different basis.

(iii) *Example.* Employer X is required by State law to pay his employees within 6 days after the compensation is earned. In compliance with the State law, employer X, for services rendered to him for the payroll week of June 27 to July 2, 1955, pays his employees on the last-named date. June 1955 is the last month of a period for which a return of tax is required by paragraph (a)(1) of this section. Employer X may elect to include in the return required by paragraph (a)(1) of this section for the period April 1 to June 30, 1955, the compensation paid to his employees for the payroll week of June 27 to July 2, 1955, inclusive, although the compensation for July 1 and 2 falls within another period for which a return is required by paragraph (a)(1) of this section. If, in this example, the payroll week ended on July 5, 1955, the compensation paid for the payroll week of June 29 to July 5 would be included in the return period in which July falls although the compensation earned for June 29 and 30 fell in a prior return period under the general rule.

(c) *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.

(d) *Returns by employees and employee representatives in respect of Additional Medicare Tax.* An employee or employee representative who is paid compensation, as defined in section 3231(e), subject to the tax under sections 3201(a) (as calculated under section 3101(b)(2)) or section 3211(a) (as calculated under section 3101(b)(2)) (Additional Medicare Tax), must make a return for the taxable year in respect of such tax. The return shall be made on Form 1040, ''U.S. Individual Income Tax Return.'' The form to be used by residents of the U.S. Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands is Form 1040–SS, ''U.S. Self-Employment Tax Return (Including Additional Child Tax Credit for Bona Fide Residents of Puerto Rico).'' The form to be used by residents of Puerto Rico is either Form 1040–SS or Form 1040–PR, ''Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico).''

(e) *Effective/applicability date.* Paragraph (d) of this section applies to taxable years beginning on or after November 29, 2013.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7396, 41 FR 1903, Jan. 13, 1976; T.D. 9645, 78 FR 71473, Nov. 29, 2013]

§31.6011(a)–3 Returns under Federal Unemployment Tax Act.

(a) *Requirement.* Every person shall make a return of tax under the Federal Unemployment Tax Act for each calendar year with respect to which he is an employer as defined in §31.3306(a)–1. Except as otherwise provided in §31.6011 (a)–8, Form 940 is the form prescribed for use in making the return.

(b) *When to report wages.* Wages taxable under the Federal Unemployment Tax Act shall be reported in the return required under this section 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.

(c) *Time and place for filing returns.* For provisons relating to the time and place for filing returns, see §§ 31.6071 (a)–1 and 31.6091–1, respectively.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7200, 37 FR 16544, Aug. 16, 1972]

§ 31.6011(a)–3A Returns of the railroad unemployment repayment tax.

(a) *Requirement*—(1) *Employers.* Every rail employer (as defined in section 3323(a) and section 1 of the Railroad Unemployment Insurance Act) shall make a return of the tax imposed by section 3321(a) (relating to the railroad unemployment repayment tax) for each taxable period (as defined in section 3322(a)) with respect to the total rail wages (as defined in section 3323(b)) paid by the rail employer during the taxable period. Form CT–1 is the form prescribed for use in making the return. One original and a duplicate of each return on Form CT–1 shall be filed with the director of the service center as designated in the instructions to Form CT–1. Rail wages taxable under section 3321(a) shall be reported in the return required under this section 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.

(2) *Employee representatives.* Each employee representative (as defined in section 3323(d)(2) and section 1 of the Railroad Unemployment Insurance Act) shall make a return of the tax imposed by section 3321(b) on the rail wages paid to him (as determined under section 3321(b)(2)) during each calendar quarter within a taxable period. Form CT–2 is the form prescribed for use in making the return. One original and a duplicate of each return on Form CT–2 shall be filed with the director of the service center as designated in the instructions to Form CT–2. Rail wages taxable under section 3321(b) shall be reported in the return required under this section 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.

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

[T.D. 8105, 51 FR 40168, Nov. 5, 1986. Redesignated and amended at T.D. 8227, 53 FR 34736, Sept. 8, 1988]

§ 31.6011(a)–4 Returns of income tax withheld.

(a) *Withheld from wages*—(1) *In general.* Except as otherwise provided in paragraphs (a)(2), (a)(3), (a)(4), and (b) of this section, and in § 31.6011(a)–5, every person required to make a return of income tax withheld from wages pursuant to section 3402 shall make a return for the first calendar quarter in which the person is required to deduct and withhold such tax and for each subsequent calendar quarter, whether or not wages are paid therein, until the person has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in paragraphs (a)(2), (a)(3), (a)(4), and (b) of this section, and in § 31.6011(a)–8, Form 941, ''Employer's QUARTERLY Federal Tax Return,'' is the form prescribed for making the return required under this paragraph (a)(1).

(2) *Wages paid for domestic service.* Schedule H (Form 1040), ''Household Employment Taxes,'' is the form prescribed for making the return required under paragraph (a)(1) of this section with respect to income tax withheld, pursuant to an agreement under section 3402(p), from wages paid 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. The preceding sentence shall not apply in the case of an employer who has chosen under § 31.6011(a)–1(a)(3) to use Form 941, ''Employer's QUARTERLY Federal Tax Return,'' Form 943, ''Employer's Annual Tax Return for Agricultural Employees,'' or Form 944, ''Employer's ANNUAL Federal Tax Return,'' as the

return with respect to such payments for purposes of the Federal Insurance Contributions Act. For the requirements relating for Schedule H (Form 1040) with respect to qualified State individual income taxes, see §301.6361–1(d)(3)(iv).

(3) *Wages paid for agricultural labor.* Every person shall make a return of income tax withheld, pursuant to an agreement under section 3402(p), from wages paid for agricultural labor for the first calendar year in which he is required (by reason of such agreement) to deduct and withhold such tax and for each subsequent calendar year (whether or not wages for agricultural labor are paid therein) until he has filed a final return in accordance with §31.6011 (a)–6. Form 943 is the form prescribed for making the return required under this subparagraph. For the requirements relating to Form 943 with respect to qualified State individual income taxes, see paragraph (d)(3)(iv) of §301.6361–1.

(4) *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 of income tax withheld from wages pursuant to section 3402. Upon proper request by the employer, the IRS will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). The IRS will notify employers when they no longer qualify for the Employers' Annual Federal Tax Program (Form 944) and must file Forms 941 instead. 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 employers required under—

(A) Paragraph (a)(3) of this section to make a return on Form 943, ''Employer's Annual Federal Tax Return for Agricultural Employees''; or

(B) Paragraph (a)(2) of this section to make a return on Schedule H (Form 1040), ''Household Employment Taxes.''

(ii) *Request to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).* The IRS established procedures in Revenue Procedure 2009–51 published in the Internal Revenue Bulletin for employers to follow to request to participate in the Employers' Annual Federal Tax Program (Form 944) (to opt in) and to request to be removed from the Employers' Annual Federal Tax Program (Form 944) after becoming a participant in order to file Forms 941 instead (to opt out). The IRS will notify employers that their filing requirements have changed to Form 944 or Forms 941. Employers must follow the procedures in Revenue Procedure 2009–51 or its successor to opt in or opt out of the Employers' Annual Federal Tax Program (Form 944).

(b) *Withheld from nonpayroll payments.* Every person required to withhold tax from nonpayroll payments for calendar year 1994 must make a return for calendar year 1994 and for any subsequent calendar year in which the person is required to withhold such tax until the person makes a final return in accordance with §31.6011(a)–6. Every person not required to withhold tax from nonpayroll payments for calendar year 1994 must make a return for the first calendar year after 1994 in which the person is required to withhold such tax and for any subsequent calendar year in which the person is required to withhold such tax until the person makes a final return in accordance with §31.6011(a)–6. Form 945, Annual Return of Withheld Federal Income Tax, is the form prescribed for making the return required under this paragraph (b). Nonpayroll payments are—

(1) Certain gambling winnings subject to withholding under section 3402(q);

(2) Retirement pay for services in the Armed Forces of the United States subject to withholding under section 3402;

(3) Certain annuities as described in section 3402(o)(1)(B);

(4) Pensions, annuities, IRAs, and certain other deferred income subject to withholding under section 3405; and

(5) Reportable payments subject to backup withholding under section 3406.

(c) *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.

(d) *Effective/applicability dates.* Paragraphs (a)(1) and (a)(4)(i) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (a)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–4 as in effect prior to December 30, 2008. The rules of paragraph (a)(4)(ii) of this section that apply to taxable years beginning before January 1, 2010, but on or after December 30, 2008, are contained in § 31.6011(a)–4T as in effect on or after December 30, 2008. The rules of paragraph (a)(4) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–4T as in effect prior to December 30, 2008.

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

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7096, 36 FR 5217, Mar. 18, 1971; T.D. 7200, 37 FR 16544, Aug. 16, 1972; T.D. 7577, 43 FR 59359, Dec. 20, 1978; T.D. 7580, 43 FR 60159, Dec. 26, 1978; T.D. 8504, 58 FR 68035, Dec. 23, 1993; T.D. 8624, 60 FR 53510, Oct. 16, 1995; T.D. 8672, 61 FR 27008, May 30, 1996; T.D. 9239, 71 FR 14, Jan. 3, 2006; T.D. 9405, 73 FR 37375, July 1, 2008; T.D. 9440, 79358, Dec. 29, 2008; T.D. 9524, 76 FR 26602, May 9, 2011; T.D. 9566, 76 FR 77675, Dec. 14, 2011; T.D. 9586, 77 FR 24611, Apr. 25, 2012]

§ 31.6011(a)–5 Monthly returns.

(a) *In general*—(1) *Requirement.* The provisions of this section are applicable in respect of the taxes reportable on returns required pursuant to § 31.6011(a)–1 or § 31.6011(a)–4. An employer (or other person) who is required by § 31.6011(a)–1 or § 31.6011(a)–4 to make quarterly or annual returns on any such form shall, in lieu of making such quarterly or annual returns, make returns of such taxes in accordance with the provisions of this section if the employer is so notified in writing by the IRS. Every employer (or other person) notified by the IRS shall make a return for the calendar month in which the notice is received, for each of the prior calendar months in the return period, and for each calendar month afterwards (whether or not wages are paid in any such month) until the employer has filed a final return or is required to make quarterly or annual returns pursuant to notification as provided in paragraph (a)(2) of this section. Each return required under this section shall be made on the form prescribed for making the return which would otherwise be required of the employer (or other person) under the provisions of § 31.6011(a)–1 or § 31.6011(a)–4, except that, if some other form is furnished by the IRS for use in lieu of such prescribed form, the return shall be made on such other prescribed form. The IRS may notify any employer (or other person)—

(i) Who by reason of notification as provided in § 301.7512–1, is required to comply with the provisions of such § 301.7512–1; or

(ii) Who failed to—

(A) Make any return required pursuant to § 31.6011(a)–1 or § 31.6011(a)–4;

(B) Pay tax reportable on any such form; or

(C) Deposit any such tax as required under the provisions of § 31.6302–1.

(2) *Termination of requirement.* The IRS, in its discretion, may notify the employer in writing that the employer shall discontinue the filing of monthly returns under this section. If the employer is so notified, the IRS will provide the employer with instructions for filing the final monthly return. Afterwards, the employer shall make quarterly or annual returns in accordance with the provisions of § 31.6011(a)–1 or § 31.6011(a)–4.

(b) *Information returns on Form W-3 and Social Security Administration copies of Form W-2.* See § 31.6051–2 for requirements with respect to information returns on Form W-3 and Social Security Administration copies of Form W-2.

(c) *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.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7351, 40 FR 17145, Apr. 17, 1975; T.D. 7580, 43 FR 60154, Dec. 26, 1978; T.D. 8637, 60 FR 66133, Dec. 21, 1995; T.D. 9061, 68 FR 34799, June 11, 2003; T.D. 9405, 73 FR 37375, July 1, 2008]

§ 31.6011(a)–6 Final returns.

(a) *In general*—(1) *Federal Insurance Contributions Act; income tax withheld from wages and nonpayroll payments.* An employer (or other person) who is required to make a return on a particular form pursuant to § 31.6011(a)–1, § 31.6011(a)–4, or § 31.6011(a)–5, and who in any return period ceases to pay wages or nonpayroll payments in respect of which he is required to make a return on that form, must make the return for the period as a final return. Each return made as a final return shall be marked ''Final return'' by the person filing the return. Every such person filing a final return (other than a final return on Form 942 or Form 943) must furnish information showing the date of the last payment of wages (as defined in section 3121(a) or section 3401(a)), and, if appropriate, the date of the last payment of nonpayroll payments defined in § 31.6011(a)–4(b). An employer (other than an employer making returns on Form 942) who has only temporarily ceased to pay wages, because of seasonal activities or for other reasons, shall not make a final return but shall continue to file returns. If (i) for any return period an employer makes a final return on a particular form, and (ii) after the close of such period the employer pays wages, as defined in section 3121(a) or section 3401(a), in respect of which the same or a different return form is prescribed, such employer shall make returns on the appropriate return form. For example, if an employer who has filed a final return on Form 941 pays wages only for domestic service in his private home not on a farm operated for profit, the employer is required to make returns on Form 942 in respect of such wages.

(2) *Railroad Retirement Tax Act*—(i) *Form CT–1.* An employer required to make returns on Form CT–1 who in any return period ceases to pay taxable compensation shall make the return on Form CT–1 for such period as a final return. Such return shall be marked ''Final return'' by the person filing the return, and such person shall furnish information showing the date of the last payment of taxable compensation. An employer who has only temporarily ceased to pay taxable compensation shall continue to file returns on Form CT–1.

(ii) *Form CT–2.* An employee representative required to make returns on Form CT–2 who in any calendar quarter ceases to be paid taxable compensation for services as an employee representative shall make the return on Form CT–2 for such quarter as a final return. Such return shall be marked ''Final return'' by the person filing the return, and such person shall furnish information showing the date of the last payment of taxable compensation. An employee representative who only temporarily ceases to be paid taxable compensation for services as an employee representative shall continue to file returns on Form CT–2.

(3) *Federal Unemployment Tax Act.* An employer required to make a return on Form 940 for a calendar year in which he ceases to be an employer, as defined in § 31.3306(a)–1, because of the discontinuance, sale, or other transfer of his business, shall make such return as a final return. Such return shall be marked ''Final return'' by the person filing the return.

(b) *Statement to accompany final return.* There shall be executed as a part of each final return, except in the case of a final return on Form 942, a statement showing the address at which the records required by the regulations in this part will be kept, the name of the person keeping such records, and, if the business of an employer has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or other transfer took place. If no such sale or transfer occurred or the employer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement. Such statement shall include any information required by this section as to the date of the last payment of wages or compensation. If the statement is executed as a part of a final return on Form CT–1 or Form CT–2, such statement shall be furnished in duplicate.

(c) *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.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7396, 41 FR 1904, Jan. 14, 1976; T.D. 8637, 60 FR 66133, Dec. 21, 1995]

§ 31.6011(a)–7 Execution of returns.

(a) *In general.* Each return required under the regulations in this part, together with any prescribed copies or supporting data, shall be filled in and disposed of in accordance with the forms, instructions, and regulations applicable thereto. The return shall be carefully prepared so as fully and accurately to set forth the data required to be furnished therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the regulations in this part. The return may be made by an agent in the name of the person required to make the return if an acceptable power of attorney is filed with the internal revenue office with which such person is required to file his returns and if such return includes all taxes required to be reported by such person on such return for the period covered by the return. Only one return on any one prescribed form for a return period shall be filed by or for a taxpayer. Any supplemental return made on such form in accordance with § 31.6205–1 shall constitute a part of the return which it supplements. Except as may be provided under procedures authorized by the Commissioner with respect ot taxes imposed by the Railroad Retirement Tax Act, consolidated returns of two or more employers are not permitted, as for example, returns of a parent and a subsidiary corporation. For provisions relating to the filing of returns of the taxes imposed by the Federal Insurance Contributions Act and of income tax withheld under section 3402 in the case of governmental employers see §§ 31.3122 and 31.3404–1.

(b) *Use of prescribed forms*—(1) *In general.* Copies of the prescribed return forms will so far as possible be regularly furnished taxpayers by the Internal Revenue Service. A taxpayer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Taxpayers not supplied with the proper forms should make application therefor to an internal revenue office in ample time to have their returns prepared, verified, and filed on or before the due date with the internal revenue office with which they are required to file their returns. See §§ 31.6071 (a)–1 and 31.6091–1, relating, respectively, to the time and place for filing returns. In the absence of a prescribed return form, a statement made by a taxpayer disclosing the aggregate amount of wages or compensation reportable on such form for the period in respect of which a return is required and the amount of taxes due may be accepted as a tentative return. If filed within the prescribed time, the statement so made will relieve the taxpayer from liability for the addition to tax imposed for the delinquent filing of the return, provided that without unnecessary delay such tentative return is supplemented by a return made on the proper form. For additions to the tax in case of failure to file a return within the prescribed time, see the provisions of § 301.6651–1 of this chapter (Regulations on Procedure and Administration).

In any case where the use of Form W-2 is required from the purpose of making a return or reporting information, such requirement may be satisfied by submitting the information required by such form on magnetic tape or by other media, provided that the prior consent of the Commissioner of Social Security (or other authorized officer or employee thereof has been obtained.

(c) *Signing and verification.* For provisions relating to the signing of returns, see § 31.6061–1. For provisions relating to the verifying of returns, see § 31.6065(a)–1.

(d) *Reporting of identifying numbers.* For provisions relating to the reporting of identifying number on returns required under the regulations in this part, see § 31.6109–1.

(68A Stat. 747, 26 U.S.C. 6051; and 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6606, 27 FR 8516, Aug. 25, 1962; T.D. 6883, 31 FR 6590, May 3, 1966; T.D. 7276, 38 FR 11345, May 7, 1973; T.D. 7396, 41 FR 1904, Jan. 13, 1976; T.D. 7580, 43 FR 60159, Dec. 26, 1978]

§ 31.6011(a)–8 Composite return in lieu of specified form.

The Commissioner may authorize the use, at the option of the employer, of a composite return in lieu of any form specified in this part for use by an employer, subject to such conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate. Such composite return shall consist of a form prescribed ty the Commissioner and an attachment or attachments of magnetic tape or other approved media. Notwithstanding any provisions in this part to the contrary, a single form and attachment may comprise the returns of more than one employer. To the extent that the use of a compsoite return has been authorized by the Commissioner, references in this part to a specific form for use by the employer shall be deemed to refer also to a composite return under this section.

[T.D. 7200, 37 FR 16544, Aug. 16, 1972]

§ 31.6011(a)–9 Instructions to forms control as to which form is to be used.

Notwithstanding provisions in this part which specify the use of a particular form for a return or other document required by this part, the use of a different form may be required by the latter form's instructions. In such case, the latter form shall be completed in accordance with its instructions.

[T.D. 7351, 40 FR 17145, Apr. 17, 1975]

§ 31.6011 (a)–10 Instructions to forms may waive filing requirement in case of no liability tax returns.

Notwithstanding provisions in this part which require that a tax return be filed, the instructions to the form on which a return of tax is otherwise required by this part to be made may waive such requirement with respect to a particular class or classes of no liability tax returns. Returns in a class for which such requirement has been so waived need not be made.

This Treasury decision is not adverse to any taxpayer. For this reason, it is found unnecessary to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

[T.D. 8229, 53 FR 35811, Sept. 15, 1988]

§ 31.6011(b)–1 Employers' identification numbers.

(a) *Requirement of application*—(1) *In general*—(i) *Before October 1, 1962.* Except as provided in paragraph (b) of this section, every employer who on any day after December 31, 1954, and before October 1, 1962, has in his employ one or more individuals in employment for wages subject to the taxes imposed by the Federal Insurance Contributions Act, but who prior to such day neither has been assigned an identification number nor has applied therefor, shall make an application on Form SS–4 for an identification number.

(ii) *On or after October 1, 1962.* Except as provided in paragraph (b) of this section, every employer who on any day after September 30, 1962, has in his employ one or more individuals in employment for wages which are subject to the taxes imposed by the Federal Insurance Contributions act or which are subject to the withholding of income tax from wages under section 3402, but who prior to such day neither has been assigned an identification number nor has applied therefor, shall make an application on Form SS–4 for an identification number.

(iii) *Method of application.* The application, together with any supplementary statement, shall be prepared in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Form SS–4 may be obtained from any district director or director of a service center or any district office of the Social Security Administration. The application shall be filed with the internal revenue officer designated in the instructions applicable to Form SS-4, or with the nearest district office of the Social Security Administration. The application shall be signed by (*a*) the individual, if the employer is an individual; (*b*) the

president, vice president, or other principal officer, if the employer is a corporation; (*c*) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization; or (*d*) the fiduciary, if the employer is a trust or estate. An identification number will be assigned to the employer in due course upon the basis of the information reported on the application required under this section.

(2) *Time for filing Form SS–4.* The application for an identification number shall be filed on or before the seventh day after the first payment of wages to which reference is made in paragraph (a)(1) of this section. For provisions relating to the time when wages are paid, see § 31.3121(a)–2 and paragraph (b) of § 31.3402(a)–1.

(b) *Employers who are assigned identification numbers without application.* An identification number may be assigned, without application by the employer, in the case of an employer who has in his employ only employees who are engaged exclusively in the performance of domestic service in his private home not on a farm operated for profit (see § 31.3121(a)(7)–1. If an identification number is so assigned, the employer is not required to make an application on Form SS–4 for the number.

(c) *Crew leaders.* Any person who, as a crew leader within the meaning of section 3121(o), furnishes individuals to perform agricultural labor for another person shall, on or before the first date on which he furnishes such individuals to perform such labor for such other person, advise such other person of his name; permanent mailing address, or if none, present address; and identification number, if any.

(d) *Use of identification number.* The identification number assigned to an employer (other than a household employer referred to in paragraph (b) of this section) shall be shown in the employer's records, and shall be shown in his claims to the extent required by the applicable forms, regulations, and instructions. For provisions relating to the inclusion of identification numbers in returns, statements on Form W-2, and depositary receipts, see § 31.6109–1.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6606, 27 FR 8517, Aug. 25, 1962; T.D. 7012, 34 FR 7693, May 15, 1969]

§ 31.6011(b)–2 Employees' account numbers.

(a) *Requirement of application*—(1) *In general*—(i) *Before November 1, 1962.* Every employee who on any day after December 31, 1954, and before November 1, 1962, is in employment for wages subject to the taxes imposed by the Federal Insurance Contributions Act, but who prior to such day has neither secured an account number nor made application therefor, shall make an application on Form SS–5 for an account number.

(ii) *On or after November 1, 1962.* Every employee who on any day after October 31, 1962, is in employment for wages which are subject to the taxes imposed by the Federal Insurance Contributions Act or which are subject to the withholding of income tax from wages under section 3402 but who prior to such day has neither secured an account number nor made application therefore, shall make an application on Form SS–5 for an account number.

(iii) *Method of application.* The application shall be prepared in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. The employee shall file the application with any district office of the Social Security Administration or, if the employee is not working within the United States, with the district office of the Social Security Administration at Baltimore, Maryland. Form SS–5 may be obtained from any district office of the Social Security Administration or from any district director. An account number will be assigned to the employee by the Social Security Administration in due course upon the basis of information reported on the application required under this section. A card showing the name and account number of the employee to whom an account number has been assigned will be furnished to the employee by the Social Security administration.

(2) *Time for filing Form SS–5.* The application shall be filed on or before the

seventh day after the occurrence of the first day of employment to which reference is made in paragraph (a)(1) of this section, unless the employee leaves the employ of his employer before such seventh day, in which case the application shall be filed on or before the date on which the employee leaves the employ of his employer.

(3) *Changes and corrections.* Any employee may have his account number changed at any time by applying to a district office of the Social Security Administration and showing good reasons for a change. With that exception, only one account number will be assigned to an employee. Any employee whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS–5, should report such change or correction to a district office of the Social Security Administration Copies of the form for making such reports may be obtained from any district office of the administration.

(b) *Duties of employee with respect to his account number*—(1) *Information to be furnished to employer.* An employee shall, on the day on which he enters the employ of any employer for wages, comply with the provisions of paragraph (b)(1)(i), (ii), (iii), or (iv) of this section, except that, if the employee's services for the employer consist solely of agricultural labor, domestic service in a private home of the employer not on a farm operated for profit, or service not in the course of the employer's trade or business, the employee shall comply with such provisions on the first day on which wages are paid to him by such employer, within the meaning of § 31.3121(a)–2.

(i) *Employee who has account number card.* If the employee has been issued an account number card by the Social Security Administration and has the card available, the employee shall show it to the employer.

(ii) *Employee who has number but card not available.* If the employee does not have available the account number card issued to him by the Social Security Administration but knows what his account number is, and what his name is, exactly as shown on such card, the employee shall advise the employer of such number and name. Care must be exercised that the employer is correctly advised of such number and name.

(iii) *Employee who has receipt acknowledging application.* If the employee does not have an account number card but has available a receipt issued to him by an office of the Social Security Administration acknowledging that an application for an account number has been received, the employee shall show such receipt to the employer.

(iv) *Employee who is unable to furnish number or receipt.* If an employee is unable to comply with the requirement of paragraph (b)(1)(i), (ii), or (iii) of this section, the employee shall furnish to the employer a statement in writing, signed by the employee, setting forth the date of the statement, the employee's full name, present address, date and place of birth, father's full name, mother's full name before marriage, and the employee's sex, including a statement as to whether the employee has previously filed an application on Form SS–5 and, if so, the date and place of such filing. The information required by this subdivision shall be furnished on Form SS–5, if a copy of Form SS–5 is available. The furnishing of such a Form SS–5 or other statement by the employee to the employer does not relieve the employee of his obligation to make an application on Form SS–5 and file it with a district office of the Social Security Administration as required by paragraph (a) of this section. The foregoing provisions of this subdivision are not applicable to an employee engaged exclusively in the performance of domestic service in a private home of his employer not on a farm operated for profit, or in the performance of agricultural labor, if the services are performed for an employer other than an employer required to file returns of the taxes imposed by the Federal Insurance Contributions Act with the office of the United States Internal Revenue Service in Puerto Rico. However, such employee shall advise the employer of his full name and present address.

For provisions relating to the duties of an employer when furnished the information required by paragraph (b)(1) (i), (ii), (iii), or (iv) of this section, see paragraph (c) of this section.

(2) *Additional information to be furnished by employee to employer.* Every employee who, on the day on which he is required to comply with paragraph (b)(1)(i), (ii), (iii), or (iv) of this section, has an account number card but for any reason does not show such card to the employer on such day shall promptly thereafter show the card to the employer. An employee who does not have an account number card on such day shall, upon receipt of an account number card from the Social Security Administration, promptly show such card to the employer, if he is still in the employ of that employer. If the employee has left the employ of the employer when the employee receives an account number card from the Social Security Administration, he shall promptly advise the employer of his account number and name exactly as shown on such card. The account number originally assigned to an employee (or the number as changed in accordance with paragraph (a)(3) of this section) shall be used by the employee as required by this paragraph even though he enters the employ of other employers.

(3) *Furnishing of account number by employee to employer.* See §31.6109–1 for additional provisions relating to the furnishing of an account number by the employee to his employer.

(c) *Duties of employer with respect to employees' account numbers*—(1) *Employee who shows account number.* Upon being shown the account number card issued to an employee by the Social Security administration, the employer shall enter the account number and name, exactly as shown on the card, in the employer's records, returns, statements for employees, and claims to the extent required by the applicable forms, regulations, and instructions.

(2) *Employee who does not show account number card.* With respect to an employee who, on the day on which he is required to comply with paragraph (b)(1)(i), (ii), (iii), or (iv) of this section, does not show the employer an account number card issued to the employee by the Social Security Administration, the employer shall request such employee to show him such card. If the card is not shown, the employer shall comply with the applicable provisions of paragraph (c)(1)(i), (ii), (iii), (iv), or (v) of this section:

(i) *Employee who has not applied for account number.* If the employee has not been assigned an account number and has not made application therefor with a district office of the Social Security Administration, the employer shall inform the employee of his duties under this section.

(ii) *Employee who has account number.* If the employee advises the employer of his number and name as shown on his account number card, as provided in paragraph (b)(1)(ii) of this section, the employer shall enter such number and name in his records.

(iii) *Employee who has receipt for application.* If the employee shows the employer, as provided in paragraph (b)(1)(iii) of this section, a receipt issued to him by an office of the Social Security Administration acknowledging that an application for an account number has been received from the employee, the employer shall enter in his records with respect to such employee the name and address of the employee exactly as shown on the receipt, the expiration date of the receipt, and the address of the issuing office. The receipt shall be retained by the employee.

(iv) *Employee who furnishes Form SS–5 or statement.* If the employee furnishes information to the employer as provided in paragraph (b)(1)(iv) of this section, the employer shall retain such information for use as provided in paragraph (c)(3)(ii) of this section.

(v) *Household or agricultural employees.* If the employee advises the employer of his full name and present address in accordance with those provisions of paragraph (b)(1)(iv) of this section which are applicable in the case of employees engaged exclusively in the performance of domestic service in a private home of the employer not on a farm operated for profit, or agricultural labor, the employer shall enter such name and address in his records.

(3) *Account number unknown when return is filed.* In any case in which the employee's account number is for any reason unknown to the employer at the time the employer's return is filed for any return period with respect to

which the employer is required to report the wages paid to such employee—

(i) *If employee has shown receipt for application.* If the employee has shown to the employer, as provided in paragraph (b)(1)(iii) of this section, a receipt issued to him by an office of the Social Security Administration acknowledging that an application for an account number has been received from the employee, the employer shall enter on the return, with the entry with respect to the employee, the name and address of the employee exactly as shown on the receipt, the expiration date of the receipt, and the address of the issuing office.

(ii) *If employee furnished Form SS–5 or statement.* If the employee has furnished information to the employer as provided in paragraph (b)(1)(iv) of this section, the employer shall prepare a copy of the Form SS–5 or statement furnished by the employee and attach the copy to the return.

(iii) *If employee did not furnish receipt, Form SS–5, or statement.* If neither paragraph (c)(3)(i) nor (ii) of this section is applicable, the employer shall, except as provided in paragraph (c)(4) of this section, attach to the return a Form SS–5 or statement, signed by the employer, setting forth as fully and clearly as practicable the employee's full name, his present or last known address, date and place of birth, father's full name, mother's full name before marriage, the employee's sex, and a statement as to whether an application for an account number has previously been filed by the employee and, if so, the date and place of such filing. The employer shall also insert in such Form SS–5 or statement an explanation of why he has not secured from the employee the information referred to in paragraph (b)(1)(iv) of this section and shall insert the word ''Employer'' as part of his signature.

(4) *Household or agricultural employees.* The provisions of paragraph (c)(3)(iii) of this section are not applicable with respect to an employee engaged exclusively in the performance of domestic service in a private home of his employer not on a farm operated for profit, or in the performance of agricultural labor, if the services are performed for an employer other than an employer required to file returns of the taxes imposed by the Federal Insurance Contributions Act with the office of the United States Internal Revenue Service in Puerto Rico. If any such employee has not furnished to the employer the information required by paragraph (b) (1) (i), (ii), or (iii) of this section prior to the time the employer's return is filed for any return period with respect to which the employer is required to report wages paid to such employee, the employer shall enter the word ''Unknown'' in the account number column of the return and (i) file with the return a statement showing the employee's full name and present or last known address, or (ii) enter such address on the return form immediately below the name of the employee.

(5) *Where to obtain Form SS–5.* Employers may obtain copies of Form SS–5 from any district office of the Social Security Administration or from any district director.

(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. 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). Each statement on Form W-2 shall show the following:

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

(B) The name, address, and social security number of the employee, which may be truncated to appear in the form of an IRS truncated taxpayer identification number (TTIN) on copies of Forms W–2 that are furnished to the employee (for provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations)), 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,

(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,

(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 number of the employee, which may be truncated to appear in the form of a TTIN on copies of Forms W–2 that are furnished to the employee (for provisions relating to the use of TTINs, see § 301.6109–4 of this chapter),

(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.

(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)(2).

(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*—(1) *Notification of possible credit or refund.* With respect to compensation (as defined in section 3231(e)), 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 to 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).

(2) *Information to be supplied to employees upon request.* With respect to compensation (as defined in section 3231(e)), 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 or her a written statement showing—

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

(ii) 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

(iii) 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.

(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.* The statement required by this paragraph (h) for a calendar year shall be furnished—

(i) 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

(ii) 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.

(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 and 31.6109–4. For the penalties applicable to information returns and payee statements, see sections 6721 through 6724 and the regulations in part 301 under sections 6721 through 6724.

(j) *Electronic furnishing of statements*—(1) *In general.* A person required by section 6051 to furnish a written statement on Form W-2 (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the Form W-2 in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (j)(2) through (6) of this section is treated as furnishing the Form W-2 in a timely manner.

(2) *Consent*—(i) *In general.* The recipient must have affirmatively consented to receive the Form W-2 in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the Form W-2 in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a

paper document if it is confirmed electronically.

(ii) *Withdrawal of consent.* The consent requirement of this paragraph (j)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements.* If a change in hardware or software required to access the Form W-2 creates a material risk that the recipient will not be able to access the Form W-2, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the Form W-2 and inform the recipient that a new consent to receive the Form W-2 in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (j)(2)(i) of this section, a new consent or confirmation of consent to receive the Form W-2 electronically.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (j)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive Form W-2 electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive Form W-2 electronically by accessing the Web site, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the Web site uses the same electronic format that F will use for the electronically furnished Form W-2. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (j)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive Form W-2 electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive Form W-2 electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished Form W-2. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive Form W-2 electronically in the manner described in paragraph (j)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its Web site stating that Recipient R may receive Form W-2 electronically instead of in a paper format. The Web site contains instructions on how R may access a secure Web page and consent to receive the statements electronically. By accessing the secure Web page and giving consent, R has consented to receive Form W-2 electronically in the manner described in paragraph (j)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general.* Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (j)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* The recipient must be informed that the Form W-2 will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to each Form W-2 required to be furnished after the consent is given until it is withdrawn in the manner described in paragraph (j)(3)(v)(A) of this section or only to the first Form W-2 required to be furnished following the date on which the consent is given.

(iv) *Post-consent request for a paper statement.* The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (j)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent.* The recipient must be informed that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department

whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (j) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination.* The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient (for example, termination of the recipient's employment with furnisher-employer).

(vii) *Updating information.* The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) *Hardware and software requirements.* The recipient must be provided with a description of the hardware and software required to access, print, and retain the Form W-2, and the date when the Form W-2 will no longer be available on the Web site. The recipient must be informed that the Form W-2 may be required to be printed and attached to a Federal, State, or local income tax return.

(4) *Format.* The electronic version of the Form W-2 must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Notice*—(i) *In general.* If the statement is furnished on a Web site, the furnisher must notify the recipient that the statement is posted on a Web site. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, ''IMPORTANT TAX RETURN DOCUMENT AVAILABLE.'' If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (j)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected Form W-2.* If the furnisher has corrected a recipient's Form W-2 that was furnished electronically, the furnisher must furnish the corrected Form W-2 to the recipient electronically. If the recipient's Form W-2 was furnished through a Web site posting and the furnisher has corrected the Form W-2, the furnisher must notify the recipient that it has posted the corrected Form W-2 on the Web site within 30 days of such posting in the manner described in paragraph (j)(5)(i) of this section. The corrected Form W-2 or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original Form W-2 or the corrected Form W-2 was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) *Access period.* Forms W-2 furnished on a Web site must be retained on the Web site through October 15 of the year following the calendar year to which the Forms W-2 relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected Forms W-2 that are posted on the Web site through October 15 of the year following the calendar year to which the Forms W-2 relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(7) *Paper statements after withdrawal of consent.* If a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished electronically, a paper statement must be furnished. A paper statement furnished after the statement due date under this paragraph (j)(7) will be considered timely if furnished within 30 days after

the date the withdrawal of consent is received by the furnisher.

(k) *Applicability date.* This section is applicable for statements required to be furnished under section 6051 after December 31, 2020.

(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 affecting §31.6051–1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 31.6051–2 Information returns on Form W–3 and Social Security Administration 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. An employer may not truncate an employee's social security number to appear in the form of an IRS truncated taxpayer identification number (TTIN) on copies of Forms W–2 filed with the Social Security Administration. Each Form W–2 and the transmittal Form W–3 shall together constitute an information return to be filed with the Social Security Administration as indicated on the instructions to such forms. For the requirement to submit the information on Form W–2 on magnetic media, see section 6011(e) and §301.6011–2 of this chapter (Procedure and Administration Regulations).

(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 sections 6071 and 6081 and the regulations in this part under sections 6071 and 6081. For the penalties applicable to information returns and payee statements, see sections 6721 through 6724 and the regulations in part 301 under sections 6721 through 6724.

(d) *Applicability date.* This section is applicable for statements required to be filed under section 6051 July 3, 2019.

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

[T.D. 7351, 40 FR 17145, Apr. 17, 1975, as amended by T.D. 7580, 43 FR 60160, Dec. 26, 1978; T.D. 8155, 52 FR 34357, Sept. 10, 1987; T.D. 8344, 56 FR 15042, Apr. 15, 1991; T.D. 8636, 60 FR 66141, Dec. 21, 1995; T.D. 9061, 68 FR 34799, June 11, 2003; T.D. 9861, 84 FR 31720, July 3, 2019]

§ 31.6051–3 Statements required in case of sick pay paid by third parties.

(a) *Statements required from payor.* (1) Every payor of sick pay shall furnish to the employer of the payee of the sick pay a written statement. The written statement must contain the following information:

(i) The name and, if there is withholding from sick pay under section 3402(o) and the regulations in this part under section 3402(o), the social security account number of the payee (the payee's social security number may not be truncated to appear in the form of an IRS truncated taxpayer identification number (TTIN)),

(ii) The total amount of sick pay paid to the payee during the calendar year, and

(iii) The total amount (if any) deducted and withheld from sick pay under section 3402(o) and the regulations thereunder.

The statement must be furnished to the employer on or before January 15 of the year following the calendar year in which any sick pay was paid.

(2) These reporting requirements are in lieu of the requirements of sections 6051(a) (relating to written statements

for employees) and 6041 (relating to information returns). Statements required to be furnished by this paragraph shall be treated as statements required under section 6051 to be furnished to employees for purposes of sections 6674 (relating to fraudulent statement or failure to furnish statement to employee) and 7204 (relating to fraudulent statement or failure to make statement to employees).

(3) A multiemployer plan paying sick pay pursuant to a collectively bargained agreement may furnish the statement required to be furnished by this paragraph, which shall include the total amount of sick pay paid to the employee under the plan regardless of the identity or number of employers for whom the employee worked during the calendar year under the plan, to one of the following:

(i) The employer for whom the employee worked the most hours during the calendar year for which the statement is to be furnished,

(ii) The employer for whom the employee first worked during such year,

(iii) The employer for whom the employee last worked during such year,

(iv) The employer for whom the employee worked immediately preceding his absence for which sick pay was paid,

(v) The employer for whom the employee worked immediately following his absence for which sick pay was paid,

(vi) The employer designated through the operation of a specific clause of the collective bargaining agreement, or

(vii) The employer designated through the operation of a specific system of designation chosen by the payor.

(b) *Information required to be furnished by employer.* Every employer of a payee of sick pay who receives a statement under paragraph (a) from a payor of sick pay shall furnish to each payee of sick pay a written statement, which must be furnished on Form W-2. The written statement must contain the following information:

(1) All of the information required to be furnished under paragraph (a) of this section, but the employer may truncate the payee's social security number to appear in the form of a TTIN on copies of Forms W–2 that are furnished to the payee (for provisions relating to the use of TTINs, see § 301.6109–4 of this chapter (Procedure and Administration Regulations)).

(2) The name, the address, and the Employer Identification Number (EIN) of the employer,

(3) The words ''sick pay'', which shall be written in the box labelled ''Employer's use'', and

(4) If any portion of the sick pay is excludable from gross income under section 104(a)(3), the amount of the portion which is not so excludable and of the portion which is so excludable. Only sick pay payments includable in gross income shall be reported in the box labelled ''Wages, tips, other compensation'' on Form W-2. Any amount excludable from gross income under section 104(a)(3) shall be reported in the box labelled ''Employer's use'' on Form W-2 and any amount so reported shall be described as ''Nontaxable''. The information required to be furnished by this paragraph may be furnished either on the same Form W-2 that is required to be furnished under section 6051(a) or on a separate Form W-2. To the extent practicable, this statement should be furnished to the payee along with the statement (if any) required under section 6051(a) (relating to written statements for employees). The statement must be furnished to the payee on or before January 31 of the year following the calendar year in which any sick pay was paid. The employer shall file copy A of Form W-2 and Form W-3 with the Social Security Administration in accordance with section 6051(d) (relating to statements to constitute information returns) and the regulations thereunder.

(c) *Optional rule.* The payor and the employer may at their option enter into an agency agreement valid under local law whereby the employer designates the payor to be the employer's agent for purposes of fulfilling the requirements of this section. This agreement must specify what portion, if any, of the sick pay is excludable from gross income under section 104(a)(3). If they enter into such an agreement, the payor shall not provide the statement required by paragraph (a) but shall instead furnish statements that meet all

of the requirements of paragraph (b), except that the agreement must provide that the payor will furnish the statements with the payor's, rather than the employer's name, address, and Employer Identification Number (EIN) if ''Sick Pay Statement Furnished under an Agency Agreement with Your Employer'' appears in the box labelled ''Employer's Use'' on Form W-2. Paragraph (a)(2) remains applicable to statements furnished under this paragraph. In the case of sick pay paid under a multiemployer plan pursuant to a collectively bargained agreement, an amendment to either the multiemployer plan or the collectively bargained agreement designating the payor to be the employers' agent for purposes of fulfilling the requirements of this section shall be deemed an agency agreement that fulfills the requirements of the first sentence of this paragraph.

(d) *Definitions.* For purposes of this section, the terms ''payor'', ''payee'', and ''sick pay'' shall have the same meaning as ascribed thereto in section 3402(o) and the regulations thereunder. For purposes of this section, the term ''employer'' shall have the same meaning as ascribed thereto in section 3401(d) and the regulations thereunder, except that the term ''employer'' shall not include the payor for purposes of this section.

(e) *Additional requirements.* (1) Statements furnished to payees under this section must also comply with all requirements of section 6051 (c) and (d) and the regulations thereunder.

(2) The provisions of §1.9101–1 (relating to permission to submit information required by certain returns and statements on magnetic tape) shall be applicable to the information required by this section to be furnished on Form W-2 if the employer properly complies with those provisions.

(3) The provisions of section 6109 (relating to identifying numbers) and the regulations in this part and part 301 under section 6109 shall be applicable to Form W–2 and to any payee of sick pay to whom a statement on Form W–2 is required by this section to be furnished. The employer must include the social security number of the payee on all copies of Forms W–2. The employer may truncate the payee's social security number to appear in the form of a TTIN on copies of Forms W–2 that are furnished to the payee. For provisions relating to the use of TTINs, see §301.6109–4 of this chapter.

(f) *Applicability date.* This section is applicable for statements required to be furnished under section 6051 after December 31, 2020.

(Secs. 3402(o), 7805, Internal Revenue Code of 1954 (94 Stat. 3495, (26 U.S.C. 3402(o)); 68A Stat. 917 (26 U.S.C. 7805))

[T.D. 7814, 47 FR 11277, Mar. 16, 1982, as amended by T.D. 9861, 84 FR 31720, July 3, 2019]

§ 31.6051–4 Statement required in case of backup withholding.

(a) *Statements required from payor.* Every payor of any reportable payment (as defined in section 3406(b)(1)) who is required to deduct and withhold tax under section 3406 must furnish to the payee a written statement containing the information required by paragraph (c) of this section.

(b) *Prescribed form.* The prescribed form for the statement required by this section is Form 1099. In the case of any reportable interest or dividend payment as defined in section 3406(b)(2), the prescribed form is the Form 1099 required in §1.6042–4 of this chapter (relating to payments of dividends), §1.6044–5 of this chapter (relating to payments of patronage dividends), or §1.6049–6(e) of this chapter (relating to payments of interest or original issue discount). Statements required to be furnished by this section will be treated as statements required by the respective sections with respect to any reportable payment, except that the statement required under this section must include the amount of tax withheld under section 3406. In no event will a statement be required under this section if a statement with the same information is required to be furnished to the recipient under another section.

(c) *Information required.* Each statement on Form 1099 must show the following:

(1) The name, address, and taxpayer identification number of the person receiving any reportable payment;

(2) Except as provided in the prescribed form or instructions, the

amount subject to reporting under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, 6050N, or 6050W whether or not the amount of the reportable payment is less than the amount for which an information return is required or, if tax is withheld under section 3406, the amount of the payment withheld upon;

(3) The amount of tax deducted and withheld under section 3406;

(4) The name and address of the person filing the form;

(5) A legend stating that such amount is being reported to the Internal Revenue Service; and

(6) Such other information as is required by the form.

(d) *Time for furnishing statements.* The statement must be furnished to the payee no later than January 31 of the year following the calendar year in which the payment was made. However, for a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045 applies to the statement if the statement reports tax withheld from a payment reportable under section 6045 or is furnished in a consolidated reporting statement under section 6045. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii) of this chapter.

(e) *Aggregation.* The payor or broker may combine the information required to be shown under this section with information required to be shown under another section even if they do not relate to the same type of reportable payment.

[T.D. 8637, 60 FR 66133, Dec. 21, 1995, as amended by T.D. 9496, 75 FR 49835, Aug. 16, 2010; T.D. 9504, 75 FR 64103, Oct. 18, 2010]

§ 31.6053–1 Report of tips by employee to employer.

(a) *Requirement that tips be reported*—(1) *In general.* An employee who receives, in the course of employment by an employer, tips that constitute wages as defined in section 3121(a) or section 3401, or compensation as defined in section 3231(e), must furnish to the employer a statement, or statements, disclosing the total amount of the tips received by the employee in the course of employment by the employer. Tips received by an employee in a calendar month in the course of employment by an employer that are required to be reported to the employer must be reported on or before the 10th day of the following month. For example, tips received by an employee in January 2000 are required to be reported by the employee to the employer on or before February 10, 2000.

(2) *Cross references.* For provisions relating to the treatment of tips as wages for purposes of the Federal Insurance Contributions Act (FICA) tax under sections 3101 and 3111, see sections 3102(c), 3121(a)(12), and 3121(q) and §§ 31.3102–3 and 31.3121(a)(12)–1. For provisions relating to the treatment of tips as wages for purposes of the tax under section 3402 (income tax withholding), see sections 3401(a)(16), 3401(f), and 3402(k) and §§ 31.3401(a)(16)–1, 31.3401(f)–1, and 31.3402(k)–1. For provisions relating to the treatment of tips as compensation for purposes of the Railroad Retirement Tax Act (RRTA) tax under sections 3201 and 3201, see section 3231(e) and § 31.3231(e)–1(a).

(b) *Statement for use in reporting tips*—(1) *In general.* The statement described in paragraph (a) of this section can be provided on paper or transmitted electronically. The statement must be signed by the employee and must disclose:

(i) The name, address, and social security number of the employee.

(ii) The name and address of the employer.

(iii) The period for which, and the date on which, the statement is furnished. If the statement is for a period of less than 1 calendar month, the beginning and ending dates of the period must be included (for example, January 1 through January 8, 1998).

(iv) The total amount of tips received by the employee during the period covered by the statement which are required to be reported to the employer (see paragraph (a) of this section).

(2) *Form of statement*—(i) *In general.* No particular form is prescribed for use in furnishing the statement required by this section. The statement may be furnished on paper or transmitted electronically. An electronic system and all tip statements generated by that system must meet the requirements of paragraph (d) of this section. If the employer does not provide any other

means for the employee to report tips, the employee may use Form 4070, ''Employee's Report of Tips to Employer.''

(ii) *Single-purpose forms.* A statement may be furnished on an employer-provided form. The form may be on paper or in electronic form. An employer that provides a paper form must make blank copies of the form readily available to all tipped employees. Any form, whether paper or electronic, provided by an employer for use by its tipped employees solely to report tips must meet all the requirements of paragraph (b)(1) of this section.

(iii) *Regularly used forms.* Instead of requiring that tips be reported as described in paragraph (b)(2)(ii) of this section on a special form used solely for tip reporting, an employer may prescribe regularly used forms for use by employees in reporting tips. A regularly used form may be on paper or in electronic form (such as a time card or report), must meet the requirements of paragraph (b)(1) (iii) and (iv) of this section, must contain identifying information that will ensure accurate identification of the employee by the employer, and is permitted to be used only if the employer furnishes the employee a statement suitable for retention showing the amount of tips reported by the employee for the period. The employer statement may be furnished when the employee reports the tips, when wages are first paid following the reporting of tips by the employee, or within a short time after the wages are paid. The employer may meet this requirement, for example, through the use of a payroll check stub or other payroll document regularly furnished (if not less frequent than monthly) by the employer to the employee showing gross pay and deductions.

(c) *Period covered by, and due date of, tip statement*—(1) *In general.* A tip statement furnished by an employee to an employer may not cover a period greater than 1 calendar month. An employer may, however, require the submission of a statement in respect of a specified period of time, for example, on a weekly or biweekly basis, regular payroll period, etc. An employer may specify, subject to the limitation in paragraph (a) of this section, the time within which, or the date on which, the statement for a specified period of time should be submitted by the employee. For example, a statement covering a payroll period may be required to be submitted on the first (or second) day following the close of the payroll period. A statement submitted by an employee after the date specified by the employer for its submission nevertheless is a statement furnished pursuant to section 6053(a) and this section if it is submitted to the employer on or before the 10th day following the month in which the tips were received.

(2) *Termination of employment.* If an employee's employment terminates, the employee must furnish a tip statement to the employer when the employee ceases to perform services for the employer. A statement submitted by an employee after the date on which the employee ceases to perform services for the employer is a statement furnished pursuant to section 6053(a) and this section if the statement is submitted to the employer on or before the earlier of the day on which the final wage payment is made by the employer to the employee or the 10th day following the month in which the tips were received.

(d) *Requirements for electronic systems*—(1) *In general.* The electronic system must ensure that the information received is the information transmitted by the employee and must document all occasions of access that result in the transmission of a tip statement. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and transmitting the statement is the employee identified in the statement transmitted.

(2) *Same information as on paper statement.* The electronic tip statement must provide the employer with all the information required by paragraph (b)(1) of this section.

(3) *Signature.* The electronic tip statement must be signed by the employee. The electronic signature must identify the employee transmitting the electronic tip statement and must authenticate and verify the transmission. For this purpose, the terms *authenticate*

and *verify* have the same meanings as they do when applied to a written signature on a paper tip statement. Any form of electronic signature that satisfies the foregoing requirements is permissible.

(4) *Copies of electronic tip statements.* Upon request by the Internal Revenue Service (IRS), the employer must supply the IRS with a hard copy of the electronic tip statement and a statement that, to the best of the employer's knowledge, the electronic tip statement was filed by the named employee. The hard copy of the electronic tip statement must provide the information required by paragraph (b)(1) of this section, but need not be a facsimile of Form 4070 or any employer-designed form.

(5) *Record retention.* The record retention requirements applicable to automatic data processing systems also apply to electronic tip reporting systems.

(6) *Effective date.* The provisions pertaining to electronic systems and electronic tip reports are applicable as of December 13, 2000. However, employers may apply these provisions to earlier periods.

[T.D. 7001, 34 FR 1004, Jan. 23, 1969, as amended by T.D. 8910, 65 FR 77819, Dec. 13, 2000]

§ 31.6053–2 Employer statement of uncollected employee tax.

(a) *Requirement that statement be furnished.* If—

(1) The amount of the employee tax imposed by section 3101 in respect of tips reported by an employee to his employer pursuant to section 6053(a) (see § 31.6053–1) exceeds

(2) The amount of employee tax imposed by section 3101 in respect of such tips which can be collected by the employer from wages (exclusive of tips) of such employee or from funds furnished to the employer by the employee,

the employer shall furnish to the employee a statement showing the amount of the excess. For provisions relating to the collection of, and liability for, employee tax on tips, see § 31.3102–3.

(b) *Form of statement.* Form W-2 is the form prescribed for use in furnishing the statement required by paragraph (a) of this section, except that if an employer files a composite return pursuant to § 31.6011(a)–8 he may furnish to the employee, in lieu of Form W-2, a statement containing the required information in a form suitable for retention by the employee. A statement is required under this section in respect of an excess referred to in paragraph (a) of this section, even though the employer may not be required to furnish a statement to the employee under § 31.6051. Provisions applicable to the furnishing of a statement under § 31.6051 shall be applicable to statements under this section.

(c) *Excess to be shown on statement.* If there is an excess in respect of the tips reported by an employee in two or more statements furnished pursuant to section 6053(a), only the total excess for the period covered by the employer statement shall be shown on such statement.

[T.D. 7001, 34 FR 1005, Jan. 23, 1969, as amended by T.D. 7351, 40 FR 17145, Apr. 17, 1975]

§ 31.6053–3 Reporting by certain large food or beverage establishments with respect to tips.

(a) *Information return by an employer with respect to tips*—(1) *In general.* An employer shall file a separate information return for each calendar year (as defined in paragraph (j)(14) of this section) with respect to each large food or beverage establishment (as defined in paragraph (j)(7) of this section) in which such employer has employees. The information return shall contain the following:

(i) The employer's name, address, and employer identification number;

(ii) The establishment's name, address, and identification number (see paragraph (a)(5) of this section);

(iii) The aggregate gross receipts (other than nonallocable receipts) of the establishment from the provision of food or beverages;

(iv) The aggregate amount of charge receipts (other than nonallocable receipts) on which there were charged tips;

(v) The aggregate amount of charged tips shown on such charge receipts;

(vi) The aggregate amount of tips actually received by food or beverage employees of the establishment during the

calendar year and reported to the employer under section 6053(a) (see paragraph (j)(15) of this section);

(vii) The aggregate amount the employer is required to report under section 6051 and the regulations thereunder with respect to service charges of less than 10 percent.

(viii) The name and social security number of each employee of the establishment during the calendar year to whom an allocation was made under section 6053(c)(3) and paragraph (d) of this section and the amount of such allocation.

(2) *Calendar year 1983 information return.* In the case of the 1983 calendar year information return, the information required by paragraphs (a)(1)(iii) through (viii) of this section shall be reported for the period beginning with the first payroll period ending on or after April 1, 1983, and ending with the end of the 1983 calendar year. See paragraph (c) of this section relating to information required for the first quarter of 1983.

(3) *Prescribed form.* The return required by this paragraph shall be made on Form 8027 with the transmittal form being Form 8027T. The information required by paragraph (a)(1)(viii) of this section may be provided by attaching to Form 8027 photocopies of each employee's W-2 for whom an allocation was made. A copy of any written good faith agreements applicable to a given calendar year (see paragraph (e) of this section) shall be attached to Form 8027 for such calendar year.

(4) *Time and place for filing.* The information return required by this paragraph (a) shall be filed on or before the last day of February (March 31 if filed electronically) of the year following the calendar year for which the return is made with the Internal Revenue Service Center specified by the Form 8027 or its instructions. See section 6652(a) relating to the penalty for failure to file this information return.

(5) *Large food or beverage establishment identification number.* Each large food or beverage establishment shall have a unique identification number to be included on Form 8027 and any employer's application pursuant to paragraph (h) of this section. If an identification number is changed for any reason, for example if the establishment becomes a different ''type'' of establishment as described in paragraph (a)(5)(ii) of this section, or if the employer identification number changes, the employer shall notify the Service by including both the old and new identification numbers on the Form 8027 filed for the year in which the identification number was changed. An establishment identification number shall be determined as follows:

(i) The first nine digits shall be the employer's identification number (EIN).

(ii) The next digit shall identify the type of large food or beverage establishment, with the categories as follows:

(A) The number ''1'' signifies an establishment that serves evening meals only (with or without alcoholic beverages).

(B) The number ''2'' signifies an establishment that serves evening meals and other meals (with or without alcoholic beverages).

(C) The number ''3'' signifies an establishment that serves only meals other than evening meals (with or without alcoholic beverages).

(D) The number ''4'' signifies an establishment that serves food, if at all, as only an incidental part of the business of serving alcoholic beverages.

(iii) The last five digits are to differentiate between multiple establishments reporting under the same EIN number. For this purpose, the employer shall assign each establishment reporting under such employer's EIN number a unique five digit number. For example, each establishment could be assigned a unique number by beginning with ''00001'' and progressing in numerical sequence (*i.e.,* ''00002'', ''00003'', ''00004'', ''00005'') until each establishment has been assigned a number.

(6) *Definitions.* See paragraph (j) of this section for definitions of various terms used in this section.

(b) *Employer statement to employees*—(1) *In general.* The employer shall furnish to each employee to whom an amount is allocated under section 6053(c)(3) and paragraph (d) of this section a written statement for each calendar year containing the following information:

(i) The employer's name and address;

(ii) The name of the employee;

(iii) The aggregate amount allocated to the employee for the calendar year.

(2) *Prescribed form.* The written statement required by this paragraph shall be made on Form W-2.

(3) *Time and manner for furnishing the statement.* The written statement required by this paragraph shall be due at the same time and shall be furnished in the same manner as the statement required to be furnished under section 6051. See section 6678 relating to the penalty for failure to file this statement.

(4) *Employee's request for an early W-2.* If an employee's employment is terminated prior to the end of a calendar year and the employee requests an early W-2 under section 6051 and § 31.6051–1(d), a tip allocation under section 6053(c) is not required to be shown on such early W-2. However, the employer may include on such early W-2 the employee's actual tip allocation under section 6053(c), if known, or a good faith estimate of such allocation. A good faith estimate of an allocation shall be signified by placing the word ''estimate'' next to the allocation on the employee's copy of the early W-2. An amended W-2 must be furnished to each employee to whom an amount is allocated under section 6053(c), during January of the calendar year following the calendar year for which the statement is made, if there is no tip allocation on the early W-2 or if the estimated allocation is found to vary from the actual allocation by more than 5 percent of the amount of the actual allocation.

(5) *Employee reporting of tip income.* Regardless of whether an employee receives an allocation under section 6053(c) and § 31.6053–3, the employee is required to report as income on his or her Federal income tax return all tips received. For tips received before October 1, 1985, an employee must be able to substantiate the amount of reported tip income as provided in section 6001 and the regulations thereunder, For tips received on or after October 1, 1985, an employee must be able to substantiate the amount of reported tip income as provided in § 31.6053–4. The Internal Revenue Service may determine that a tipped employee received a larger amount of tip income than is reflected by the employee's allocation.

(c) *First quarter report of 1983*—(1) *In general.* For the period beginning with the first day of calendar year 1983, and ending on the last day of the last payroll period ending before April 1, 1983, an employer must file an information return for each large food or beverage establishment that was a large food or beverage establishment on January 1, 1983, that contains the information required by paragraph (a)(1)(i)–(vii) of this section for such period.

(2) *Prescribed form.* The information return required by this paragraph shall be made on Form 8027. The returns for the first calendar quarter of 1983 and for calendar year 1983 may be incorporated onto a single Form 8027 but must separately set forth the required information for each of the two return periods.

(3) *Time and place for filing.* The time and place for filing the information return required by this paragraph shall be the same as for the calendar year 1983 information return. See paragraph (a)(4) of this section.

(d) *Allocation of excess of 8 percent of gross receipts over the aggregate amount of reported tips*—(1) *In general.* An employer that operates a large food or beverage establishment shall allocate (as tips for purposes of the requirements of section 6053(c) among tipped employees at such establishment performing services during any payroll period an amount equal to the excess of:

(i) Eight percent of the gross receipts (other than nonallocable receipts) of such establishment for the payroll period, over

(ii) The aggregate amount of tips reported by employees at such establishment to the employer under section 6053(a) for such period. For this purpose, if an employee reports under section 6053(a) on the basis of a period other than a payroll period such employee may specify what portion of his or her reported tips are attributable to a given payroll period when reporting tips to the employer under section 6053(a). In the absence of any specification by the employee, the employer

shall allocate the amount of tips reported by an employee to a given payroll period either:

(A) By multiplying the aggregate amount of those reported tips by a fraction, the numerator of which is the gross receipts attributable to the tipped employee for the payroll period and the denominator of which is the gross receipts attributable to the employee for the entire tip reporting period; or

(B) By multiplying the aggregate amount of those reported tips by a fraction, the numerator of which is the hours worked by the employee during the payroll period and the denominator of which is the total hours worked by the employee during the entire tip reporting period.

With respect to each establishment, the employer shall choose the method described in either paragraph (d)(1)(ii)(A) or paragraph (d)(1)(ii)(B) of this section for a calendar year and apply such method consistently in making all allocations required by the preceding sentence. If an employee is employed in more than one of an employer's food or beverage operations, such employee may specify what portion of his or her reported tips are attributable to a given operation when reporting tips to the employer under section 6053(a). In the absence of any specification by the employee, the employer shall allocate the amount of tips reported by the employee to a given food or beverage operation in a manner similar to that provided above for allocation of tips among payroll periods. The employer shall choose the method described in either paragraph (d)(1)(ii)(A) or paragraph (d)(1)(ii)(B) of this section for a calendar year and apply such method consistently in making all allocations required by the preceding sentence.

(2) *Employer not liable to employees for allocations.* An employer who makes allocations (as tips for purposes of the requirements of section 6053(c) and this section) among such employer's employees in accordance with paragraph (d) and either paragraph (e) or (f) of this section shall not be liable to any employee if any amount is improperly allocated. However, if an employee's total tip allocations for a calendar year as reported on Form W-2 varies from the correct allocation amount by more than 5 percent of the correct allocation amount, the employer shall adjust such employee's allocation. If such an adjustment of an employee's allocation is required, the employer shall also review all tips allocations made to other employees in the same establishment to assure that the error did not distort other allocated amounts by more than 5 percent. Any adjustments made for variances of more than 5 percent shall be reflected in amended W-2's issued to the affected employees. Tip allocations made under this section shall have no effect on the withholding responsibilities of the employer under subtitle C of the Code. Withholding on tips is authorized only with respect to amounts of tips reported to employers by employees under section 6053(a).

(e) *Allocation pursuant to a good faith agreement.* The amount determined under paragraph (d)(2) of this section for each payroll period must be allocated among tipped employees providing services during such payroll period either on the basis of a good faith agreement described in this paragraph, or, if there is no good faith agreement applicable with respect to the payroll period on the basis of the allocation method provided in paragraph (f) of this section. A good faith agreement is a written agreement consented to by the employer and at least two-thirds of the members of each occupational category of tipped employees (*e.g.*, waiters, busboys, maitre d's) employed in the large food or beverage establishment at the time the agreement is adopted which:

(1) Provides for the allocation of the amount described in paragraph (d)(1) among tipped employees in a manner that, in combination with the tips reported by such employees under section 6053(a), will reflect a good faith approximation of the actual distribution of tip income among such tipped employees;

(2) Is effective prospectively beginning with the first day of a payroll period that begins after the date of adoption, but in no event later than the first day of the succeeding calendar year. However, a good faith agreement may be effective for calendar year 1983

if adopted on or before December 31, 1983.

(3) Is adopted at a time when there are tipped employees employed by the employer in each occupational category of tipped employees (*e.g.*, waiters, busboys, maitre d's) which would be affected by the agreement; and

(4) May be revoked prospectively by a written instrumnent adopted by a least two-thirds of the tipped employees who are employed in the establishment in occupational categories affected by the agreement at the time of the revocation. A revocation of an agreement shall be effective only at the beginning of a payroll period.

(f) *Allocation method to be used in the absence of a good faith agreement.* (1) In a case in which there is no good faith agreement in effect and the aggregate amount of tips reported pursuant to section 6053(a) with respect to a payroll period is less than 8 percent of the establishment's gross receipts for the payroll period, the employer shall allocate the difference as tips for purposes of section 6053(c) as provided in this paragraph. No allocations shall be made to indirectly tipped employees. An allocation shall be made to each directly tipped employee performing services for the establishment who has a reporting shortfall (as determined under paragraph (f)(1)(v) of this section) for the payroll period. The amount of each allocation shall be determined in the following manner:

(i) Multiply the amount of the establishment's gross receipts for the payroll period by 8 percent (0.08).

(ii) Determine the aggregate amount of tips reported for the payroll period by indirectly tipped employees.

(iii) Subtract from the amount determined under paragraph (f)(1)(i) the aggregate amount of tips reported by indirectly tipped employees as determined under paragraph (f)(1)(ii) of this section. The excess is the directly tipped employees' aggregate share of 8 percent of the gross receipts of the establishment for the payroll period.

(iv) For each directly tipped employee, multiply the amount determined under paragraph (f)(1)(iii) of this section by a fraction, the numerator of which is the amount of gross receipts of the establishment for the payroll period that is attributable to the employee and the denominator of which is the aggregate amount of gross receipts for the payroll period that is attributable to all directly tipped employees. The product is each directly tipped employee's share of 8 percent of the gross receipts of the establishment for the payroll period. The employer may determine the fraction described in the first sentence of this subparagraph by substituting for the numerator the number of hours worked by the directly tipped employee during the payroll period and by substituting for the denominator the number of hours worked by all directly tipped employees during the payroll period. For payroll periods beginning after December 31, 1986, the method of allocation described in the preceding sentence may be used only by an employer that employs less than the equivalent of 25 full-time employees (as defined in paragraph (j)(19) of this section) at the establishment during the payroll period.

(v) For each directly tipped employee, determine the excess, if any, of the amount determined under paragraph (f)(1)(iv) of this section over the amount reported as tips by the employee for the payroll period pursuant to section 6053(a). Such excess, if any, is the employee's shortfall for the payroll period.

(vi) Subtract from the amount determined under paragraph (f)(1)(i) of this section the aggregate amount of tips reported pursuant to section 6053(a) by all directly and indirectly tipped employees for the payroll period. The excess is the amount to be allocated as tips among directly tipped employees who had a shortfall for the payroll period as determined under paragraph (f)(1)(v) of this section.

(vii) For each directly tipped employee who had a shortfall for the payroll period, multiply the amount determined under paragraph (f)(1)(vi) of this section by a fraction, the numerator of which is the amount of such employee's shortfall (determined under paragraph (f)(1)(v) of this section and the denominator of which is the aggregate of all shortfalls for the payroll period for all directly tipped employees. The product is the employee's allocation for the payroll period.

(2) The provisions of this paragraph may be illustrated by the following examples:

Example 1. X is a large food or beverage establishment that has chosen to make tip allocations using its actual payroll period and gross receipts attributable to employees. X had gross receipts for a payroll period of $100,000 and tips reported for the payroll period of $6,200. Directly tipped employees reported $5,700 while indirectly tipped employees reported $500.

Directly tipped employees	Gross receipts for payroll period	Tips reported
A	18,000	1,080
B	16,000	880
C	23,000	1,810
D	17,000	800
E	12,000	450
F	14,000	680
Total	100,000	5,700

The allocation computations would be as follows:

(1) $100,000 (gross receipts) × 0.08 = $8,000.

(2) Tips reported by indirectly tipped employees = $500.

(3) $8,000 − $500 (indirect employees tips) = $7,500.

(4)

Directly tipped employees	Directly tipped share of 8 pct gross	×	Gross receipts ratio	=	Employee share of 8 pct gross
A	$7,500		18,000/100,000		1,350
B	7,500		16,000/100,000		1,200
C	7,500		23,000/100,000		1,725
D	7,500		17,000/100,000		1,275
E	7,500		12,000/100,000		900
F	7,500		14,000/100,000		1,050
Total					7,500

(5)

Directly tipped employees	Employee share of 8 pct gross	–	Tips reported	=	Employee shortfall
A	$1,350		$1,080		$270
B	1,200		880		320
C	1,725		1,810		
D	1,275		800		475
E	900		450		450
F	1,050		680		370
Total shortfall					1,885

Since employee C has no reporting shortfall there is no allocation to C.

(6) $8,000 − 6,200 (total tips reported) = $1,800 (amount allocable among shortfall employees).

(7)

Shortfall employees	Allocable amount	×	Shortfall ratio	=	Amount of allocation
A	$1,800		270/1885		$258
B	1,800		320/1885		306
D	1,800		475/1885		454
E	1,800		450/1885		430
F	1,800		370/1885		353

Example 2. Assume the same facts as in example 1 except that the employer uses employee hours worked to calculate tip allocations.

Directly tipped employees	Hours worked in payroll period	Tips reported
A	40	$1,080
B	35	880
C	45	1,810
D	40	800
E	15	450
F	25	680
Total	200	$5,700

The allocation computations would be as follows:

(1) $100,000 (gross receipts) × 0.08 = $8,000

(2) Tips reported by indirectly tipped employees = $500

(3) $8,000 − $500 (indirect employees tips) = $7,500

(4)

Directly tipped employees	Directly tipped share of 8 pct gross	×	Hours worked ratio	=	Employee share of 8 pct gross
A	$7,500		40/200		$1,500
B	7,500		35/200		1,313
C	7,500		45/200		1,688
D	7,500		40/200		1,500
E	7,500		15/200		563
F	7,500		25/200		938

(5)

Directly tipped employees	Employee share of 8 pct gross	–	Tips reported	=	Employee shortfall
A	$1,500		$1,080		$420
B	1,313		880		433
C	1,688		1,810		
D	1,500		800		700
E	563		450		113
F	938		680		258
Total shortfall					$1,924

Since employee C has no reporting shortfall there is no allocation to C.

(6) $8,000 − 6,200 (total tips reported) = $1,800 (amount allocable among shortfall employees).

(7)

Shortfall employees	Allocable amount	×	Shortfall ratio	=	Amount of allocation
A	$1,800		420/1,924		$393
B	1,800		433/1,924		405
D	1,800		700/1,924		655
E	1,800		113/1,924		106
F	1,800		258/1,924		241

Example 3. X is a large food or beverage establishment that has chosen to make tip allocations using a calendar year period. X had gross receipts for a calendar year of $2,000,000 and tips reported for the calendar year of $176,000. The amount to be allocated as tips is equal to the excess of 8 percent of the gross receipts of the establishment for the calendar year over the aggregate amount of tips reported by the employees of the establishment to the employer under section 6053(a) for the calendar year. Because the reported tips for the year ($176,000) are in excess of 8 percent of the gross receipts ($2,000,000 × .08 = $160,000), no tip allocations are made to the employees of this establishment for the calendar year.

Example 4. X is a large food or beverage establishment that has chosen to make tip allocations using a calendar year period and gross receipts attributable to employees. X had gross receipts for a calendar year of $1,500,000 and tips reported for the calendar year of $110,000. Directly tipped employees reported $94,000 while indirectly tipped employees reported $16,000.

Directly tipped employees	Gross receipts for calendar year	Tips reported
A	260,000	$18,600
B	240,000	14,600
C	380,000	31,200
D	260,000	13,000
E	160,000	6,000
F	200,000	10,600
Total	$1,500,000	$94,000

The allocation computations are as follows:

(1) $1,500,000 (gross receipts) × 0.08 = $120,000.

(2) Tips reported by indirectly tipped employees = $16,000.

(3) $120,000 − 16,000 (indirect employees tips) = $104,000.

(4)

Directly tipped employees	Directly tipped share of 8 pct. gross	X	Gross receipts ratio	=	Employee share of 8 pct. gross
A	$104,000		260,000/1,500,000		$18,027
B	104,000		240,000/1,500,000		16,640
C	104,000		380,000/1,500,000		26,347
D	104,000		260,000/1,500,000		18,027
E	104,000		160,000/1,500,000		11,093
F	104,000		200,000/1,500,000		13,867

(5)

Directly tipped employees	Employee share of 8 pct. gross	−	Tips reported	=	Employee shortfall
A	18,027		18,600		
B	16,640		14,600		2,040
C	26,347		31,200		
D	18,027		13,000		5,027
E	11,093		6,000		5,093
F	13,867		10,600		3,267
Total shortfall					15,427

Since employees A and C do not have a reporting shortfall there are no allocations to them.

(6) $120,000 − 110,000 (total tips reported) = $10,000 (amount allocable among shortfall employees).

(7)

Shortfall employees	Allocable amount	×	Shortfall ratio	=	Amount of allocation
B	10,000		2,040/15,427		$1,322
D	10,000		5,027/15,427		3,259
E	10,000		5,093/15,427		3,301
F	10,000		3,267/15,427		2,118
Total					$10,000

Example 5. Assume the same facts as in example 4 except that the employer has chosen the employee hours worked method of computing tip allocations, the calendar year gross receipts were $1,000,000, and the tips reported for the calendar year were $74,000. Directly tipped employees reported $70,000 while indirectly tipped employees reported $4,000.

Directly tipped employees	Hours worked in the calendar year	Tips reported
A	2,000	$11,800
B	1,750	9,800
C	2,250	15,100
D	2,000	9,000
E	750	4,500
F	1,250	7,800
G	490	3,200
H	510	2,800
I	200	800

Directly tipped employees	Hours worked in the calendar year	Tips reported
J	1,000	5,200
Total	12,200	$70,000

The allocation computations would be as follows:

(1) $1,000,000 (gross receipts) × 0.08 = $80,000.

(2) Tips reported by indirectly tipped employees = $4,000.

(3) $80,000 − $4,000 (indirect employee tips) = $76,000.

(4)

Directly tipped employees	Directly tipped share of 8 pct. gross	×	Hours worked ratio	=	Employee share of 8 pct. gross
A	$76,000		2,000/12,200		$12,459
B	76,000		1,750/12,200		10,902
C	76,000		2,250/12,200		14,016
D	76,000		2,000/12,200		12,459
E	76,000		750/12,200		4,672
F	76,000		1,250/12,200		7,787
G	76,000		490/12,200		3,052
H	76,000		510/12,200		3,177
I	76,000		200/12,200		1,246
J	76,000		1,000/12,200		6,230
Total					$76,000

(5)

Directly tipped employees	Employee share of 8 pct. gross	−	Tips reported	=	Employee shortfall
A	12,459		11,800		$659
B	10,902		9,800		1,102
C	14,016		15,100		.....
D	12,459		9,000		3,459
E	4,672		4,500		172
F	7,787		7,800		.....
G	3,052		3,200		.....
H	3,177		2,800		377
I	1,246		800		446
J	6,230		5,200		1,030
Total shortfall					$7,245

Since employees C, F, and G have no reporting shortfalls, there are no allocations made to them.

(6) $80,000 − 74,000 (total tips reported) = $6,000.

(7)

Shortfall employees	Allocable amount	×	Shortfall ratio	=	Amount of allocation
A	$6,000		659/7,245		$546
B	6,000		1,102/7,245		913
D	6,000		3,459/7,245		2,865
E	6,000		172/7,245		142
H	6,000		377/7,245		312
I	6,000		446/7,245		369
J	6,000		1,030/7,245		853
Total	.....	....	.....	....	$6,000

(g) *Period of allocation.* In applying paragraphs (d), (e), (f), and (h)(3) of this section an employer may substitute the calendar year or any period that results from a reasonable division of a calendar year for the term ''payroll period'' each place it appears in such paragraphs. If an employer makes such a substitution with respect to a large food or beverage establishment the substituted period shall be stated on Form 8027 for such large food or beverage establishment and shall be effective for such employer's large food or beverage establishment for the entire calendar year.

(h) *Lowering the percentage to be used*—(1) *In general.* On and after July 18, 1984, an employer or a majority of the employees (as defined in paragraph (h)(2)(iii) of this section) of an employer may petition the district director for the internal revenue district in which the employer's establishment is located to have the percentage of gross receipts that is used to determine the amount to be allocated under section 6053(c)(3)(A) and paragraph (d) of §31.6053–3 reduced from 8 percent to the percentage that the petitioning employer or employees believe to be the actual percentage of the amount of the establishment's gross receipts that reflects the amount of tips. The district director may thereafter reduce the percentage of gross receipts used to determine the amount to be so allocated to the percentage that the district director determines to be the proper estimate of the actual percentage of gross receipts constituting tips. The district director, however, may not reduce the percentage below 2 percent. For the rules in effect prior to July 18, 1984, see 26 CFR 31.6053–3(h) (Rev. as of April 1, 1984).

(2) *Time and manner for petition to have percentage reduced*—(i) *In general.*

The petition shall be in writing and shall include sufficient information to allow the district director to estimate with reasonable accuracy the actual tip rate of the establishment. For example, such information might include the charged tip rate, the type of establishment, menu prices, the location of the establishment, the amount of ''self-service'' required, the days and hours open for business, and whether the customer receives the check from or pays the server for the meal.

(ii) *Employer petitions.* In the case of employer-originated petitions, the employer has the burden of supplying sufficient information to allow the district director to estimate with reasonable accuracy the actual tip rate of the establishment. The employer also shall attach to the petition copies of Form 8027 (if any) filed for the establishment for the 3 years preceding calendar years.

(iii) *Employee petitions.* (A) In the case of employee-originated petitions, a majority of the employees of an establishment must consent to the petition. A majority for purposes of this paragraph is more than one-half of all the directly tipped employees (within the meaning of paragraph (j)(12) of this section) employed by the establishment at the time the petition is filed. In the case of a single petition for certain multi-establishment employers (see paragraph (h)(4) of this section), more than one-half of the aggregate directly tipped employees (at the time the petition is filed) of the establishments covered by the petition must consent. The petition filed with the district director must state the total number of directly tipped employees employed by the establishment (or establishments) and the number of the directly tipped employees consenting to the petition.

(B) The petitioning employees have the burden of supplying sufficient information to allow the district director to estimate with reasonable accuracy the actual tip rate of the establishment to the extent they possess such information. If the employer possesses relevant information, the employer must provide such information to the district director upon the request of the petitioning employees or district director. Employees who file a petition under this paragraph must promptly notify their employer of the petition. Promptly upon receipt of such notification, their employer must submit to the district director copies of the Form 8027 (if any) filed for the establishment for the 3 immediately preceding calendar years. Any information supplied by the employer during the petitioning process constitutes return information (as defined in section 6103(b)(2)) which shall not be disclosed by the Internal Revenue Service (except as provided in section 6103) to any employees of the employer or to representatives of such employees.

(3) *Effective date for reduced percentage.* The district director shall determine the term for which the reduced percentage is to be effective. At the end of such term, the reduced percentage shall cease to apply unless previously extended by the district director for the district in which the large food or beverage establishment is located. In no event shall the reduced percentage be applied to payroll periods before the date the petition described in paragraph (h)(2) of this section is filed unless the establishment is a new business (as described in paragraph (i) of § 31.6053–3). In the case of a new business or a petition for reduction filed prior to September 30, 1983, the district director may allow the approved reduced percentage to be applied retroactively to the first day of the calendar year of the petition. Until such time as the employer is notified in writing by the district director of approval of a reduction, the employer must continue to use 8 percent of gross receipts for purposes of complying with section 6053(c) and this section.

(4) *Single petition for certain multi-establishment employers.* An employer (including a single employer as defined in section 52 (a) or (b)) or a majority of the employees of such employer may use a single petition for two or more of the employer's establishments if such establishments are essentially the same type of business, the petitioning employer or employees have made a good faith determination that the tip rates at such establishments are essentially the same, and the establishments

are located in the same internal revenue region. Single petitions shall include the names and locations of the establishments for which a reduction is requested and the information required by paragraph (h)(2) of this section for a typical establishment. A single petition for multi-establishments located within an internal revenue region shall be filed with the district director for the internal revenue district in which the greatest number of the establishments included in the petition are located. If there is an equal number of establishments located in two or more internal revenue districts the employer or employees petitioning may choose the district to which the petition is sent.

(i) *Application of reporting requirements to new businesses*—(1) *In general.* A food or beverage operation is a new business if the employer of the operation did not operate any food or beverage operations during the preceding calendar year. An employer will not be considered to have operated a food or beverage operation during a calendar year if each food or beverage operation of the employer was operated for less than one calendar month during such year. In a calendar year in which a food or beverage operation is a new business, the determination of whether the operation is a large food or beverage establishment shall be made as provided in paragraph (i)(2) of this section and the employer shall comply with section 6053(c) and this section as provided in paragraph (i)(3) of this section.

(2) *Determination of status as a large food or beverage establishment.* A food or beverage operation shall be considered a large food or beverage establishment during the calendar year in which it is a new business if the average number of hours worked per business day by all employees of the employer at the new business during each of any two consecutive calendar months of the calendar year, computed in the manner provided in the second sentence of paragraph (j)(9) of this section, is greater than 80 hours.

(3) *New business compliance under section 6053(c).* A new business that is determined to be a large food or beverage establishment under paragraph (i)(2) of this section shall comply with section 6053(c) and this section beginning with the first payroll period that begins after the first period of two consecutive calendar months described in paragraph (i)(2) of this section.

(j) *Definitions.* For purposes of section 6053(c) and this section:

(1) *Gross receipts.* Gross receipts shall include all receipts (other than nonallocable receipts), from the provision of food or beverages by a large food or beverage establishment from cash sales, charge receipts (including charged tips only to the extent the cash sales amount has been reduced due to the employer paying cash to tipped employees for charged tips due them), charges to a hotel room (excluding tips charged to a hotel room only to the extent that the employer's accounting procedures allow such tips to be segregated out and excluding charges that are otherwise included in charge receipts), and the retail value of complimentary food or beverages (as defined in paragraph (j)(16) of this section) served to customers. Gross receipts shall not include state or local taxes. In the case of a trade or business that does not charge separately for the provision of food or beverages (*i.e.*, a trade or business that provides other goods or services along with food or beverages for a combined price, such as a ''package deal'' for food and lodging), the employer shall make a good faith estimate of the gross receipts attributable to the provision of the food or beverages that reflects the cost to the employer of providing the food or beverages plus a reasonable profit factor.

(2) *Gross receipts attributable to a directly tipped employee.* Gross receipts attributable to a directly tipped employee are those gross receipts (as defined in paragraph (j)(1) of this section) from the provision of food or beverages to customers with respect to which the employee provided services. For example, if a directly tipped employee's name is on every check given to customers for whom the employee has provided services, the gross receipts attributable to such employee could be determined by aggregating the amounts of all checks bearing that employee's name (other than amounts from nonallocable receipts).

(3) *Nonallocable receipts.* Nonallocable receipts are receipts which are attributable to carryout sales or to services with respect to which a service charge of 10 percent or more is added. Carryout sales are sales of food or beverages for consumption off the premises of the establishment. Room service is not a carryout sale. If an establishment's accounting system does not segregate receipts from carryout sales from the establishment's other receipts, receipts from carryout sales may be determined as an estimated percentage of total receipts. The applicable percentage shall be determined in good faith by the employer on the basis of generally accepted accounting practices, including but not limited to, surveys of carryout sales as a percentage of gross sales. An employer may rely upon estimates as to carryout sales which are established in good faith between the employer and state or local governments for purposes of state or local taxation.

(4) *Charge receipts.* Charge receipts shall include credit card charges and charges under any other credit arrangement (e.g., house charges, city ledger, and charge arrangements to country club members). Charges to a hotel room may be excluded from charge receipts if such exclusion is consistent with the employer's normal accounting practices and the employer applies such exclusion consistently for a given large food or beverage establishment. Otherwise, charges to a hotel room shall be included in charge receipts.

(5) *Charged tips.* A tip included on a charge receipt is a charged tip.

(6) *Food or beverage operation.* A ''food or beverage operation'' is any business activity which provides food or beverages for consumption on the premises (other than ''fast food'' operations). If an employer conducts activities that provide food or beverages at more than one location, the activity at each separate location shall be considered to be a separate food or beverage operation, Each activity conducted within a single building shall be considered to be conducted at a separate location if the customers of the activity, while being provided with food or beverages, occupy an area separate from that occupied by customers of other activities and the gross receipts of the activity are recorded separately from the gross receipts of other activities. For example, a gourmet restaurant, a coffee shop, and a cocktail lounge in a hotel would each be treated as a separate food or beverage operation if gross receipts from each activity are recorded separately. In addition, an employer may treat different activities conducted in the identical place at different times as separate food or beverage operations if the gross receipts of the activities at each time are recorded separately. For example, a restaurant may record the gross receipts from its cafeteria style lunch operation separately from the gross receipts of its full service food or beverage operations.

(7) *Large food or beverage establishment.* A food or beverage operation is a ''large food or beverage establishment'' if:

(i) The employer at the food or beverage operation normally employed more than 10 employees on a typical business day during the preceding calendar year, and

(ii) The tipping of food or beverage employees of the food or beverage operation is customary. Generally, tipping would not be considered customary for a cafeteria style operation (as defined in paragraph (j)(18) of this section) or for a food or beverage operation where at least 95 percent of its total sales are nonallocable receipts, within the meaning of paragraph (j)(3) of this section, by reason of the addition of a service charge of 10 percent or more. Total sales shall include only gross receipts (as defined in paragraph (j)(1) of this section) and nonallocable receipts (other than carryout receipts) from the provision of food or beverages. In the case of an operation such as a restaurant that is a cafeteria style operation at lunch and that has full service with tipping customary at dinner, the entire operation is generally a large food or beverage establishment if the employer meets the 10-employee test. However, if the gross receipts of the cafeteria style operation at lunch are recorded separately from the dinner operation gross receipts the employer may treat the dinner operation as a large food or beverage establishment and the lunch operation as a separate

food or beverage operation that is not a large food or beverage establishment due to the fact that tipping is not considered customary for cafeteria style operations.

(8) *Employee.* The term ''employee'' has the same meaning as in section 3401(c) and § 31.3401(c)–1.

(9) *More than 10 employees on a typical business day.* An employer shall be considered to have normally employed more than 10 employees on a typical business day during a calendar year if one-half of the sum of the average number of employee hours worked per business day during the calendar month in which the aggregate gross receipts from food or beverage operations were the greatest plus the average number of employee hours worked per business day during the calendar month in which the aggregate gross receipts from food or beverage operations were the least, is greater than 80 hours. The average number of employee hours worked per business day during a month shall be computed by dividing the total number of hours worked during the month by all employees of the employer who are employed in a food or beverage operation by the average of the number of days during the month that each food or beverage operation at which such employees worked was open for business. If an employer operates both a food or beverage operation and a nonfood or beverage operation, and one or more of his or her employees work for both operations, the employer may make a good faith estimate of the number of hours such employees worked for each operation in a given month. Similarly, in cases where one or more of an employer's employees work for more than one of such employer's food or beverage operations, a good faith estimate may be made of the number of hours such employees worked for each operation in a given month. For purposes of this subparagraph, employees who are employed in a food or beverage operation include all employees of the operation, not just food or beverage employees. The employees of an employer shall include all employees at all food or beverage operations who, along with the employees of such employer, would be treated as employees of a single employer under section 52 (a) or (b) (as in effect on September 3, 1982) and the regulations thereunder. For example, if an employer at a food or beverage operation is a member of a controlled group of corporations, then all employees of all corporations which are members of such controlled group of corporations shall be treated as employed by each such employer for purposes of this paragraph. However, an individual who owns 50 percent or more in value of the stock of a corporation operating an establishment shall not be treated as an employee of any establishment owned by the corporation.

(10) *Food or beverage employee.* A ''food or beverage employee'' is an employee who provides services in connection with the provision of food or beverages. Such employees include, but are not limited to, waiters, waitresses, busboys, bartenders, persons in charge of seating (such as a hostess, maitre d' or dining room captain), wine stewards, cooks, and kitchen help. Examples of employees who are not food or beverage employees include, but are not limited to, coat check persons, bellhops, and doormen.

(11) *Tipped employee.* A ''tipped employee'' of a food or beverage operation is an employee who is a food or beverage employee that customarily receives tip income from employment at that operation. An employee who occasionally receives small amounts of tip income is not a tipped employee. Generally, an employee who receives less than $20 per month in tip income would not be considered as customarily receiving tip income.

(12) *Directly tipped employee.* A ''directly tipped employee'' is any tipped employee who receives tips directly from customers, including an employee who after receiving tips directly from customers turns all the tips over to a tip pool. Examples of directly tipped employees are waiters, waitresses, and bartenders.

(13) *Indirectly tipped employee.* An ''indirectly tipped employee'' is a tipped employee who does not normally receive tips directly from customers. Examples of indirectly tipped employees are busboys, service bartenders and cooks. An employee, such as a maitre d', who receives tips both directly from customers and indirectly through tip

splitting or tip pooling shall be treated as a directly tipped employee.

(14) *Calendar year.* The term ''calendar year'' shall mean either the period from January 1 through December 31 or the period that begins with the first day of the first payroll period ending on or after January 1 and ends with the last day of the last payroll period ending in December of the same year. With respect to any establishment, the employer shall choose one of these two descriptions and apply it consistently.

(15) *Tips reported for a specified period.* Tips reported to an employer for a specified period under section 6053(a) are those tips actually received by an employee during such period without regard to the time when the tips are reported to the employer. Thus, if an employee reports to the employer in calendar year 1984 tips the employee actually received in calendar year 1983, the amount of tips actually received in calendar year 1983 must be included by the employer when making such information returns, statements and allocations required under section 6053(c) and this section for calendar year 1983.

(16) *Complimentary food or beverages.* Food or beverages served to customers without charge are complimentary if:

(i) Tipping for the provision of such food or beverages is customary at the establishment, and

(ii) Such food or beverages are provided in connection with an activity that is engaged in for profit and whose receipts would not be included in gross receipts as defined in paragraph (j)(1) of this section but for this subparagraph and are not nonallocable receipts which are attributable to services with respect to which a service charge of 10 percent or more is added.

For example, the retail values of complimentary hors d'oeuvres served at a bar or a complimentary dessert served to a regular patron of a restaurant would not be included in gross receipts because the receipts of the bar or restaurant would be included in gross receipts as defined in paragraph (j)(1) of this section. The retail value of a complimentary fruit basket placed in a hotel room generally would not be included in gross receipts because tipping for the provision of such items is not customary. The retail value of complimentary drinks served to customers in a gambling casino would be included in gross receipts because tipping for the provision of such items is customary, the gambling casino is an activity engaged in for profit, and the gambling receipts of the casino would not be included in gross receipts as defined in paragraph (j)(1) of this section except for this subparagraph.

(17) *Fast food operation.* An operation is a ''fast food'' operation only if its customers order, pick up, and pay for food or beverages at a counter, window, etc., and then carry the food or beverages to another location (either on or off the premises of such activities).

(18) *Cafeteria style operation.* The term ''cafeteria style'' operation means a food or beverage operation which is primarily self-service and in which the total cost of food or beverages selected by a customer is paid prior to the customer's being seated or is stated on a check provided to the customer prior to the customer's being seated and is paid by the customer to a cashier. Generally, operations are primarily self-service if food or beverages are ordered or selected by a customer at one location and carried by the customer from such location to the customer's seat. For example, cafeteria lines, buffets, and smorgasbords are primarily self-service. If, after a customer is seated, a food or beverage employee delivers items such as an item that required additional preparation after being selected by the customer, condiments, beverages, or refills at no additional cost to the customer, a food or beverage operation's status as primarily self-service would not be affected.

(19) *Less than the equivalent of 25 full-time employees.* For purposes of paragraph (f)(1)(iv) of this section, an employer shall be considered to employ less than the equivalent of 25 full-time employees at an establishment during a payroll period (as defined in section 3401(b) and the regulations thereunder) if the average number of employee hours worked per business day during a payroll period is less than 200 hours. The average number of employee hours worked per business day during a payroll period shall be computed by dividing the total number of hours worked during the period by all employees of

the employer who are employed in a food or beverage operation by the average of the number of days during the period that each food or beverage operation at which such employees worked was open for business. If an employer operates both a food or beverage operation and a nonfood or beverage operation, and one or more of his employees work for both operations, the employer may make a good faith estimate of the number of hours such employees worked for each operation in a given payroll period. Similarly, in cases where one or more of an employer's employees work for more than one of such employer's food or beverage operations, a good faith estimate may be made of the number of hours such employees worked for each operation in a given payroll period. If there is more than one payroll period for the establishment, the payroll period which is used for the greatest number of employees shall be the payroll period for purposes of this paragraph (j)(19). For purposes of this paragraph (j)(19), employees who are employed in a food or beverage operation include all employees of the operation, not just food or beverage employees. The employees of an employer shall include all employees at all food or beverage operations who, along with the employees of such employer, would be treated as employees of a single employer under section 52 (a) or (b) (as in effect on September 3, 1982) and the regulations thereunder. For example, if an employer at a food or beverage operation is a member of a controlled group of corporations, then all employees of all corporations which are members of such controlled group of corporations shall be treated as employed by each such employer for purposes of this paragraph.

(k) *Permission to submit information on magnetic tape.* For rules relating to permission to submit the information required by section 6053(c) and this section on magnetic tape of other media, see § 31.6011 (a)–8.

(l) *Recordkeeping requirements.* An employer shall keep records sufficient to substantiate any information returns, employer statements to employees, applications, or tip allocations made pursuant to section 6053(c) and this section. The records required by this paragraph shall be retained for 3 years after the due date of the return or statement to which they pertain.

(m) *Food or beverage operations outside the United States.* Employers at food or beverage operations outside the United States (as defined in section 7701(a)(9)) are not subject to the reporting requirements under section 6053(c) and this section.

(n) *Effective date.* This section is effective for calendar year 1983 and thereafter.

(96 Stat. 603, 26 U.S.C. 6053(c); 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 7906, 48 FR 36809, Aug. 15, 1983; 48 FR 40518, Sept. 8, 1983, as amended by T.D. 8039, 50 FR 29965, July 23, 1985; T.D. 8141, 52 FR 21511, June 8, 1987; T.D. 8895, 65 FR 50408, Aug. 18, 2000]

§ 31.6053–4 Substantiation requirements for tipped employees.

(a) *Substantiation of tip income*—(1) *In general.* An employee shall maintain sufficient evidence to establish the amount of tip income received by the employee during a taxable year. A daily record maintained by the employee (as described in paragraph (a)(2) of this section) shall constitute sufficient evidence. If the employee does not maintain a daily record, other evidence of the amount of tip income received during the year, such as documentary evidence (as described in paragraph (a)(3) of this section), shall constitute sufficient evidence, but only if such other evidence is as credible and as reliable as a daily record. The Commissioner may by revenue ruling, procedure or other guidance of general applicability provide for other methods of demonstrating evidence of tip income. However, notwithstanding any other provision of this paragraph (a) (1), a daily record or other evidence that is as credible and as reliable as a daily record may not be sufficient evidence if there are facts or circumstances which indicate that the employee received a larger amount of tip income. Moreover, oral statements of the employee, without corroboration, cannot constitute sufficient evidence.

(2) *Daily record.* The daily record shall state the employee's name and address, the employer's name, and the establishment's name. The daily record

shall show for each work day the amount of cash tips and charge tips received directly from customers or from other employees, and the amount of tips, if any, paid out to other employees through tip sharing, tip pooling or other arrangements and the names of such employees. The record shall also show the date that each entry is made. Form 4070A, *Employee's Daily Record of Tips*, may be used to maintain such daily record. In addition, an electronic system maintained by the employer that collects substantially similar information as Form 4070A may be used to maintain such daily record, provided the employee receives and maintains a paper copy of the daily record. The daily record of tips received by an employee shall be prepared and maintained in such manner that each entry is made on or near the date the tip income is received. A daily record made on or near the date the tip income is received has a high degree of credibility not present with respect to a record prepared subsequent thereto when generally there is a lack of accurate recall. An entry is made ''near the date the tip income is received'' if the required information with respect to tips received and paid out by the employee for the day is recorded at a time when the employee has full present knowledge of those receipts and payments.

(3) *Documentary evidence.* Documentary evidence consists of copies of any documents that contain (i) amounts that were added to a check by customers as a tip and paid over to the employee or (ii) amounts that were paid by a customer for food or beverages with respect to which tips generally would be received by the employee. Examples of documentary evidence are copies of restaurant bills, credit card charges, or charges under any other arrangement (see § 31.6053–3(j)(4)) containing amounts added by the customer as a tip.

(b) *Retention of records.* Records maintained under this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

(c) *Effective date.* The substantiation requirements of this § 31.6053–4 shall be effective for tips received on or after October 1, 1985. For the rules in effect prior to October 1, 1985, see section 6001 and the regulations thereunder. Substantiation considered sufficient as provided in this § 31.6053–4 will also be considered sufficient for tips received before October 1, 1985.

[T.D. 8141, 52 FR 21513, June 8, 1987, as amended by T.D. 8910, 65 FR 77820, Dec. 13, 2000]

§ 31.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in § 1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 9436, 73 FR 78453, Dec. 22, 2008]

§ 31.6061–1 Signing of returns.

Each return required under the regulations in this subpart shall, if signature is called for by the form or instructions relating to the return, be signed by (a) the individual, if the person required to make the return is an individual; (b) the president, vice president, or other principal officer, if the person required to make the return is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the person required to make the return is a partnership or other unincorporated organization; or (d) the fiduciary, if the person required to make the return is a trust or estate. The return may be signed for the taxpayer by an agent who is duly authorized in accordance with § 31.6011(a)–7 to make such return.

§ 31.6065(a)–1 Verification of returns or other documents.

If a return, statement, or other document made under the regulations in this part is required by the regulations contained in this part, or the form and instructions issued with respect to such return, statement, or other document, to contain or be verified by a written declaration that it is made under the penalties of perjury, such return, statement, or other document shall be so verified by the person signing it.

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) *Federal Insurance Contributions Act and income tax withheld from wages and from nonpayroll payments*—(1) *Quarterly or annual returns.* Except as provided in paragraph (a)(4) of this section, each return required to be made under § 31.6011(a)–1, in respect of the taxes imposed by the Federal Insurance Contributions Act (26 U.S.C. 3101–3128), or required to be made under § 31.6011(a)–4, in respect of income tax withheld, shall be filed on or before the last day of the first calendar month following the period for which it is made. A return may be filed on or before the 10th day of the second calendar month following such period if timely deposits under section 6302(c) of the Code and the regulations have been made in full payment of such taxes due for the period.

(2) *Monthly tax returns.* Each return in respect of the taxes imposed by the Federal Insurance Contributions Act or of income tax withheld which is required to be made under paragraph (a) of § 31.6011(a)–5 shall be filed on or before the fifteenth day of the first calendar month following the period for which it is made.

(3) *Information returns*—(i) *General rule.* Each information return in respect of wages as defined in the Federal Insurance Contributions Act or of income tax withheld from wages as required under § 31.6051–2 must be filed on or before January 31 of the year following the calendar year for which it is made, except that, if a tax return under § 31.6011(a)–5(a) is filed as a final return for a period ending prior to December 31, the information return must be filed on or before the last day of the first month following the period for which the tax return is filed.

(ii) *Expedited filing.* If an employer who is required to make a return pursuant to § 31.6011(a)–1 or § 31.6011(a)–4 is required to make a final return on Form 941, or a variation thereof, under § 31.6011(a)–6(a)(1) (relating to the final return for Federal Insurance Contributions Act taxes and income tax withholding from wages), the return which is required to be made under § 31.6051–2 must be filed on or before the last day of the first month following the period for which the final return is filed. The requirements set forth in this paragraph (a)(3)(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).

(4) *Employee returns under Federal Insurance Contributions Act.* A return of employee tax under section 3101 required under paragraph (d) of § 31.6011(a)–1 to be made by an individual for a calendar year on Form 1040 shall be filed on or before the due date of such individual's return of income (see § 1.6012–1 of this chapter (Income Tax Regulations)) for the calendar year, or, if the individual makes his return of income on a fiscal year basis, on or before the due date of his return of income for the fiscal year beginning in the calendar year for which a return of employee tax is required. A return of employee tax under section 3101 required under paragraph (d) of § 31.601(a)–1 to be made for a calendar year—

(i) On Form 1040SS or Form 1040PR, or

(ii) On Form 1040 by an individual who is not required to make a return of income for the calendar year or for a fiscal year beginning in such calendar year,

shall be filed on or before the 15th day of the fourth month following the close of the calendar year.

(b) *Railroad Retirement Tax Act.* Each return of the taxes imposed by the Railroad Retirement Tax Act required to be made under § 31.6011(a)–2 shall be filed on or before the last day of the second calendar month following the period for which it is made.

(c) *Federal Unemployment Tax Act.* Each return of the tax imposed by the Federal Unemployment Tax Act required to be made under § 31.6011(a)–3 shall be filed on or before the last day of the first calendar month following the period for which it is made. However, a return may be filed on or before the 10th day of the second calendar month following such period if timely deposits under section 6302(c) of the Code and the regulations thereunder have been made in full payment of such taxes due for the period.

(d) *Last day for filing.* For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see the provisions of § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(e) *Late filing.* For additions to the tax in case of failure to file a return within the prescribed time, see the provisions of § 301.6651–1 of this chapter (Regulations on Procedure and Administration).

(f) *Cross reference.* For extensions of time for filing returns and other documents, see § 31.6081(a)–1.

(g) *Applicability date.* This section applies to returns filed on or after January 30, 2020. Section 31.6071(a)–1T (as contained in 26 CFR part 31, revised April 2019) applies to returns filed before January 30, 2020.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6941, 32 FR 18041, Dec. 16, 1967; T.D. 7001, 34 FR 1005, Jan. 23, 1969; T.D. 7078, 35 FR 18525, Dec. 5, 1970; T.D. 7351, 40 FR 17146, Apr. 17, 1975; T.D. 7953, 49 FR 19644, May 9, 1984; T.D. 8504, 58 FR 68035, Dec. 23, 1993; T.D. 8895, 65 FR 50408, Aug. 18, 2000; T.D. 8952, 66 FR 33832, June 26, 2001; T.D. 9239, 71 FR 14, Jan. 3, 2006; T.D. 9507, 75 FR 75900, Dec. 7, 2010; T.D. 9524, 76 FR 26602, May 9, 2011; T.D. 9566, 76 FR 77675, Dec. 14, 2011; T.D. 9586, 77 FR 24612, Apr. 25, 2012; T.D. 9821, 82 FR 33448, July 20, 2017; T.D. 9892, 85 FR 5327, Jan. 30, 2020]

§ 31.6071(a)–1A Time for filing returns with respect to the railroad unemployment repayment tax.

(a) *In general.* Each return of the taxes imposed under section 3321 (a) and (b) required to be made under § 31.6011(a)–3A shall be filed on or before the last day of the second calendar month following the period for which it is made.

(b) *Last day for filing.* For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see the provisions of § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(c) *Late filing.* For additions to the tax in the case of failure to file a return within the prescribed time, see the provisions of § 301.6651–1 of this chapter (Regulations on Procedure and Administration).

[T.D. 8105, 51 FR 40169, Nov. 5, 1986. Redesignated and amended at T.D. 8227, 53 FR 34736, Sept. 8, 1988]

§ 31.6081(a)–1 Extensions of time for filing returns and other documents.

(a) *Federal Insurance Contributions Act; income tax withheld from wages; and Railroad Retirement Tax Act*—(1) *In general.* Except as otherwise provided in subparagraphs (2) and (3) of this paragraph, no extension of time for filing any return or other document required in respect of the Federal Insurance Contributions Act, income tax withheld from wages, or the Railroad Retirment Tax Act will be granted.

(2) *Information returns of employers on Forms W-2 and W-3—In general.* The Commissioner may grant an extension of time in which to file the Social Security Administration copy of Forms W-2 and the accompanying transmittal form which constitutes an information return under § 31.6051–2(a). For further guidance regarding extensions of time to file the Social Security Administration copy of Forms W-2 and W-3, see § 1.6081–8 of this chapter.

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

(b) *Federal Unemployment Tax Act.* The Commissioner may, upon application of the employer, grant a reasonable extension of time (not to exceed 90 days) in which to file any return required in respect of the Federal Unemployment Tax Act. Any application for an extension of time for filing the return shall be in writing, properly

signed by the employer or his duly authorized agent. Except as provided in paragraph (b) of § 301.6091–1 (relating to hand-carried documents), each application shall be addressed to the internal revenue officer with whom the employer will file the return. Each application shall contain a full recital of the reasons for requesting the extension, to aid such officer in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to such internal revenue officer will suffice as an application. The application shall be filed on or before the due date prescribed in paragraph (c) of § 31.6071(a)–1 for filing the return, or on or before the date prescribed for filing the return in any prior extension granted. An extension of time for filing a return does not operate to extend the time for payment of the tax or any part thereof.

(c) *Duly authorized agent.* 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 requests sets forth the reasons for a signature other than the employer's and the relationship existing between the employer and the signer.

(d) *Effective date.* Paragraph (a)(2)(i) of this section applies to requests for extensions of time to file the Social Security Administration copy of Forms W-2 and W-3 due after December 7, 2004.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6950, 33 FR 5358, Apr. 4, 1968; T.D. 7351, 40 FR 17146, Apr. 17, 1975; T.D. 9061, 68 FR 34799, June 11, 2003; T.D. 9163, 69 FR 70549, 70550, Dec. 7, 2004]

§ 31.6091–1 Place for filing returns.

(a) *Persons other than corporations.* Except as provided in paragraph (c) of this section, the return of a person other than a corporation shall be filed with any person assigned the responsibility to receive returns in the local Internal Revenue Service office that serves the principal place of business or legal residence of such person. If such person has no principal place of business or legal residence in any internal revenue district, the return shall be filed with the District Director at Baltimore, Maryland, except as provided in paragraph (c) of this section.

(b) *Corporations.* The return of a corporation shall be filed with any person assigned the responsibility to receive returns in the local Internal Revenue Service office that serves the principal place of business or principal office or agency of the corporation, except as provided in paragraph (c) of this section.

(c) *Returns of taxpayers outside the United States.* The return of a person (other than a corporation) outside the United States having no legal residence or principal place of business in the United States, or the return of a corporation having no principal place of business or principal office or agency in the United States, shall be filed with the Internal Revenue Service, Philadelphia, Pennsylvania 19255, or as otherwise directed in the applicable forms and instructions.

(d) *Returns filed with internal revenue service centers or Social Security Administration office.* Notwithstanding paragraphs (a), (b), and (c) of this section, whenever instructions applicable to such returns provide that the returns shall be filed with an internal revenue service center or an office of the Social Security Administration, such returns shall be so filed in accordance with such instructions.

(e) *Hand-carried returns.* Except as provided in subparagraph (3) of this paragraph, and notwithstanding paragraphs (1) and (2) of section 6091(b) and paragraph (d) of this section—

(1) *Persons other than corporations.* Returns of persons other than corporations which are filed by hand carrying shall be filed with any person assigned the responsibility to receive hand-carried returns in the local Internal Revenue Service office as provided in paragraph (a) of this section.

(2) *Corporations.* Returns of corporations which are filed by hand carrying shall be filed with any person assigned the responsibility to receive hand-carried returns in the local Internal Revenue Service office as provided in paragraph (b) of this section.

(3) *Exceptions.* This paragraph shall not apply to returns of—

(i) Persons who have no legal residence, no principal place of business, nor principal office or agency served by a local Internal Revenue Service office,

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to earned income from sources without the United States), section 922 (relating to special deduction for Western Hemisphere trade corporations), section 931 (relating to income from sources within possessions of the United States), section 933 (relating to income from sources within Puerto Rico), or section 941 (relating to the special deduction for China Trade Act corporations), and

(iv) Nonresident alien persons and foreign corporations.

(f) *Permission to file in office other than required office.* The Commissioner may permit the filing of any return required to be made under the regulations in this subpart in any local Internal Revenue Service office, notwithstanding the provisions of paragraphs (1), (2), and (4) of section 6091(b) and paragraphs (a), (b), (c), (d), and (e) of this section.

(g) *Returns of officers and employees of the Internal Revenue Service.* The Commissioner may require any officer or employee of the Internal Revenue Service to file any return required of him under the regulations in this subpart in any local Internal Revenue Service office selected by the Commissioner, notwithstanding the provisions of paragraphs (1), (2), and (4) of section 6091(b) and paragraphs (a), (b), (c), (d), and (e) of this section.

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

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6915, 32 FR 5261, Mar. 29, 1967; T.D. 7495, 42 FR 33727, July 1, 1977; T.D. 7580, 43 FR 60160, Dec. 26, 1978; T.D. 9156, 69 FR 55745, Sept. 16, 2004]

§ 31.6101–1 Period covered by returns.

The period covered by any return required under the regulations in this subpart shall be as provided in those provisions of the regulations under which the return is required to be made. See § 31.6011(a)–1, relating to returns of taxes under the Federal Insurance Contributions Act; § 31.6011(a)–2, relating to returns of taxes under the Railroad Retirement Tax Act; § 31.6011(a)–3, relating to returns of tax under the Federal Unemployment Tax Act; § 31.6011(a)–4, relating to returns of income tax withheld under section 3402; and § 31.6011 (a)–5, relating to monthly returns of taxes under the Federal Insurance Contributions Act and of income tax withheld under section 3402.

§ 31.6107–1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 9436, 73 FR 78453, Dec. 22, 2008]

§ 31.6109–1 Supplying of identifying numbers.

(a) *In general.* The returns, statements, and other documents required to be filed under this subchapter shall reflect such identifying numbers as are required by each return, statement, or document and its related instructions. See § 301.6109–1 of this chapter (Regulations on Procedure and Administration).

(b) *Effective date.* The provisions of this section are effective for information which must be furnished after April 15, 1974. See 26 CFR § 31.6109–1 (revised as of April 1, 1973) for provisions with respect to information which must be furnished before April 16, 1974.

[39 FR 9946, Mar. 15, 1974]

§ 31.6109–2 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each employment tax return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 9436, 73 FR 78453, Dec. 22, 2008]

§ 31.6151–1 Time for paying tax.

(a) *In general.* The tax required to be reported on each tax return required under this subpart is due and payable to the internal revenue officer with whom the return is filed at the time prescribed in § 31.6071(a)–1 for filing such return. See the applicable sections in Part 301 of this chapter (Regulations on Procedure and Administration), for provisions relating to interest on underpayments, additions to tax, and penalties.

(b) *Cross references.* For provisions relating to the use of authorized financial institutions in depositing the taxes, see §§ 31.6302(c)–1, 31.6302(c)–2, and 31.6302(c)–3. For rules relating to the payment of taxes in nonconvertible foreign currency, see § 301.6316–7 of this chapter (Regulations on Procedure and Administration).

[T.D. 6872, 31 FR 149, Jan. 6, 1966; T.D. 6915, 32 FR 5261, Mar. 29, 1967; T.D. 7037, 35 FR 6709, Apr. 28, 1970; T.D. 7953, 49 FR 19644, May 9, 1984; T.D. 8952, 66 FR 33832, June 26, 2001]

§ 31.6157–1 Cross reference.

For provisions relating to the time and manner of depositing the tax imposed by section 3301, see the provisions of § 31.6302(c)–3. For provisions relating to the time and manner of depositing the railroad unemployment repayment tax imposed by section 3321(a), see § 31.6302(c)–2A.

[T.D. 7037, 35 FR 6709, Apr. 28, 1970, as amended at T.D. 8227, 53 FR 34736, Sept. 8, 1988]

§ 31.6161(a)(1)–1 Extensions of time for paying tax.

No extension of time will be granted for payment of any of the taxes to which the regulations in this part have application.

§ 31.6205–1 Adjustments of underpayments.

(a) *In general.* (1) An employer who has underreported and underpaid employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employer FICA tax under section 3111, employee Railroad Retirement Tax Act (RRTA) tax under section 3201 or employer RRTA tax under section 3221, or income tax required under section 3402 to be withheld, with respect to any payment of wages or compensation, shall correct such error as provided in this section. Such correction may constitute an interest-free adjustment as provided in paragraph (b) or (c) of this section.

(2) No correction will be eligible for interest-free adjustment treatment if the failure to report relates to an issue that was raised in an examination of a prior return period or if the employer knowingly underreported its employment tax liability.

(3) Every correction under this section of an underpayment of tax with respect to a payment of wages or compensation shall be made on the form prescribed by the IRS that corresponds to the return being corrected. The form, filed in accordance with this section and the instructions, will constitute an adjusted return for the return period being corrected.

(4) Every adjusted return on which an underpayment is corrected pursuant to this section shall designate the return period in which the error was ascertained and the return period being corrected, explain in detail the grounds and facts relied upon to support the correction, and set forth such other information as may be required by the regulations in this section and by the instructions relating to the adjusted return.

(5) For purposes of this section, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(6) No correction will be eligible for interest-free adjustment treatment pursuant to this section after the earlier of the following:

(i) Receipt from the IRS of notice and demand for payment thereof based upon an assessment.

(ii) Receipt from the IRS of a Notice of Determination of Worker Classification (Notice of Determination) in connection with such underpayment. Prior to receipt of a Notice of Determination, the taxpayer may, in lieu of making a payment, make a cash bond deposit that would have the effect of stopping the accrual of any interest, but would not deprive the taxpayer of its right to receive a Notice of Determination and to petition the Tax Court under section 7436.

(7) Subject to the exceptions specified in paragraphs (a)(2) and (a)(6) of this section, Form 2504, ''Agreement and Collection of Additional Tax and Acceptance of Overassessment (Excise or Employment Tax),'' Form 2504–WC, ''Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment in Worker Classification Cases (Employment Tax),'' and such other forms as may be prescribed by the IRS, constitute adjusted returns for purposes of this section.

(8) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041–2 and 31.6051–1. For provisions relating to filing information returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041–2 and 31.6051–2.

(9) For the period of limitations upon assessment and collection of taxes, see § 301.6501(a)–1.

(b) *Federal Insurance Contributions Act and Railroad Retirement Tax Act*—(1) *Undercollection ascertained before return is filed.* If an employer collects less than the correct amount of employee FICA or RRTA tax from an employee with respect to a payment of wages or compensation, and if the employer ascertains the error before filing the return on which the employee tax with respect to such wages or compensation is required to be reported, the employer shall nevertheless report on the return and pay to the IRS the correct amount of employee tax. If the employer does not report the correct amount of tax in these circumstances, the employer may not later correct the error through an interest-free adjustment.

(2) *Error ascertained after return is filed.* (i) If an employer files a return on which FICA tax or RRTA tax is required to be reported, and reports on the return less than the correct amount of employee or employer FICA or RRTA tax with respect to a payment of wages or compensation, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section, except as provided in paragraph (b)(4) of this section for Additional Medicare Tax. The employer shall adjust the underpayment of tax by reporting the additional amount due on an adjusted return for the return period in which the wages or compensation was paid, accompanied by a detailed explanation of the amount being reported on the adjusted return and any other information as may be required by this section and by the instructions relating to the adjusted return. The reporting of the underpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed within the period of limitations for assessment for the return period being corrected, and by the due date for filing the return for the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected, without regard to the employer's current filing requirements. For example, an employer with a current annual filing requirement who is correcting an error on a previously filed quarterly return must file the adjusted return by the due date for filing a quarterly return for the quarter in which the error is ascertained. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the adjusted return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due,

interest accrues from that date (see section 6601).

(ii) If an employer files a return reporting FICA tax for a return period although the employer was required to file a return reporting RRTA tax, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. However, if the employer also reported less than the correct amount of Additional Medicare Tax, the employer shall correct the underwithheld and underpaid Additional Medicare Tax in accordance with paragraph (b)(4) of this section. The employer shall adjust the underpayment of RRTA tax by reporting the correct amount of RRTA tax on an original return for reporting RRTA tax for the return period for which the incorrect return was filed, accompanied by an adjusted return corresponding to the incorrect return that was filed to correct the erroneously reported and paid FICA tax. The adjusted return must include a detailed explanation of the amounts being reported on the original return and the adjusted return and any other information as may be required by the regulations in this section and by the instructions relating to the adjusted return. The reporting of the correct amounts for the period constitutes an adjustment within the meaning of this section only if the returns are filed by the due date of the return for reporting the RRTA tax for the return period in which the error is ascertained. Pursuant to § 31.3503–1, the amount of erroneously paid FICA tax will be credited against the underpaid RRTA tax. Any remaining underpayment of RRTA tax adjusted in accordance with this section must be paid to the IRS by the time the returns are filed in accordance with this paragraph. If an adjustment is reported pursuant to this section, but the amount of the remaining underpayment is not paid when due, interest accrues from that date (see section 6601).

(iii) If an employer files a return reporting RRTA tax for a return period although the employer was required to file a return reporting FICA tax, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. However, if the employer also reported less than the correct amount of Additional Medicare Tax, the employer shall correct the underwithheld and underpaid Additional Medicare Tax in accordance with paragraph (b)(4) of this section. The employer shall adjust the underpayment of FICA tax by reporting the correct amount of FICA tax on an original return for reporting FICA tax for the return period for which the incorrect return was filed (or an adjusted return for reporting the FICA tax if an original return was already filed for such return period to report the income tax required to be withheld under section 3402), accompanied by an adjusted return corresponding to the incorrect return that was filed to correct the erroneously reported and paid RRTA tax. The adjusted return(s) must include a detailed explanation of the amount being reported on the original return and/or the adjusted return(s) and any other information as may be required by the regulations in this section and by the instructions relating to the form. The reporting of the correct amounts for the period constitutes an adjustment within the meaning of this section only if the returns are filed by the due date of the return for reporting the FICA tax for the return period in which the error is ascertained. Pursuant to § 31.3503–1, the amount of erroneously paid RRTA tax will be credited against the underpaid FICA tax. Any remaining underpayment of FICA tax adjusted in accordance with this section must be paid to the IRS by the time the returns are filed in accordance with this paragraph (b)(2)(iii). If an adjustment is reported pursuant to this section, but the amount of the remaining underpayment is not paid when due, interest accrues from that date (see section 6601).

(3) *Return not filed because of failure to treat individual as employee.* If an employer fails to file a return for a return period solely because the employer failed to treat any individuals properly as employees for the return period (and, therefore, failed to withhold and pay any employer or employee FICA or

RRTA tax with respect to wages or compensation paid to the employees) and if the employer ascertains the error after the due date of the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall report the amount due by filing an original return required to be filed to report the tax for the return period for which the employer failed to file a return, accompanied by an adjusted return as provided in the instructions to the adjusted return. The adjusted return must include a detailed explanation of the amount being reported on the original return and adjusted return and any other information as may be required by this section and by the instructions relating to the adjusted return. The reporting of the correct amount of tax for the return period constitutes an adjustment within the meaning of this section only if the original and adjusted returns are filed by the due date of the return for reporting such tax for the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected, without regard to the employer's current filing requirements. For example, an employer with a current annual filing requirement who is correcting an error on a previously filed quarterly return must file the adjusted return by the due date for filing a quarterly return for the quarter in which the error is ascertained. However, an adjustment of Additional Medicare Tax required to be withheld under section 3101(b)(2) or section 3201(a) may only be reported pursuant to this section if the error is ascertained within the same calendar year that the wages or compensation were paid to the employee, or if section 3509 applies to determine the amount of the underpayment, or if the adjustment is reported on a Form 2504 or Form 2504–WC. See paragraph (b)(4) of this section. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the returns are filed in accordance with this paragraph. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(4) *Additional Medicare Tax.* If an employer files a return on which FICA tax or RRTA tax is required to be reported, and reports on the return less than the correct amount of Additional Medicare Tax required to be withheld with respect to a payment of wages or compensation, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. An adjustment of Additional Medicare Tax may only be reported pursuant to this paragraph (b)(4) if the error is ascertained within the same calendar year that the wages or compensation were paid to the employee, unless the underpayment is attributable to an administrative error (that is, an error involving the inaccurate reporting of the amount actually withheld), section 3509 applies to determine the amount of the underpayment, or the adjustment is reported on a Form 2504 or Form 2504–WC. The employer shall adjust the underpayment of Additional Medicare Tax by reporting the additional amount due on an adjusted return for the return period in which the wages or compensation were paid, accompanied by a detailed explanation of the amount being reported on the adjusted return and any other information as may be required by this section and by the instructions relating to the adjusted return. The reporting of the underpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed within the period of limitations for assessment for the return period being corrected, and by the due date for filing the return for the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected, without regard to the employer's current filing requirements. For example, an employer with a current annual filing requirement who is correcting an error on a previously filed quarterly return must file the adjusted return by the due date for filing a quarterly return for the quarter in which the error

is ascertained. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the adjusted return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(c) *Income tax required to be withheld from wages*—(1) *Undercollection ascertained before return is filed.* If an employer collects less than the correct amount of income tax required to be withheld from wages under section 3402, and if the employer ascertains the error before filing the return on which the withheld tax is required to be reported, the employer shall nevertheless report on the return and pay to the IRS the correct amount of tax required to be withheld. If the employer does not report the correct amount of tax in these circumstances, the employer may not correct the error through an interest-free adjustment.

(2) *Error ascertained after return is filed.* If an employer files a return on which income tax required to be withheld from wages is required to be reported and reports on the return less than the correct amount of income tax required to be withheld, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of tax by reporting the additional amount due on an adjusted return for the return period in which the wages were paid, accompanied by a detailed explanation of the amount being reported on the adjusted return and any other information as may be required by this section and by the instructions relating to the adjusted return. The reporting of the underpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed by the due date for filing the return for the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected, without regard to the employer's current filing requirements. For example, an employer with a current annual filing requirement who is correcting an error on a previously filed quarterly return must file the adjusted return by the due date for filing a quarterly return for the quarter in which the error is ascertained. However, an adjustment may only be reported pursuant to this section if the error is ascertained within the same calendar year that the wages to the employee were paid, unless the underpayment is attributable to an administrative error (that is, an error involving the inaccurate reporting of the amount actually withheld), section 3509 applies to determine the amount of the underpayment, or the adjustment is reported on a Form 2504 or Form 2504–WC. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the adjusted return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(3) *Return not filed because of failure to treat individual as employee.* If an employer fails to file a return for a return period solely because the employer failed to treat any individuals properly as employees for the return period (and, therefore, failed to withhold and pay any income tax required to be withheld from wages), the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall report the amount due by filing an original return for the return period for which the employer failed to file a return, accompanied by an adjusted return as provided in the instructions to the adjusted return. The adjusted return must include a detailed explanation of the amount being reported on the original and adjusted returns and any other information as may be required by this section and by the instructions relating to the adjusted return. The reporting of the correct amount of tax for the return period constitutes an adjustment within the meaning of this section only if the original and adjusted returns are filed by the due date of the return for reporting such tax for the return period in which the error is

ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected, without regard to the employer's current filing requirements. For example, an employer with a current annual filing requirement who is correcting an error on a previously filed quarterly return must file the adjusted return by the due date for filing a quarterly return for the quarter in which the error is ascertained. However, an adjustment may only be reported pursuant to this section if the error is ascertained within the same calendar year that the wages to the employee were paid, or if section 3509 applies to determine the amount of the underpayment, or if the adjustment is reported on a Form 2504 or Form 2504–WC. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the returns are filed in accordance with this paragraph. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(d) *Deductions from employee*—(1) *Federal Insurance Contributions Tax Act and Railroad Retirement Tax Act.* If an employer collects less than the correct amount of employee FICA or RRTA tax from an employee with respect to a payment of wages or compensation, the employer must collect the amount of the undercollection by deducting the amount from remuneration of the employee, if any, paid after the employer ascertains the error. If an employer collects less than the correct amount of Additional Medicare Tax required to be withheld under section 3101(b)(2) or section 3201(a), the employer must collect the amount of the undercollection on or before the last day of the calendar year by deducting the amount from remuneration of the employee, if any, paid after the employer ascertains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages or compensation. The correct amount of employee tax must be reported and paid, as provided in paragraph (b) of this section, whether or not the undercollection is corrected by a deduction made as prescribed in this paragraph (d)(1), and even if the deduction is made after the return on which the employee tax must be reported is due. If such a deduction is not made, the obligation of the employee to the employer with respect to the undercollection is a matter for settlement between the employee and the employer. If an employer makes an erroneous collection of employee tax from two or more of its employees, a separate settlement must be made with respect to each employee. An overcollection of employee tax from one employee may not be used to offset an undercollection of such tax from another employee. For provisions relating to the employer's liability for the tax, whether or not it collects the tax from the employee, see §§ 31.3102–1(d), 31.3102–4(c), and 31.3202–1. This paragraph (d)(1) does not apply if section 3509 applies to determine the employer's liability.

(2) *Income tax required to be withheld from wages.* If an employer collects less than the correct amount of income tax required to be withheld from wages during a calendar year, the employer must collect the amount of the undercollection on or before the last day of the year by deducting the amount from remuneration of the employee, if any, paid after the employer ascertains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages. The correct amount of income tax must be reported and paid, as provided in paragraph (c) of this section, whether or not the undercollection is corrected by a deduction made as prescribed in this paragraph (d)(2), and even if the deduction is made after the return on which the tax must be reported is due. If such a deduction is not made, the obligation of the employee to the employer with respect to the undercollection is a matter for settlement between the employee and the employer within the calendar year. If an employer makes an erroneous collection of income tax from two or more of its employees, a separate settlement must be made with respect to each employee. An overcollection of income tax from one employee may not be used to offset an

undercollection of such tax from another employee. For provisions relating to the employer's liability for the tax, whether or not it collects the tax from the employee, see §31.3403–1. For provisions relating to the employer's liability for an underpayment of tax unless the employer can show that the income tax against which the tax under section 3402 may be credited has been paid, see §31.3402(d)–1. This paragraph (d)(2) does not apply if section 3509 applies to determine the employer's liability.

(e) *Effective/applicability date.* Paragraphs (b) and (d) of this section apply to adjusted returns filed on or after November 29, 2013.

[T.D. 9405, 73 FR 37376, July 1, 2008, as amended by T.D. 9645, 78 FR 71473, Nov. 29, 2013]

§ 31.6205–2 Adjustments of underpayments of hospital insurance taxes that accrue after March 31, 1986, and before January 1, 1987, with respect to wages of State and local government employees.

(a) *Adjustments without interest.* A State or local government employer who makes, or has made, an undercollection or underpayment of the hospital insurance taxes imposed by sections 3101(b) and 3111(b) that—

(1) Are required to be paid by reason of section 3121(u)(2), and

(2) Are required to be reported on returns due July 31, 1986, October 31, 1986, or February 2, 1987.

may make an adjustment without interest with respect to such taxes provided that all such taxes for the time period specified in paragraph (a)(2) (except for amounts that are subsequently paid pursuant to an interest-free adjustment under §31.6205–1) are paid on or before February 2, 1987.

(b) *Example.* The application of the provisions of this section are illustrated by the following example:

Example. A State or local government employer should have withheld and paid $100 dollars in hospital insurance taxes for the quarter beginning April 1, 1986, and ending June 30, 1986. The due date for the return and payment for that period is July 31, 1986. If the employer made the payment by February 2, 1987, then, under section 6601, interest is not assessable with respect to the underpayment of the hospital insurance taxes. If the employer did not make the payment by February 2, 1987, the interest is assessable for the period from July 31, 1986, until the time of payment.

[T.D. 8156, 52 FR 33582, Sept. 4, 1987]

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This section lists the table of contents for §§31.6302–1 through 31.6302–4.

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§ 31.6302–1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.

(a) *Introduction.* With respect to employment taxes attributable to payments made after December 31, 1992, an employer is either a monthly depositor or a semi-weekly depositor based on an annual determination. An employer must generally deposit employment taxes under one of two rules: the Monthly rule in paragraph (c)(1) of this section, or the Semi-Weekly rule in paragraph (c)(2) of this section. Various exceptions and safe harbors are provided. Paragraph (f) of this section provides certain safe harbors for employers who inadvertently fail to deposit the full amount of taxes. Paragraph (c)(3) of this section provides an overriding exception to the Monthly and Semi-Weekly rules where an employer has accumulated $100,000 or more of employment taxes. Paragraph (e) of this section provides the definition of employment taxes.

(b) *Determination of status*—(1) *In general.* The determination of whether an employer is a monthly or semi-weekly depositor for a calendar year is based on an annual determination and generally depends upon the aggregate amount of employment taxes reported by the employer for the lookback period as defined in paragraph (b)(4) of this section.

(2) *Monthly depositor*—(i) *In general.* An employer is a monthly depositor for the entire calendar year if the aggregate amount of employment taxes reported for the lookback period is $50,000 or less.

(ii) *Special rule.* An employer ceases to be a monthly depositor on the first day after the employer is subject to the One-Day ($100,000) rule in paragraph (c)(3) of this section. At that time, the employer immediately becomes a semi-

weekly depositor for the remainder of the calendar year and for the following calendar year.

(3) *Semi-weekly depositor.* An employer is a semi-weekly depositor for the entire calendar year if the aggregate amount of employment taxes reported for the lookback period exceeds $50,000.

(4) *Lookback period*—(i) *In general.* For employers who file Form 941, ''Employer's QUARTERLY Federal Tax Return,'' (or any related Spanish-language returns or returns for U.S. possessions) the lookback period for each calendar year is the twelve month period ended the preceding June 30. For example, the lookback period for calendar year 2006 is the period July 1, 2004, to June 30, 2005. The lookback period for employers who file Form 944, ''Employer's ANNUAL Federal Tax Return,'' or filed Form 944 (or any related Spanish-language returns or returns for U.S. possessions) for either of the two previous calendar years, is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2006 is calendar year 2004. In determining status as either a monthly or semi-weekly depositor, an employer should determine the aggregate amount of employment tax liabilities reported on its return(s) (Forms 941 or Form 944) for the lookback period. The amount of employment tax liabilities reported for the lookback period is the amount the employer reported on either Forms 941 or Form 944 even if the employer is required to file the other form for the current calendar year. New employers shall be treated as having employment tax liabilities of zero for any part of the lookback period before the date the employer started or acquired its business.

(ii) *Adjustments and claims for refund.* The employment tax liability reported on the original return for the return period is the amount taken into account in determining whether the aggregate amount of employment taxes reported for the lookback period exceeds $50,000. Any amounts reported on adjusted returns or claims for refund pursuant to sections 6205, 6402, 6413, and 6414 filed after the due date of the original return are not taken into account when determining the aggregate amount of employment taxes reported for the lookback period. Prior period adjustments reported on Forms 941 or Form 944 for 2008 and earlier years are taken into account in determining the employment tax liability for the return period in which the adjustments are reported.

(c) *Deposit rules*—(1) *Monthly rule.* An employer that is a monthly depositor must deposit employment taxes accumulated with respect to payments made during a calendar month by electronic funds transfer by the 15th day of the following month. If the 15th day of the following month is a Saturday, Sunday, or legal holiday in the District of Columbia under section 7503, taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

(2) *Semi-Weekly rule*—(i) *In general.* An employer that is a semi-weekly depositor for a calendar year must deposit employment taxes by electronic funds transfer by the dates set forth below:

Payment dates/semi-weekly periods	Deposit date
(A) Wednesday, Thursday and/or Friday	On or before the following Wednesday.
(B) Saturday, Sunday, Monday and/or Tuesday	On or before the following Friday.

(ii) *Semi-weekly period spanning two return periods.* If the return period ends during a semi-weekly period in which an employer has two or more payment dates, two deposit obligations may exist. For example, if one quarterly return period ends on Thursday and a new quarterly return period begins on Friday, employment taxes from payments on Wednesday and Thursday are subject to one deposit obligation, and employment taxes from payments on Friday are subject to a separate deposit obligation. Two separate federal tax deposits are required.

(iii) *Special rule for computing days.* Semi-weekly depositors have at least three business days following the close

of the semi-weekly period by which to deposit employment taxes accumulated during the semi-weekly period. Business days include every calendar day other than Saturdays, Sundays, or legal holidays in the District of Columbia under section 7503. If any of the three weekdays following the close of a semi-weekly period is a legal holiday, the employer has an additional day for each day that is a legal holiday by which to make the required deposit. For example, if the Monday following the close of a Wednesday to Friday semi-weekly period is Memorial Day, a legal holiday, the required deposit for the semi-weekly period is not due until the following Thursday rather than the following Wednesday.

(3) *Exception—One–Day rule.* Notwithstanding paragraphs (c)(1) and (c)(2) of this section, if on any day within a deposit period (monthly or semi-weekly) an employer has accumulated $100,000 or more of employment taxes, those taxes must be deposited by electronic funds transfer in time to satisfy the tax obligation by the close of the next day. If the next day is a Saturday, Sunday, or legal holiday in the District of Columbia under section 7503, the taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of determining whether the $100,000 threshold is met—

(i) A monthly depositor takes into account only those employment taxes accumulated in the calendar month in which the day occurs; and

(ii) A semi-weekly depositor takes into account only those employment taxes accumulated in the Wednesday–Friday or Saturday–Tuesday semi-weekly period in which the day occurs.

(4) *Deposits required only on business days.* No taxes are required to be deposited under this section on any day that is a Saturday, Sunday, or legal holiday. Deposits are required only on business days. Business days include every calendar day other than Saturdays, Sundays, or legal holidays. For purposes of this paragraph (c), legal holidays shall have the same meaning provided in section 7503. Pursuant to section 7503, the term *legal holiday* means a legal holiday in the District of Columbia. For purposes of this paragraph (c), the term ''legal holiday'' does not include other Statewide legal holidays.

(5) *Exception to the monthly and semi-weekly deposit rules for employers in the Employers' Annual Federal Tax Program (Form 944).* Generally, an employer who files Form 944 for a taxable year may remit its accumulated employment taxes with its timely filed return for that taxable year and is not required to deposit under either the monthly or semi-weekly rules set forth in paragraphs (c)(1) and (c)(2) of this section during that taxable year. An employer who files Form 944 whose actual employment tax liability exceeds the eligibility threshold, as set forth in §§ 31.6011(a)–1(a)(5) and 31.6011(a)–4(a)(4), will not qualify for this exception and should follow the deposit rules set forth in this section.

(6) *Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.* An employer who filed Form 944 for the preceding year but will file Form 941 instead for the current year will be deemed to have timely deposited its current year's January deposit obligation(s) under paragraphs (c)(1) through (c)(4) of this section if the employer deposits the amount of such deposit obligation(s) by March 15 of that year.

(7) *Exception to the monthly and semi-weekly deposit rules for employers making interest-free adjustments.* An employer filing an adjusted return under § 31.6205–1 to report taxes that were accumulated in a prior return period shall pay the amount of the adjustment by the time it files the adjusted return, and the amount timely paid will be deemed to have been timely deposited by the employer. The payment may be made by a check or money order with the adjusted return, by electronic funds transfer, or by other methods of payment as provided by the instructions relating to the adjusted return.

(d) *Examples.* The provisions of paragraphs (a), (b) and (c) of this section are illustrated by the following examples:

Example 1 Monthly depositor. (i) *Determination of status.* For calendar year 2011, Employer A determines its depositor status using the lookback period July 1, 2009 to June 30, 2010. For the four calendar quarters within this period, A reported aggregate employment tax liabilities of $42,000 on its quarterly Forms 941. Because the aggregate amount did not exceed $50,000, A is a monthly depositor for the entire calendar year 2011.

(ii) *Monthly rule.* During December 2011, A (a monthly depositor) accumulates $3,500 in employment taxes. A has a $3,500 deposit obligation that must be satisfied by the 15th day of the following month. Since January 15, 2012, is a Sunday, and January 16, 2012, Dr. Martin Luther King, Jr.'s Birthday, is a legal holiday, A's deposit obligation will be satisfied if the deposit is made by electronic funds transfer by the next business day, January 17, 2012.

Example 2 Semi-weekly depositor. (i) *Determination of status.* For the calendar year 2011, Employer B determines its depositor status using the lookback period July 1, 2009 to June 30, 2010. For the four calendar quarters within this period, B reported aggregate employment tax liabilities of $88,000 on its quarterly Forms 941. Because that amount exceeds $50,000, B is a semi-weekly depositor for the entire calendar year 2011.

(ii) *Semi-weekly rule.* On Friday, January 7, 2011, B (a semi-weekly depositor) has a pay day on which it accumulates $4,000 in employment taxes. B has a $4,000 deposit obligation that must be satisfied by the following Wednesday, January 12, 2011.

(iii) *Deposit made within three business days.* On Friday, January 14, 2011, B (a semi-weekly depositor) has a pay day on which it accumulates $4,200 in employment taxes. Generally, B would have a required deposit obligation of employment taxes that must be satisfied by the following Wednesday, January 19, 2011. Because Monday, January 17, 2011, is Dr. Martin Luther King, Jr.'s Birthday, a legal holiday, B has an additional day to make the required deposit. B has a $4,200 deposit obligation that must be satisfied by the following Thursday, January 20, 2011.

Example 3 One-Day rule. On Monday, January 10, 2011, Employer C accumulates $110,000 in employment taxes with respect to wages paid on that date. C has a deposit obligation of $110,000 that must be satisfied by the next business day. If C was not subject to the semi-weekly rule on January 10, 2011, C becomes subject to that rule as of January 11, 2011. See paragraph (b)(2)(ii) of this section.

Example 4 One-Day rule in combination with subsequent deposit obligation. Employer D is subject to the semi-weekly rule for calendar year 2011. On Monday, January 10, 2011, D accumulates $115,000 in employment taxes. D has a deposit obligation that must be satisfied by the next business day. On Tuesday, January 11, D accumulates an additional $30,000 in employment taxes. Although D has a $115,000 deposit obligation incurred earlier in the semi-weekly period, D has an additional and separate deposit obligation of $30,000 on Tuesday that must be satisfied by the following Friday.

Example 5 Legal Holidays. Employer E conducts business in State X. Wednesday, August 31, 2011, is a statewide legal holiday in State X which is not a legal holiday in the District of Columbia. On Friday, August 26, 2011, E (a semi-weekly depositor) has a pay day on which it accumulates $4,000 in employment taxes. E has a $4,000 deposit obligation that must be satisfied on or before the following Wednesday, August 31, 2011, notwithstanding that the day is a statewide legal holiday in State X.

Example 6 Extension of time to deposit for employers who filed Form 944 for the preceding year satisfied. F (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. F filed Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of $3,000. Because F's annual employment tax liability for the 2006 taxable year exceeded $1,000 (the applicable eligibility threshold for that taxable year), the IRS notified F to file Forms 941 for calendar year 2007 and thereafter. Based on F's liability during the lookback period (calendar year 2005, pursuant to paragraph (b)(4)(i) of this section), F is a monthly depositor for 2007. F accumulates $1,000 in employment taxes during January 2007. Because F is a monthly depositor, F's January deposit obligation is due February 15, 2007. F does not deposit these accumulated employment taxes on February 15, 2007. F accumulates $1,500 in employment taxes during February 2007. F's February deposit is due March 15, 2007. F deposits the $2,500 of employment taxes accumulated during January and February on March 15, 2007. Pursuant to paragraph (c)(6) of this section, F will be deemed to have timely deposited the employment taxes due for January 2007, and, thus, the IRS will not impose a failure-to-deposit penalty under section 6656 for that month.

(e) *Employment taxes defined.* (1) For purposes of this section, the term ''employment taxes'' means—

(i) The employee portion of the tax withheld under section 3102;

(ii) The employer tax under section 3111;

(iii) The income tax withheld under sections 3402 and 3405, except income tax withheld with respect to payments made after December 31, 1993, on the following—

(A) Certain gambling winnings under section 3402(q);

(B) Retirement pay for service in the Armed Forces of the United States under section 3402;

(C) Certain annuities described in section 3402(o)(1)(B); and

(D) Pensions, annuities, IRAs, and certain other deferred income under section 3405; and

(iv) The income tax withheld under section 3406, relating to backup withholding with respect to reportable payments made before January 1, 1994.

(2) The term *employment taxes* does not include taxes with respect to wages for domestic service in a private home of the employer, unless the employer is otherwise required to file a Form 941 or Form 944 under §31.6011(a)–4 or §31.6011(a)–5. In the case of employers paying advance earned income credit amounts for periods ending before January 1, 2011, the amount of taxes required to be deposited shall be reduced by advance amounts paid to employees. Also, see §31.6302–3 concerning a taxpayer's option with respect to payments made before January 1, 1994, to treat backup withholding amounts under section 3406 separately.

(f) *Safe harbor/De minimis rules*—(1) *Single deposit safe harbor.* An employer will be considered to have satisfied its deposit obligation imposed by this section if—

(i) The amount of any shortfall does not exceed the greater of $100 or 2 percent of the amount of employment taxes required to be deposited; and

(ii) The employer deposits the shortfall on or before the shortfall make-up date.

(2) *Shortfall defined.* For purposes of this paragraph (f), the term ''shortfall'' means the excess of the amount of employment taxes required to be deposited for the period over the amount deposited for the period. For this purpose, a period is either a monthly, semi-weekly or daily period.

(3) *Shortfall make-up date*—(i) *Monthly rule.* A shortfall with respect to a deposit required under the Monthly rule must be deposited or remitted no later than the due date for the quarterly return, in accordance with the applicable form and instructions.

(ii) *Semi-Weekly rule and One-Day rule.* A shortfall with respect to a deposit required under the Semi-Weekly rule or the One-Day rule must be deposited on or before the first Wednesday or Friday (whichever is earlier), falling on or after the 15th day of the month following the month in which the deposit was required to be made or, if earlier, the return due date for the return period.

(4) *De minimis rule*—(i) *De minimis deposit rules for quarterly and annual return periods beginning on or after January 1, 2001.* If the total amount of accumulated employment taxes for the return period is *de minimis* and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited. The total amount of accumulated employment taxes is *de minimis* if it is less than $2,500 for the return period or if it is *de minimis* pursuant to paragraph (f)(4)(ii) of this section.

(ii) *De minimis deposit rule for quarterly return periods beginning on or after January 1, 2010.* For purposes of paragraph (f)(4)(i) of this section, if the total amount of accumulated employment taxes for the immediately preceding quarter was less than $2,500, unless §31.6302–1(c)(3) applies to require a deposit at the close of the next day, then the employer will be deemed to have timely deposited the employer's employment taxes for the current quarter if the employer complies with the time and method payment requirements contained in paragraph (f)(4)(i) of this section.

(iii) *De minimis deposit rule for employers who file Form 944.* An employer who files Form 944 whose employment tax liability for the year equals or exceeds $2,500 but whose employment tax liability for a quarter of the year is *de minimis* pursuant to paragraph (f)(4)(i) of this section will be deemed to have timely deposited the employment taxes due for that quarter if the employer fully deposits the employment taxes accumulated during the quarter by the last day of the month following the close of that quarter. Employment taxes accumulated during the fourth quarter can be either deposited by January 31 or remitted with a timely filed return for the return period.

(5) *Examples.* The provisions of this paragraph (f) may be illustrated by the following examples:

Example 1 Safe-harbor rule satisfied. On Monday, January 4, 1993, *J* (a semi-weekly depositor), pays wages and accumulates employment taxes. As required under this section, *J* makes a deposit on or before the following Friday, January 8, 1993, in the amount of $4,000. Subsequently, *J* determines that it was actually required to deposit $4,090 by Friday. *J* has a shortfall of $90. The $90 shortfall does not exceed the greater of $100 or 2% of the amount required to be deposited (2% of $4,090 = $81.80). Therefore, *J* satisfies the safe harbor of paragraph (f)(1) of this section as long as the $90 shortfall is deposited by the first deposit date (Wednesday or Friday) on or after the 15th day of the next month (in this case Wednesday, February 17, 1993).

Example 2 Safe-harbor rule not satisfied. The facts are the same as in *Example 1* except that on Friday, January 8, 1993, *J* makes a deposit of $25,000, and later determines that it was actually required to deposit $26,000. Since the $1,000 shortfall ($26,000 less $25,000) exceeds $520 (the greater of $100 or 2% of the amount required to be deposited (2% of $26,000 = $520)), the safe harbor of paragraph (f)(1) of this section is not satisfied, and absent reasonable cause, *J* will be subject to a failure-to-deposit penalty under section 6656.

Example 3 De minimis deposit rule for employers who file Form 944 satisfied. K (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. In the first quarter of 2006, K accumulates employment taxes in the amount of $1,000. On April 28, 2006, K deposits the $1,000 of employment taxes accumulated in the first quarter. K accumulates another $1,000 of employment taxes during the second quarter of 2006. On July 31, 2006, K deposits the $1,000 of employment taxes accumulated in the second quarter. K's business grows and accumulates $1,500 in employment taxes during the third quarter of 2006. On October 31, 2006, K deposits the $1,500 of employment taxes accumulated in the third quarter. K accumulates another $2,000 in employment taxes during the fourth quarter. K files Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of $5,500 and submits a check for the remaining $2,000 of employment taxes with the return. K will be deemed to have timely deposited the employment taxes due for all of 2006 because K complied with the *de minimis* deposit rule provided in paragraph (f)(4)(iii) of this section. Therefore, the IRS will not impose a failure-to-deposit penalty under section 6656 for any month of the year. Under this *de minimis* deposit rule, because K was required to file Form 944 for calendar year 2006, if K's employment tax liability for a quarter is *de minimis,* then K may deposit that quarter's liability by the last day of the month following the close of the quarter. This *de minimis* rule allows K to have the benefit of the same quarterly *de minimis* amount K would have received if K filed Form 941 each quarter instead of Form 944 annually. Thus, because K's employment tax liability for each quarter was *de minimis,* K could deposit quarterly.

(g) *Agricultural employers—special rules*—(1) *In general.* An agricultural employer reports wages paid to farm workers annually on Form 943 (Employer's Annual Tax Return for Agricultural Employees) and reports wages paid to nonfarm workers quarterly on Form 941 or annually on Form 944. Accordingly, an agricultural employer must treat employment taxes reportable on Form 943 (''Form 943 taxes'') separately from employment taxes reportable on Form 941 or Form 944 (''Form 941 or Form 944 taxes''). Form 943 taxes and Form 941 or Form 944 taxes are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of paragraph (c)(3) of this section applies, or whether any safe harbor is applicable. In addition, Form 943 taxes and Form 941 or Form 944 taxes must be deposited separately. (See paragraph (b) of this section for rules for determining an agricultural employer's deposit status for Form 941 taxes). Whether an agricultural employer is a monthly or semi-weekly depositor of Form 943 taxes is determined according to the rules of this paragraph (g).

(2) *Monthly depositor.* An agricultural employer is a monthly depositor of Form 943 taxes for a calendar year if the amount of Form 943 taxes accumulated in the lookback period (as defined in paragraph (g)(4) of this section) is $50,000 or less. An agricultural employer ceases to be a monthly depositor of Form 943 taxes on the first day after the employer is subject to the One-Day rule in paragraph (c)(3) of this section. At that time, the agricultural employer immediately becomes a semi-weekly depositor of Form 943 taxes for the remainder of the calendar year and the succeeding calendar year.

(3) *Semi-weekly depositor.* An agricultural employer is a semi-weekly depositor of Form 943 taxes for a calendar year if the amount of Form 943 taxes accumulated in the lookback period (as

defined in paragraph (g)(4) of this section) exceeds $50,000.

(4) *Lookback period*—(i) *In general.* For purposes of this paragraph (g), the lookback period for Form 943 taxes is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 1993 is calendar year 1991. New employers shall be treated as having employment tax liabilities of zero for any lookback period before the date the employer started or acquired its business.

(ii) *Adjustments and Claims for Refund.* The employment tax liability reported on the original return for the return period is the amount taken into account in determining whether the amount of Form 943 taxes accumulated in the lookback period exceeds $50,000. Any amounts reported on adjusted returns or claims for refund pursuant to sections 6205, 6402, 6413 and 6414 filed after the due date of the original return are not taken into account when determining the amount of Form 943 taxes accumulated in the lookback period. However, prior period adjustments reported on Form 943 for 2008 and earlier years are taken into account in determining the employment tax liability for the return period in which the adjustments are reported.

(5) The following example illustrates the provisions of this section.

Example. A, an agricultural employer, employs both farm workers and nonfarm workers (employees in its administrative offices). *A*'s depositor status for calendar year 1993 for Form 941 taxes will be based upon its employment tax liabilities reported on Forms 941 for the third and fourth quarters of 1991 and the first and second quarters of 1992 (the period July 1 to June 30). *A*'s depositor status for Form 943 taxes will be based upon its employment tax liability reported on its annual Form 943 for calendar year 1991.

(h) *Time and manner of deposit—deposits required to be made by electronic funds transfer*—(1) *In general.* Section 6302(h) requires the Secretary to prescribe such regulations as may be necessary for the development and implementation of an electronic funds transfer system to be used for the collection of the depository taxes as described in paragraph (h)(3) of this section. Section 6302(h)(2) provides a phase-in schedule that sets forth escalating minimum percentages of those depository taxes to be deposited by electronic funds transfer. This paragraph (h) prescribes the rules necessary for implementing an electronic funds transfer system for collection of depository taxes and for effecting an orderly and expeditious phase-in of that system.

(2) *Applicability of requirement*—(i) *Deposits for return periods beginning before January 1, 2000.* (A) Taxpayers whose aggregate deposits of the taxes imposed by Chapters 21 (Federal Insurance Contributions Act), 22 (Railroad Retirement Tax Act), and 24 (Collection of Income Tax at Source on Wages) of the Internal Revenue Code during a 12-month determination period exceed the applicable threshold amount are required to deposit all depository taxes described in paragraph (h)(3) of this section by electronic funds transfer (as defined in paragraph (h)(4) of this section) unless exempted under paragraph (h)(5) of this section. If the applicable effective date is January 1, 1995, or January 1, 1996, the requirement to deposit by electronic funds transfer applies to all deposits required to be made on or after the applicable effective date. If the applicable effective date is July 1, 1997, the requirement to deposit by electronic funds transfer applies to all deposits required to be made on or after July 1, 1997 with respect to deposit obligations incurred for return periods beginning on or after January 1, 1997. If the applicable effective date is January 1, 1998, or thereafter, the requirement to deposit by electronic funds transfer applies to all deposits required to be made with respect to deposit obligations incurred for return periods beginning on or after the applicable effective date. In general, each applicable effective date has one 12-month determination period. However, for the applicable effective date January 1, 1996, there are two determination periods. If the applicable threshold amount is exceeded in either of those determination periods, the taxpayer becomes subject to the requirement to deposit by electronic funds transfer, effective January 1, 1996. The threshold amounts, determination periods and applicable effective dates for purposes of this paragraph (h)(2)(i)(A) are as follows:

Threshold amount	Determination period	Applicable effective date
$78 million	1–1–93 to 12–31–93	Jan. 1, 1995.
$47 million	1–1–93 to 12–31–93	Jan. 1, 1996.
$47 million	1–1–94 to 12–31–94	Jan. 1, 1996.
$50 thousand	1–1–95 to 12–31–95	July 1, 1997.
$50 thousand	1–1–96 to 12–31–96	Jan. 1, 1998.
$50 thousand	1–1–97 to 12–31–97	Jan. 1, 1999.

(B) Unless exempted under paragraph (h)(5) of this section, a taxpayer that does not deposit any of the taxes imposed by chapters 21, 22, and 24 during the applicable determination periods set forth in paragraph (h)(2)(i)(A) of this section, but that does make deposits of other depository taxes (as described in paragraph (h)(3) of this section), is nevertheless subject to the requirement to deposit by electronic funds transfer if the taxpayer's aggregate deposits of all depository taxes exceed the threshold amount set forth in this paragraph (h)(2)(i)(B) during an applicable 12-month determination period. This requirement to deposit by electronic funds transfer applies to all depository taxes due with respect to deposit obligations incurred for return periods beginning on or after the applicable effective date. The threshold amount, determination periods, and applicable effective dates for purposes of this paragraph (h)(2)(i)(B) are as follows:

Threshold amount	Determination period	Applicable effective date
$50 thousand	1–1–95 to 12–31–95	Jan. 1, 1998.
$50 thousand	1–1–96 to 12–31–96	Jan. 1, 1998.
$50 thousand	1–1–97 to 12–31–97	Jan. 1, 1999.

(C) This paragraph (h)(2)(i) applies only to deposits required to be made for return periods beginning before January 1, 2000. Thus, a taxpayer, including a taxpayer that is required under this paragraph (h)(2)(i) to make deposits by electronic funds transfer beginning in 1999 or an earlier year, is not required to use electronic funds transfer to make deposits for return periods beginning after December 31, 1999, unless deposits by electronic funds transfer are required under paragraph (h)(2)(ii) of this section.

(ii) *Deposits for return periods beginning after December 31, 1999, and made before January 1, 2011.* Unless exempted under paragraph (h)(5) of this section, for deposits for return periods beginning after December 31, 1999, and made before January 1, 2011, a taxpayer that deposits more than $200,000 of taxes described in paragraph (h)(3) of this section during a calendar year beginning after December 31, 1997, must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes that are required to be made for return periods beginning after December 31 of the following year and must continue to deposit by electronic funds transfer in all succeeding years. As an example, a taxpayer that exceeds the $200,000 deposit threshold during calendar year 1998 is required to make deposits for return periods beginning in or after calendar year 2000 by electronic funds transfer.

(iii) *Deposits made after December 31, 2010.* Unless exempted under paragraph (h)(5) of this section, a taxpayer that has a required tax deposit obligation described in paragraph (h)(3) of this section must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes made after December 31, 2010.

(iv) *Voluntary deposits.* A taxpayer that is authorized to make payment of taxes with a return under regulations may voluntarily make a deposit by electronic funds transfer.

(3) *Taxes required to be deposited by electronic funds transfer.* The requirement to deposit by electronic funds transfer under paragraph (h)(2) of this

section applies to all the taxes required to be deposited under §§ 1.6302–1, 1.6302–2, and 1.6302–3 of this chapter; §§ 31.6302–1, 31.6302–2, 31.6302–3, 31.6302–4, and 31.6302(c)–3; and § 40.6302(c)–1 of this chapter.

(4) *Definitions*—(i) *Electronic funds transfer. An electronic funds transfer* is any transfer of depository taxes made in accordance with Revenue Procedure 97–33, (1997–30 I.R.B.), (see § 601.601(d)(2) of this chapter), or in accordance with procedures subsequently prescribed by the Commissioner.

(ii) *Taxpayer.* For purposes of this section, a *taxpayer* is any person required to deposit federal taxes, including not only individuals, but also any trust, estate, partnership, association, company or corporation.

(5) *Exemptions.* If any categories of taxpayers are to be exempted from the requirement to deposit by electronic funds transfer, the Commissioner will identify those taxpayers by guidance published in the Internal Revenue Bulletin. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

(6) *Separation of deposits.* A deposit for one return period must be made separately from a deposit for another return period.

(7) *Payment of balance due.* If the aggregate amount of taxes reportable on the applicable tax return for the return period exceeds the total amount deposited by the taxpayer with regard to the return period, then the balance due must be remitted in accordance with the applicable form and instructions.

(8) *Time deemed deposited.* A deposit of taxes by electronic funds transfer will be deemed made when the amount is withdrawn from the taxpayer's account, provided the U.S. Government is the payee and the amount is not returned or reversed.

(9) *Time deemed paid.* In general, an amount deposited under this paragraph (h) will be considered to be a payment of tax on the last day prescribed for filing the applicable return for the return period (determined without regard to any extension of time for filing the return) or, if later, at the time deemed deposited under paragraph (h)(8) of this section. In the case of the taxes imposed by chapters 21 and 24 of the Internal Revenue Code, solely for purposes of section 6511 and the regulations thereunder (relating to the period of limitation on credit or refund), if an amount is deposited prior to April 15th of the calendar year immediately succeeding the calendar year that includes the period for which the amount was deposited, the amount will be considered paid on April 15th.

(i) *Time and manner of remittance with a return*—(1) *General rules.* A remittance required to be made by this section that is authorized to be made with a return under regulations and is made with a return must be made separately from a remittance required by any other section. Further, a remittance for a deposit period in one return period must be made separately from a remittance for a deposit period in another return period.

(2) *Payment of balance due.* If the aggregate amount of taxes reportable on the return for the return period exceeds the total amount deposited by the employer with regard to the return period pursuant to this section, the balance due must be remitted in accordance with the applicable form and instructions.

(3) *Time deemed paid.* In general, amounts remitted with a return under this section will be considered as paid on the date payment is received by the Internal Revenue Service at the place prescribed for filing by regulations or forms and instructions (or if section 7502(a) applies, by the date the payment is treated as received under section 7502(a)), or on the last day prescribed for filing the return (determined without regard to any extension of time for filing the return), whichever is later. In the case of the taxes imposed by chapter 21 and 24 of the Internal Revenue Code, solely for purposes of section 6511 and the regulations thereunder (relating to the period of limitation on credit or refund), if an amount is remitted with a return under this section prior to April 15th of the calendar year immediately succeeding the calendar year that contains the period for which the amount was remitted, the amount will be considered paid on April 15th of the succeeding calendar year.

(j) *Voluntary payments by electronic funds transfer*. Any person may voluntarily remit by electronic funds transfer any payment of tax imposed by subtitle C of the Internal Revenue Code. Such payment must be made in accordance with procedures prescribed by the Commissioner.

(k) *Special rules*—(1) *Notice exception*. The provisions of this section are not applicable with respect to employment taxes for any month in which the employer receives notice that a return is required under §31.6011(a)–5 (or for any subsequent month for which such a return is required), if those taxes are also required to be deposited under the separate accounting procedures provided in §301.7512–1 of the Regulations on Procedure and Administration (which procedures are applicable if notification is given by the Commissioner of failure to comply with certain employment tax requirements). In cases in which a monthly return is required under §31.6011(a)–5 but the taxes are not required to be deposited under the separate accounting procedures provided in §301.7512–1, the provisions of this section shall apply except those provisions shall not authorize the deferral of any deposit to a date after the date on which the return is required to be filed.

(2) *Wages paid in nonconvertible foreign currency*. The provisions of this section are not applicable with respect to wages paid in nonconvertible foreign currency pursuant to §301.6316–7.

(l) [Reserved]

(m) *Cross references*—(1) *Failure to deposit penalty*. For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

(2) *Saturday, Sunday, or legal holiday*. For provisions relating to the time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday, see the provisions of §301.7503–1.

(n) *Effective/applicability dates*. Sections 31.6302–1 through 31.6302–3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. To the extent that the provisions of §§31.6302–1 through 31.6302–3 are inconsistent with the provisions of §§31.6302(c)–1 and 31.6302(c)–2, a taxpayer will be considered to be in compliance with §§31.6302–1 through 31.6302–3 if the taxpayer makes timely deposits during 1993 in accordance with §§31.6302(c)–1 and 31.6302(c)–2. Paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (e)(2), (f)(4)(i), (f)(4)(iii), (f)(5) *Example 3*, and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in §31.6302–1 as in effect prior to December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (f)(4)(i), (f)(4)(iii), and (f)(5) *Example 3* of this section that apply to taxable years beginning on or after January 1, 2006, and before December 30, 2008, are contained in §31.6302–1T as in effect prior to December 30, 2008. The rules of paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in §31.6302–1 as in effect prior to January 1, 2006. The rules of paragraph (g) of this section eliminating use of Federal tax deposit coupons apply to deposits and payments made after December 31, 2010.

(o) *Effective/applicability date*. Paragraphs (c), (d) *Examples 1 through 5*, (h)(2)(ii), (h)(2)(iii), (h)(2)(iv),(i)(1) and (i)(3) of this section apply to deposits and payments made after December 31, 2010.

[T.D. 8436, 57 FR 44102, Sept. 24, 1992; 57 FR 48724, Oct. 28, 1992, as amended by T.D. 8504, 58 FR 68035, Dec. 23, 1993; T.D. 8436, 59 FR 6218, Feb. 10, 1994; T.D. 8723, 62 FR 37493, July 14, 1997; T.D. 8771, 63 FR 32736, June 16, 1998; T.D. 8822, 64 FR 32409, June 17, 1999; T.D. 8828, 64 FR 37676, July 13, 1999; T.D. 8909, 65 FR 76153, Dec. 6, 2000; T.D. 8946, 66 FR 28370, May 23, 2001; T.D. 8947, 66 FR 32542, June 15, 2001; T.D. 8952, 66 FR 33831, 33832, June 26, 2001; T.D. 9239, 71 FR 13, 15, Jan. 3, 2006; T.D. 9405, 73 FR 37379, July 1, 2008; T.D. 9440, 73 FR 79359, Dec. 29, 2008; T.D. 9507, 75 FR 75901, Dec. 7, 2010; T.D. 9524, 76 FR 26602, May 9, 2011; T.D. 9566, 76 FR 77676, Dec. 14, 2011; T.D. 9586, 77 FR 24612, Apr. 25, 2012]

§ 31.6302–2 Deposit rules for taxes under the Railroad Retirement Tax Act (RRTA).

(a) *General rule.* Except as otherwise provided in this section, the rules of § 31.6302–1 determine the time and manner of making deposits of employee tax withheld under section 3202 and employer tax imposed under sections 3221 (a) and (b) attributable to payments made after December 31, 1992. Railroad retirement taxes described in section 3221(c) arising during the month must be deposited on or before the first date after the 15th day of the following month on which taxes are otherwise required to be deposited under § 31.6302–1.

(b) *Separate application of deposit rules.* A person who accumulates tax under sections 3202 or 3221 shall not take that tax into account for purposes of determining when taxes described in paragraph (e) of § 31.6302–1 must otherwise be deposited.

(c) *Modification of Monthly rule determination*—(1) *General rule.* Except as otherwise provided in this section, any person is allowed to use the Monthly rule of § 31.6302–1(c)(1) for an entire calendar year unless the amount of R.R.T.A. taxes required to be deposited under this section during the lookback period was more than $50,000. The lookback period is defined as the calendar year preceding the calendar year just ended. Thus, for purposes of determining if an R.R.T.A. employer qualifies to use the Monthly rule for calendar year 1993, a lookback must be made to calendar year 1991. New employers shall be treated as having employment tax liabilities of zero for any calendar year during which the employer did not exist.

(2) *Exception.* An employer shall immediately cease to be allowed to use the Monthly rule after any day on which that employer is subject to the One-Day rule set forth in § 31.6302–1(c)(3). Such employer immediately becomes subject to the Semi-Weekly rule of § 31.6302–1(c)(2) for the remainder of the calendar year and the following calendar year.

(d) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

[T.D. 8436, 57 FR 44105, Sept. 24, 1992, as amended by T.D. 9507, 75 FR 75903, Dec. 7, 2010]

§ 31.6302–3 Federal tax deposit rules for amounts withheld under the backup withholding requirements of section 3406 for payments made after December 31, 1992.

(a) *General rule.* The rules of § 31.6302–1 shall apply to determine the time and manner of making deposits of amounts withheld under the backup withholding requirements of section 3406.

(b) *Treatment of backup withholding amounts separately.* A taxpayer that withholds income tax under section 3406 with respect to reportable payments made after December 31, 1992, and before January 1, 1994, may, in accordance with the instructions provided with Form 941, deposit such tax under the rules of § 31.6302–1 without taking into account the other taxes described in paragraph (e) of § 31.6302–1 for purposes of determining when tax withheld under section 3406 must be deposited. A taxpayer that treats backup withholding amounts separately with respect to reportable payments made after December 31, 1992, and before January 1, 1994, shall not take tax withheld under section 3406 into account for purposes of determining when the other taxes described in paragraph (e) of § 31.6302–1 must otherwise be deposited under that section. See § 31.6302–4 for rules regarding the deposit of income tax withheld under section 3406 with respect to reportable payments made after December 31, 1993.

(c) *Example.* The following example illustrates the provisions of this section.

Example. For the last two calendar quarters of 1991 and the first two calendar quarters of 1992, Bank *A* reports employment taxes with respect to wages paid totalling in excess of $50,000. For the same four quarters, pursuant to section 3406, *A* withholds income tax with respect to dividend payments in an amount aggregating less than $50,000. For deposit and reporting purposes, *A* treated the backup withholding amounts separately from the employment taxes with respect to wages paid. Accordingly, for calendar year

1993, if *A* chooses to treat the items separately, *A* must use the Semi-Weekly rule of § 31.6302–1(c)(2) to deposit taxes with respect to wages paid but may use the Monthly rule of § 31.6302–1(c)(1) for the deposit of backup withholding amounts. If *A* chooses not to treat the items separately, the Semi-Weekly rule would apply to the combined amount of both the taxes with respect to wages paid and the backup withholding amounts.

[T.D. 8436, 57 FR 44106, Sept. 24, 1992, as amended by T.D. 8504, 58 FR 68035, Dec. 23, 1993]

§ 31.6302–4 Deposit rules for withheld income taxes attributable to nonpayroll payments.

(a) *General rule.* With respect to nonpayroll withheld taxes attributable to nonpayroll payments made after December 31, 1993, a taxpayer is either a monthly or a semi-weekly depositor based on an annual determination. Except as provided in this section, the rules of § 31.6302–1 shall apply to determine the time and manner of making deposits of nonpayroll withheld taxes as though they were employment taxes. Paragraph (b) of this section defines nonpayroll withheld taxes. Paragraph (c) of this section provides rules for determining whether a taxpayer is a monthly or a semi-weekly depositor.

(b) *Nonpayroll withheld taxes defined.* For purposes of this section, effective with respect to payments made after December 31, 1993, *nonpayroll withheld taxes* means—

(1) Amounts withheld under section 3402(q), relating to withholding on certain gambling winnings;

(2) Amounts withheld under section 3402 with respect to amounts paid as retirement pay for service in the Armed Forces of the United States;

(3) Amounts withheld under section 3402(o)(1)(B), relating to certain annuities;

(4) Annuities withheld under section 3405, relating to withholding on pensions, annuities, IRAs, and certain other deferred income; and

(5) Amounts withheld under section 3406, relating to backup withholding with respect to reportable payments.

(c) *Determination of deposit status*—(1) *Rules for calendar years 1994 and 1995.* On January 1, 1994, a taxpayer's depositor status for nonpayroll withheld taxes is the same as the taxpayer's status on January 1, 1994, for taxes reported on Form 941 under § 31.6302–1. A taxpayer generally retains that depositor status for nonpayroll withheld taxes for all of calendar years 1994 and 1995. However, a taxpayer that under this paragraph (c) is a monthly depositor for 1994 and 1995 will immediately lose that status and become a semi-weekly depositor of nonpayroll withheld taxes if the One-Day rule of § 31.6302–1(c)(3) is triggered with respect to nonpayroll withheld taxes. See paragraph (d) of this section for a special rule regarding the application of the One-Day rule of § 31.6302–1(c)(3) to nonpayroll withheld taxes.

(2) *Rules for calendar years after 1995*—(i) *In general.* For calendar years after 1995, the determination of whether a taxpayer is a monthly or a semi-weekly depositor for a calendar year is based on an annual determination and generally depends on the aggregate amount of nonpayroll withheld taxes reported by the taxpayer for the lookback period as defined in paragraph (c)(2)(iv) of this section.

(ii) *Monthly depositor.* A taxpayer is a monthly depositor of nonpayroll withheld taxes for a calendar year if the amount of nonpayroll withheld taxes accumulated in the lookback period (as defined in paragraph (c)(2)(iv) of this section) is $50,000 or less. A taxpayer ceases to be a monthly depositor of nonpayroll withheld taxes on the first day after the taxpayer is subject to the One-Day rule in § 31.6302–1(c)(3) with respect to nonpayroll withheld taxes. At that time, the taxpayer immediately becomes a semi-weekly depositor of nonpayroll withheld taxes for the remainder of the calendar year and the succeeding calendar year. See paragraph (d) of this section for a special rule regarding the application of the One-Day rule of § 31.6302–1(c)(3) to nonpayroll withheld taxes.

(iii) *Semi-weekly depositor.* A taxpayer is a semi-weekly depositor of nonpayroll withheld taxes for a calendar year if the amount of nonpayroll withheld taxes accumulated in the lookback period (as defined in paragraph (c)(2)(iv) of this section) exceeds $50,000.

(iv) *Lookback period.* For purposes of this section, the lookback period for nonpayroll withheld taxes is the second

calendar year preceding the current calendar year. For example, the lookback period for calendar year 1996 is calendar year 1994. A new taxpayer is treated as having nonpayroll withheld taxes of zero for any calendar year in which the taxpayer did not exist.

(d) *Special rules.* A taxpayer must treat nonpayroll withheld taxes, which are reported on Form 945, ''Annual Return of Withheld Federal Income Tax,'' separately from taxes reportable on Form 941, ''Employer's QUARTERLY Federal Tax Return'' (or any other return, for example, Form 943, ''Employer's Annual Federal Tax Return for Agricultural Employees''). Taxes reported on Form 945 and taxes reported on Form 941 are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of § 31.6302–1(c)(3) applies, or whether any safe harbor is applicable. In addition, taxes reported on Form 945 and taxes reported on Form 941 must be deposited separately. (*See* paragraph (b) of § 31.6302–1 for rules for determining an employer's deposit status for taxes reported on Form 941.) Taxes reported on Form 945 for one calendar year must be deposited separately from taxes reported on Form 945 for another calendar year.

(e) *Effective/applicability date.* Section 31.6302–4(d) applies to deposits and payments made after December 31, 2010.

[T.D. 8504, 58 FR 68036, Dec. 23, 1993, as amended by T.D. 9507, 75 FR 75903, Dec. 7, 2010; T.D. 9524, 76 FR 26602, May 9, 2011; T.D. 9586, 77 FR 24612, Apr. 25, 2012]

§ 31.6302(b)–1 Method of collection.

For provisions relating to collection by means of returns of the taxes imposed by chapter 21 (Federal Insurance Contributions Act), see §§ 31.6011(a)–1 and 31.6011(a)–5.

§ 31.6302(c)–1 Use of Government depositories in connection with taxes under Federal Insurance Contributions Act and income tax withheld for amounts attributable to payments made before January 1, 1993.

(a) *Requirement for calendar months beginning after December 31, 1980, but before January 1, 1993*—(1) *In general.* (i) In the case of a calendar month which begins after December 31, 1980, but before April 1, 1991—

(*a*) Except as provided in paragraph (b) of this section and hereinafter in this subdivision (i), if at the close of any calendar month the aggregate amount of undeposited taxes (as defined in paragraph (a)(1)(iii) of this section) is $500 or more, the employer shall deposit the undeposited taxes in a Federal Reserve bank or authorized financial institution (see paragraph (a)(3)(iii) of this section) within 15 calendar days after the close of such calendar month.

However, this (*a*) of subdivision (i) shall not apply if the employer was required to make a deposit of taxes pursuant to (*b*) of this subdivision (i) with respect to an eighth-monthly period which occurred during the calendar month.

(*b*) Except as provided in paragraph (b) of this section and except in the case of first-time 3-banking-day depositors, if at the close of any eighth-monthly period the aggregate amount of undeposited taxes is $3,000 or more, the employer shall deposit the undeposited taxes in a Federal Reserve bank or authorized financial institution within 3 banking days after the close of such eighth-monthly period. For purposes of determining the amount of undeposited taxes at the close of an eighth-monthly period, undeposited taxes with respect to wages paid during a prior eighth-monthly period shall not be taken into account if the employer has made a deposit with respect to such prior eighth-monthly period. An employer will be considered to have complied with the requirements of this paragraph (a)(1)(i)(*b*) for a deposit with respect to the close of an eighth-monthly period if—

(*1*) His deposit is not less than 95 percent (90 percent before January 1, 1982) of the aggregate amount of the taxes with respect to wages paid during the period for which the deposit is made, and

(*2*) If such eighth-monthly period occurs in a month other than the last month of a period for which a return is required to be filed (hereinafter in this subparagraph referred to as a return period), he deposits any underpayment

with his first deposit which is otherwise required by this paragraph (a)(1)(i)(*b*) to be made after the 15th day of the following month.

For purposes of this paragraph (a)(1)(i)(*b*), a ''first-time 3-banking-day depositor'' is an employer who establishes to the satisfaction of the Commissioner that he was not required (but for this exception) to make a deposit pursuant to this paragraph (a)(1)(i)(*b*) (or pursuant to paragraph (a)(1)(ii)(*b*) of this section) with respect to each period in any preceding month of the current calendar quarter and with respect to each period in the 4 calendar quarters preceding the current calendar quarter. An employer may in no event qualify as a ''first-time 3-banking-day depositor'' with respect to any eighth-monthly period if the undeposited taxes at the close of that period are $10,000 or more.

The excess (if any) of a deposit over the actual taxes for a deposit period shall be applied in order of time to each of the employer's succeeding deposits with respect to the same return period, until exhausted, to the extent that the amount by which the taxes for a subsequent deposit period exceed the deposit for such subsequent deposit period. For purposes of this paragraph (a)(1)(i), ''eighth-monthly period'' means the first 3 days of a calendar month, the 4th day through the 7th day of a calendar month, the 8th day through the 11th day of a calendar month, the 12th day through the 15th day of a calendar month, the 16th day through the 19th day of a calendar month, the 20th day through the 22nd day of a calendar month, the 23rd day through the 25th day of a calendar month, or the portion of a calendar month following the 25th day of such month.

(*c*) The periods within which taxes must be desposited under this section are determined, in the case of employers paying advance earned income credit amounts, by reference to the amount of taxes required to be deposited after reduction for advance amounts paid to employees.

(ii) In the case of a calendar month which begins after March 31, 1991, but before January 1, 1993—

(*a*) Except as provided in §31.6302(c)–1(a)(1)(ii) (*b*) or (*c*), or §31.6302(c)–1(b), if with respect to any calendar month the aggregate amount of taxes (as defined in §31.6302(c)–1(a)(1)(iii)) accumulated with respect to wages paid is $500 or more, but less than $3,000, then the employer shall deposit that aggregate amount in a Federal Reserve bank or authorized financial institution within 15 calendar days after the close of that calendar month. Taxes accumulated with respect to wages paid in a prior calendar month within the same return period shall not be taken into account in determining the aggregate amount of taxes accumulated if a deposit was required to be made under this section with respect to such tax amounts. Deposits made during the calendar month of taxes with respect to wages paid during that month do not reduce the aggregate amount of taxes accumulated for purposes of determining the deposit requirement (if any) for that month. However, this paragraph (a)(1)(ii)(*a*) shall not apply if the employer was required to make a deposit of taxes pursuant to paragraph (a)(1)(ii)(*b*) of this section with respect to an eighth-month period which occurred during the calendar month.

Example 1. Employer *A*'s aggregate amount of taxes accumulated with respect to wages paid in April 1991 is $800. Since that amount is in excess of $500, but less than $3,000, *A* must deposit the $800 in a Federal Reserve bank or authorized financial institution by May 15, 1991.

Example 2. Employer *B*'s aggregate amount of taxes accumulated with respect to wages paid in April 1991 is $400. Since that amount is less than $500, *B* has no deposit obligation for the month of April. In May 1991 *B*'s aggregate amount of taxes accumulated with respect to wages paid during the month is $450. Since the $400 in taxes in April was not required to be deposited, that amount is taken into account in determining if a deposit is required for May. The aggregate amount of taxes accumulated with respect to wages paid for the two months is in excess of $500, thus requiring a deposit. Since June 15, 1991, is a Saturday, *B* must deposit the $850 in a Federal Reserve bank or authorized financial institution by Monday, June 17, 1991, pursuant to section 7503 of the Code.

Example 3. The facts are the same as in *Example 2* except that *B* deposits the $400 in taxes from April on May 15, 1991. Because the $400 was not required to be deposited, that amount is taken into account in determining if a deposit obligation exists for May. Since the aggregate amount of taxes accumulated

with respect to wages paid for the two months, $850, is in excess of $500, a deposit in the aggregate amount of $850 is required by Monday, June 17, 1991. Since $400 was previously deposited, *B* must deposit an additional $450 by June 17, 1991.

Example 4. On Friday, April 5, 1991, a payroll date, Employer *C* accumulates $450 in taxes with respect to wages paid on that date. Although not required to do so, *C* deposits the $450 in an authorized depository. On Friday, April 19, 1991, *C* accumulates an additional $450 in taxes with respect to wages paid. The aggregate amount of taxes accumulated with respect to wages paid during the calendar month is $900. *C* has a deposit obligation of $900 for the calendar month and must deposit an additional $450 in an authorized depository by May 15, 1991.

(*b*) Except as provided in § 31.6302(c)–1(a)(1)(ii)(*c*) or § 31.6302(c)–1(b), and except in the case of first-time 3-banking-day depositors (as defined in § 31.6302(c)–1(a)(1)(i)(*b*)(*2*)), if with respect to any eighth-monthly period (as defined in § 31.6302(c)–1(a)(1)(i)(*b*)) the aggregate amount of taxes accumulated with respect to wages paid is $3,000 or more, but less than $100,000, the employer shall deposit that aggregate amount in a Federal Reserve bank or authorized financial institution within 3 banking days after the close of that eighth-monthly period. Taxes accumulated with respect to wages paid during a prior eighth-monthly period shall not be taken into account if a deposit was required to be made under this section with respect to such tax amounts. Deposits made during the eighth-monthly period of taxes with respect to wages paid during that eighth-monthly period do not reduce the aggregate amount of taxes accumulated for purposes of determining the deposit requirement (if any) for that eighth-monthly period. Solely for purposes of the examples in this paragraph (a)(1)(ii)(*b*) and paragraphs (a)(1)(ii)(*c*), (*d*), and (*f*) of this section, ''banking days'' are assumed to include all calendar days except Saturdays, Sundays, and Federal holidays.

Example 1. For the eighth-monthly period April 1–3, 1991, Employer *D*'s aggregate amount of taxes accumulated with respect to wages paid is $3,500. Since that amount is in excess of $3,000, but less than $100,000, *D* has a deposit obligation of $3,500 that must be satisfied by April 8, 1991, the third banking day after the close of the eighth-monthly period.

Example 2. For the eighth-monthly period April 1–3, 1991, Employer *E*'s aggregate amount of taxes accumulated with respect to wages paid is $3,500. *E* has a deposit obligation of $3,500 that must be satisfied by April 8, 1991, three banking days after the close of the April 1–3 eighth-monthly period. For the eighth-monthly period April 4–7, 1991, *E*'s aggregate amount of taxes accumulated with respect to wages paid is $2,800. Since *E* was required to make a deposit for the April 1–3 eighth-monthly period, that $3,500 amount is not taken into account in determining any obligations that arise in subsequent eighth-monthly periods. *E* does not have an eighth-monthly deposit obligation with respect to the April 4–7 period.

Example 3. For the eighth-monthly period April 1–3, 1991, Employer *F*'s aggregate amount of taxes accumulated with respect to wages paid is $2,800. Since that amount is less than $3,000, no deposit is required with respect to that eighth-monthly period. For the eighth-monthly period April 4–7, 1991, *F*'s aggregate amount of taxes accumulated with respect to wages paid is $2,500. Since *F* was not required to deposit the $2,800 in taxes from the April 1–3 eighth-monthly period, that amount is taken into account in determining *F*'s deposit obligation for the April 4–7 eighth-monthly period. The aggregate amount of taxes accumulated for the two eighth-monthly periods is $5,300. *F* has a deposit obligation of $5,300 that must be satisfied by April 10, 1991, three banking days after the close of the April 4–7 eighth-monthly period.

Example 4. The facts are the same as in *Example 3* except that *F* deposits the $2,800 from the April 1–3 eighth-monthly period on April 4, 1991. Because the $2,800 was not required to be deposited, that amount is taken into account in determining *F*'s deposit obligation for the April 4–7 eighth-monthly period. The aggregate amount of taxes accumulated for the two eighth-monthly periods is $5,300. Since that amount is in excess of $3,000, a deposit obligation exists after the close of the April 4–7 eighth-monthly period. As $2,800 of that amount was previously deposited, *F* has a deposit obligation of $2,500 that must be satisfied by April 10, 1991, three banking days after the close of the April 4–7 eighth-monthly period.

Example 5. On Friday, April 12, 1991, the beginning of an eighth-monthly period (April 12–15), *G* accumulates $3,500 in taxes with respect to wages paid and deposits the $3,500 in an authorized depository on that date although a deposit of the $3,500 was not required to be made on that date. On Monday, April 15, 1991, the end of the April 12–15 eighth-monthly period, *G* accumulates an additional $2,000 in taxes with respect to wages

paid. The aggregate amount of taxes accumulated with respect to wages paid during the April 12–15 eighth-monthly period of $5,500. *G* has a deposit obligation for the eighth-monthly period of $5,500. Since $3,500 of that amount was previously deposited, *G* has a remaining deposit obligation of $2,000 that must be satisfied by Thursday, April 18, 1991, three banking days after the close of the eighth-monthly period.

(*c*) If on any day within an eighth-monthly period the aggregate amount of taxes accumulated with respect to wages paid is $100,000 or more, the employer shall deposit that aggregate amount in a Federal Reserve bank or authorized financial institution on the first banking day after that day. Taxes accumulated with respect to wages paid prior to that day shall not be taken into account if a deposit was required under this section with respect to such tax amounts. Taxes deposited on any given day with respect to wages paid on that day do not reduce the aggregate amount of taxes accumulated on that day for purposes of determining the deposit requirement (if any) for that day.

Example 1. On Thursday, April 4, 1991, the beginning of the April 4–7 eighth-monthly period, Employer *H* accumulates $55,000 in taxes with respect to wages paid on that date. On Saturday, April 6, 1991, *H* accumulates an additional $50,000 in taxes with respect to wages paid. *H* has a deposit obligation of $105,000 that must be satisfied by Monday, April 8, the next banking day after Saturday, April 6.

Example 2. On Friday, April 12, 1991, the beginning of the April 12–15 eighth-monthly period, *J* accumulates $60,000 in taxes with respect to wages paid and deposits the $60,000 in an authorized depository on that date although a deposit of the $60,000 was not required to be made on that date. On Monday, April 15, 1991, the last day in the April 12–15 eighth-monthly period, *J* accumulates an additional $50,000 in taxes with respect to wages paid. On Monday, April 15, the aggregate amount of taxes accumulated with respect to wages paid during the eighth-monthly period to date totals $110,000. *J* has a $110,000 deposit obligation that must be satisfied by the next banking day after the $100,000 threshold is reached. Since $60,000 of the $110,000 was already deposited, *J* has a remaining deposit obligation of $50,000 that must be satisfied by Tuesday, April 16, 1991, the next banking day following April 15th.

Example 3. On Monday, April 1, 1991, Employer *K* accumulates $105,000 in taxes with respect to wages paid on that date. On that same day, *K* deposits in an authorized depository $10,000 of the $105,000 accumulated. *K* has a $105,000 deposit obligation that must be satisfied by the next banking day, April 2, 1991. The $10,000 deposited on April 1 cannot be used to reduce the aggregate amount of accumulated taxes with respect to that date. *K* has a remaining deposit obligation of $95,000 that must be satisfied by April 2, 1991.

(*d*) If, with respect to any eighth-monthly period, an employer incurs an obligation to deposit in accordance with § 31.6302(c)–1(a)(1)(ii)(*c*), and later, within the same eighth-monthly period, accumulates with respect to wages paid taxes of $3,000 or more, but less than $100,000, an additional deposit is required in accordance with § 31.6302(c)–1(a)(1)(ii)(*b*). However, if the amount of taxes is $100,000 or more, an additional deposit is required in accordance with § 31.6302(c)–1(a)(1)(ii)(*c*).

Example. On Tuesday, April 2, 1991, Employer *L* accumulates $110,000 in aggregate taxes with respect to wages paid. In accordance with paragraph (a)(1)(ii)(*c*) of this section, *L* has a $110,000 deposit obligation that must be satisfied by Wednesday, April 3, 1991, the next banking day following April 2. On Wednesday, April 3, 1991, *L* accumulates an additional $10,000 in taxes with respect to wages paid that date. In accordance with paragraph (a)(1)(ii)(*b*) of this section, *L* now has an additional deposit obligation of $10,000 that must be satisfied by Monday, April 8, 1991, the 3rd banking day following the close of the April 1–3 eighth-monthly period. The obligation to deposit the $10,000 is separate and distinct from the obligation to deposit the $110,000.

(*e*) An employer will be considered to have satisfied the deposit obligation imposed by paragraphs (a)(1)(ii) (*b*), (*c*) and (*d*) of this section if—

(*1*) The deposit that is made is not less than 95 percent of the aggregate amount of taxes accumulated with respect to wages paid during the period for which the deposit is made, and

(*2*) If the eighth-monthly period (or, in the case of a deposit required under paragraph (a)(1)(ii)(*c*) of this section, the day on which the obligation arose) is in a month other than the last month of the return period, the employer deposits any remaining amount due with the first deposit otherwise required to be made after the fifteenth day of the following month. In the case of the last month of the return period, see § 31.6302(c)–1(a)(1)(iv).

(*f*) Any excess of a deposit over the actual taxes required to be deposited to date (overdeposit) during the return period shall be applied in order of time to each of the employer's succeeding deposit obligations within the same return period. In the determination of the aggregate amount of taxes accumulated with respect to wages paid in succeeding deposit periods, the overdeposit does not reduce the aggregate amount accumulated although the overdeposit is credited to the depositor's account.

Example. Employer *M*'s deposit obligation for the eighth-monthly period April 1–3, 1991, is $3,200. On April 8, 1991, three banking days after the close of the eighth-monthly period, *M* deposits $4,000 in an authorized depository, $800 in excess of the amount required to be deposited. During the eighth-monthly period April 4–7, 1991, *M* accumulates $3,750 in taxes with respect to wages paid during such period. Although the $800 overdeposit for the April 1–3 eighth-monthly period is credited to *M*'s account, it may not be used to determine whether a deposit obligation exists for the April 4–7 eighth-monthly period. The two deposit obligations are separate and distinct. Since the amount of taxes accumulated with respect to the April 4–7 eighth-monthly period is an amount greater than $3,000, a deposit is required under paragraph (a)(1)(ii)(*b*) of this section within three banking days after the close of the period. *M* has a remaining deposit obligation of $2,950 ($3,750 accumulated less $800 overdeposit) that must be satisfied by April 10, 1991, three banking days after the close of the period.

(*g*) The periods within which taxes must be deposited under this section are determined, in the case of employers paying advance earned income credit amounts, by reference to the amount of taxes required to be deposited after reduction for advance amounts paid to employees.

(*h*) For purposes of this paragraph (a)(1)(ii), the term ''wages paid'' includes all amounts included in wages, e.g., under section 3121(v) of the Code, regardless of whether they have actually been paid.

(iii) As used in subdivisions (i) and (ii) of this subparagraph, the term ''taxes'' means—

(*a*) The employee tax withheld under section 3102,

(*b*) The employer tax under section 3111, and

(*c*) The income tax withheld under section 3402, including amounts withheld with respect to qualified State individual income taxes,

Exclusive of taxes with respect to wages for domestic service in a private home of the employer or, if paid before April 1, 1971, wages for agricultural labor. In addition, with respect to wages paid after December 31, 1970, and before April 1, 1971, for agricultural labor, any taxes described in paragraph (a)(2)(ii) of this section which are not required under such subparagraph to be deposited, and any income tax (including qualified State individual income tax) withheld under section 3402 with respect to such wages, shall be deemed to be ''taxes'' on and after April 1, 1971. For the requirements relating to the deposit and payment of withheld tax and with respect to qualified State individual income taxes, see paragraph (d)(3)(iii) of § 301.6361–1 of this chapter (Regulations on Procedure and Administration).

(iv) If the aggregate amount of taxes reportable on a return (other than a return on Form 942) for a return period exceeds the total amount deposited by the employer pursuant to paragraph (a)(1) (i) or (ii) of this section for such return period (*a*) by $500 or more in the case of a return period which ends after December 31, 1980, or (*b*) by more than $200 in the case of a return period which ends after December 31, 1970, and before January 1, 1981, the employer shall, on or before the last day of the first calendar month following the return period, deposit with a Federal Reserve bank or authorized financial institution an amount equal to the amount by which the taxes reportable on the return exceed the total deposits (if any) made pursuant to subdivision (i) or (ii) of this subparagraph for such period. As used in this subdivision, the term ''taxes'' shall have the meaning assigned to such term in subdivision (iii) of this subparagraph, except that the term shall include the taxes referred to in (*a*), (*b*), and (*c*) of such subdivision (iii) of this subparagraph with respect to any wages for domestic service in a private home of the employer which the employer elects to report on a quarterly return other than a quarterly return made on Form 942.

(v) If the aggregate amount of taxes reportable on Form CT–1, the return relating to an employer's railroad retirement tax payments, for a return period exceeds the total amount deposited by the employer pursuant to paragraph (a)(1)(i) of this section for such return period by $100 or more, the employer shall, on or before the last day of the second calendar month following the return period, deposit with a Federal Reserve bank or authorized financial institution an amount equal to the amount by which the taxes reportable on Form CT–1 exceed the total deposits (if any) of such taxes made pursuant to subdivision (i) of this subparagraph for such period.

(2) *Depositary forms*—(i) *In general.* A deposit required to be made by this section shall be made separately from a deposit required by any other section. An employer may make one, or more than one, remittance of the amount required to be deposited. However, a deposit for a period in one calendar quarter shall be made separately from any deposit for a period in another calendar quarter. An amount of tax which is not required to be deposited may nevertheless be deposited if the employer so desires.

(ii) *Deposits.* Each remittance of amounts required to be deposited under paragraph (a)(1) of this section shall be accompanied by a Federal Tax Deposit form. Such form shall be prepared in accordance with the instructions applicable thereto. The remittance, together with the Federal Tax Deposit form, shall be forwarded to a financial institution authorized as a depositary for Federal taxes in accordance with 31 CFR Part 214 or, at the election of the employer, to a Federal Reserve bank. For procedures governing the deposit of Federal taxes at a Federal Reserve bank, see 31 CFR Part 214.7. The timeliness of the deposit will be determined by the date stamped on the Federal Tax Deposit form by the Federal Reserve bank or the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e). Each employer making deposits under this section shall report on the return, for the period with respect to which such deposits are made, information regarding such deposits according to the instructions that apply to such return and pay at that time (or deposit by the due date of such return) the balance, if any, of the taxes due for such period.

(iii) *Time deemed paid.* In general, amounts deposited under subdivision (ii) of this subparagraph shall be considered as paid on the last day prescribed for filing the return in respect of such tax (determined without regard to any extension of time for filing such return), or at the time deposited, whichever is later. For purposes of section 6511 and the regulations thereunder, relating to period of limitation on credit or refund, if an amount is so deposited prior to April 15th of a calendar year immediately succeeding the calendar year which contains the period for which such amount was so deposited, such amount shall be considered as paid on such April 15th.

(3) *Procurement of prescribed form.* Copies of the Federal Tax Deposit form will so far as possible be furnished employers. An employer will not be excused from making a deposit, however, by the fact that no form has been furnished to it. An employer not supplied with the Federal Tax Deposit form should make application therefor in ample time to make the required deposits within the time prescribed. The employer may secure the form or additional forms by application therefor; such application shall supply the employer's name, identification number, address, and the taxable period to which the deposits will relate.

(b) *Exceptions*—(1) *Monthly returns.* The provisions of this section are not applicable with respect to taxes for the month in which the employer receives notice that returns are required under § 31.6011 (a)–5 (or for any subsequent month for which such a return is required), if those taxes are also required to be deposited under the separate accounting procedures provided in § 301.7512–1 of this chapter (Regulations on Procedure and Administration) (which procedures are applicable if notification is given of failure to comply with certain employment tax requirements). In cases in which a monthly return is required under § 31.6011 (a)–5 but

the taxes are not required to be deposited under the separate accounting procedures provided in § 301.7512–1, the provisions of this section shall apply except that paragraph (a)(1)(iv) shall not authorize the deferral of any deposit to a date after the date on which the return is required to be filed.

(2) *Wages paid in nonconvertible foreign currency*. The provisions of this section are not applicable with respect to taxes paid in nonconvertible foreign currency pursuant to § 301.6316–7 of this chapter (Regulations on Procedure and Administration).

(68A Stat. 775, 917; 26 U.S.C. 6302, 7805; secs. 6302 (c) and 7805 of the Internal Revenue Code of 1954; 68A Stat. 775, 26 U.S.C. 6302 (c); 68A Stat. 917; 26 U.S.C. 7805)

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

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 31.6302(c)–1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 31.6302(c)–2 Use of Government depositories in connection with employee and employer taxes under Railroad Retirement Tax Act for amounts attributable to payments made before January 1, 1993.

(a) *Requirement*—(1) *In general: after 1983 and before April 1, 1991*. In the case of a calendar month which begins after December 31, 1983, and before April 1, 1991, if, at a time prescribed under § 31.6302(c)–1(a)(1) (i) or (v) for the deposit of undeposited taxes, the aggregate amount of undeposited employee tax withheld after December 31, 1983, and before April 1, 1991, under section 3202 and employer tax imposed after December 31, 1983, and before April 1, 1991, under section 3221(a) and (b) equals an amount required to be deposited under § 31.6302(c)–1(a)(1) (i) or (v) the employer shall deposit the undeposited railroad retirement taxes described in sections 3202 and 3221 at such time in the manner prescribed in § 31.6302(c)–1(a)(1) (i) or (v) (except that undeposited railroad retirement taxes described in section 3221 (c) shall in no case be required to be deposited earlier than the first day on which a deposit is otherwise required by § 31.6302(c)–1(a)(1)(i) to be made after the 15th day of the month following the month in which the section 3221 (c) tax arises).

Notwithstanding the preceding sentence, and notwithstanding subdivision (v) of § 31.6302 (c)–1 (a) (1), if, for the calendar year prior to the calendar year preceding the current calendar year, the aggregate amount of taxes imposed under sections 3202 and 3221 with respect to an employer equalled or exceeded $1 million, such employer shall deposit his undeposited railroad retirement taxes required to be deposited for the current calendar year in accordance with Revenue Procedure 83–90, 1983–52 I.R.B. 18, (relating to transfers by wire to the Treasury).

(2) *In general: After March 31, 1991 and before January 1, 1993*. In the case of a calendar month which begins after March 31, 1991, if, at a time prescribed under § 31.6302(c)–1(a)(1)(ii) or (v) for the deposit of accumulated taxes, the aggregate amount of accumulated employee tax withheld after March 31, 1991, under section 3202 and employer tax imposed after March 31, 1991, under section 3221(a) and (b) equals an amount required to be deposited under § 31.6302(c)–1(a)(1)(ii) or (v), the employer shall deposit the accumulated railroad retirement taxes described in sections 3202 and 3221 at the time and in the manner prescribed in § 31.6302(c)–1(a)(1)(ii) or (v) (except that accumulated railroad retirement taxes described in section 3221(c) shall in no case be required to be deposited earlier than the first day on which a deposit is otherwise required by § 31.6302(c)–1(a)(1)(ii) to be made after the 15th day of the month following the month in which the section 3221(c) tax arises). Notwithstanding the preceding sentence, and notwithstanding § 31.6302(c)–1(a)(1)(v), if, for the calendar year prior to the calendar year preceding the current calendar year, the aggregate amount of taxes imposed under sections 3202 and 3221 with respect to an employer equalled or exceeded $1 million, such employer shall deposit the aggregate amount of railroad retirement taxes required to be deposited for the current calendar year in accordance with Revenue Procedure 83–90, 1983–2 C.B. 615 (relating to transfers by wire to the Treasury).

(3) *Special requirement.* If an employer files a return on Form CT–1 for a return period beginning before January 1, 1984, and the taxes shown thereon exceed by more than $100 the total amount deposited by him pursuant to paragraph (a)(1) of this section for such return period the employer shall, on or before the last day of the second calendar month following the period for which the return is filed, deposit with a Federal Reserve bank or authorized financial institution an amount equal to the amount by which the taxes shown on the return exceed the total deposits (if any) made pursuant to paragraph (a)(1) of this section for such return period.

(b) *Depositary forms*—(1) *In general.* A deposit required to be made by this section shall be made separately from a deposit required by any other section. An employer may make one, or more than one remittance of the amount required to be deposited. An amount of tax which is not required to be deposited may nevertheless be deposited if the employer so desires. If the aggregate amount of the taxes deposited is in excess of the taxes shown on the return, a credit or refund may be obtained; and in the event the excess is applied as a credit against such taxes for a subsequent return period, the employer shall reduce the amount of one or more of the deposits otherwise required for such subsequent return period by the amount of such credit.

(2) *Deposits.* Each remittance of amounts required to be deposited shall be accompanied by a Federal Tax Deposit form which shall be prepared in accordance with the instructions applicable thereto. Except as provided in paragraph (a)(1) or (a)(2) of this section, the remittance, together with the form, shall be forwarded to a financial institution authorized as a depositary for Federal taxes in accordance with 31 CFR part 214 or, at the election of the employer, to a Federal Reserve bank. For procedures governing the deposit of Federal taxes at a Federal Reserve bank, see 31 CFR part 214.7. The timeliness of the deposit will be determined by the date stamped on the Federal Tax Deposit form by the Federal Reserve bank or the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e). Each employer making deposits under this section shall report on the return, for the period with respect to which such deposits are made, information regarding such deposits according to the instructions that apply to such return and pay at that time (or deposit by the due date of such return) the balance, if any, of the taxes due for such period.

(3) *Time deemed paid.* In general, amounts deposited under subparagraph (2) of this paragraph shall be considered as paid on the last day prescribed for filing the return in respect of such tax (determined without regard to any extension of time for filing such return), or at the time deposited, whichever is later. For purposes of section 6511 and the regulations thereunder, relating to period of limitation on credit or refund, if an amount is so deposited prior to April 15th of a calendar year immediately succeeding the calendar year in which occurs the period for which such amount was so deposited, such amount shall be considered as paid on such April 15th.

(c) *Procurement of prescribed form.* Copies of the Federal Tax Deposit form will so far as possible be furnished employers. An employer will not be excused from making a deposit, however, by the fact that no form has been furnished to it. An employer not supplied with the form should make application therefor in ample time to make the required deposits within the time prescribed. The employer may secure the form or additional forms by applying therefor and supplying its name, identification number, address, and the taxable period to which the deposits will relate. Copies of the Federal Tax Deposit form may be secured by application therefor.

(Secs. 6302 (c) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 775, 26 U.S.C. 6302 (c); 68A Stat. 917; 26 U.S.C. 7805)

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6941, 32 FR 18041, Dec. 16, 1967; T.D. 6957, 33 FR 8272, June 4, 1968; T.D. 7419, 41 FR 19632, May 13, 1976; T.D. 7931, 48 FR 57274, Dec. 29, 1983; T.D. 7953, 49 FR 19645, May 9, 1984; T.D. 8341, 56 FR 13403, Apr. 2, 1991; T.D. 8436, 57 FR 44106, Sept. 24, 1992; T.D. 9239, 71 FR 13, Jan. 3, 2006]

§ 31.6302(c)–3 Deposit rules for taxes under the Federal Unemployment Tax Act.

(a) *Requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, every person that, by reason of the provisions of section 6157, computes the tax imposed by section 3301 on a quarterly or other time period basis shall—

(i) If the person is described in section (a)(1) of section 6157, deposit the amount of such tax by the last day of the first calendar month following the close of each of the first three calendar quarters in the calendar year; or

(ii) If the person is other than a person described in section (a)(1) of section 6157, deposit the amount of such tax by the last day of the first calendar month following the close of—

(*a*) The period beginning with the first day of the calendar year and ending with the last day of the calendar quarter (excluding the last calendar quarter) in which such person becomes an employer (as defined in section 3306(a)), and

(*b*) The third calendar quarter of such year, if the period specified in (*a*) of this subdivision includes only the first two calendar quarters of the calendar year.

(2) *Special rule where accumulated amount does not exceed $500.* The provisions of paragraph (a)(1) of this section shall not apply with respect to any period described therein if the amount of the tax imposed by section 3301 for such period (as computed under section 6157) plus amounts not deposited for prior periods does not exceed $500 ($100 in the case of periods ending on or before December 31, 2004). Thus, an employer shall not be required to make a deposit for a period unless his tax for such period plus tax not deposited for prior periods exceeds $500.

(b) *Manner of deposit*—(1) *In general.* A deposit required to be made by an employer under this section shall be made separately from a deposit required by any other section. An employer may make one, or more than one, remittance of the amount required to be deposited. An employer that is not required to deposit an amount of tax by this section may nevertheless voluntarily make that deposit. For the requirement to deposit tax under the Federal Unemployment Tax Act by electronic funds transfer, see § 31.6302–1(h).

(2) *Time deemed paid.* For the time an amount deposited by electronic funds transfer is deemed paid, see § 31.6302–1(h)(9). For the time an amount remitted with a return is deemed paid, see § 31.6302–1(i)(3).

(c) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

[T.D. 7037, 35 FR 6709, Apr. 28, 1970; 35 FR 7070, May 5, 1970, as amended by T.D. 7062, 35 FR 14840, Sept. 24, 1970; T.D. 7953, 49 FR 19645, May 9, 1984; 49 FR 25239, June 20, 1984; T.D. 8723, 62 FR 37494, July 14, 1997; T.D. 8952, 66 FR 33831, 33832, June 26, 2001; T.D. 9162, 69 FR 69820, Dec. 1, 2004; T.D. 9239, 71 FR 13, Jan. 3, 2006; T.D. 9507, 75 FR 75903, Dec. 7, 2010]

§ 31.6302(c)–4 Cross references.

(a) *Failure to deposit.* For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

(b) *Saturday, Sunday, or legal holiday.* For provisions relating to the time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday, see the provisions of § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960. Redesignated by T.D. 7037, 35 FR 6709, Apr. 28, 1970, as amended by T.D. 8947, 66 FR 32542, June 15, 2001]

§ 31.6361–1 Collection and administration of qualified State individual income taxes.

Except as otherwise provided in §§ 301.6361–1 to 301.6385–2, inclusive, of this chapter (Regulations on Procedure and Administration), the provisions of this part under subtitle F or chapter 24 of the Internal Revenue Code of 1954 relating to the collection and administration of the taxes imposed by chapter 1 of such Code on the incomes of individuals (or relating to civil or criminal sanctions with respect to such collection and administration) shall apply to the collection and administration of qualified State individual income taxes (as defined in section 6362 of such Code and the regulations thereunder) as if

such taxes were imposed by chapter 1 of chapter 24.

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

[T.D. 7577, 43 FR 59360, Dec. 20, 1978]

§ 31.6402(a)–1 Credits or refunds.

(a) *In general.* For regulations under section 6402 of special application to credits or refunds of employment taxes, see §§ 31.6402(a)–2, 31.6402(a)–3, and 31.6414–1. For regulations under section 6402 of general application to credits or refunds, see §§ 301.6402–1 and 301.6402–2. For provisions relating to adjustments without interest of overpayments of taxes under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act or income tax withholding, see §§ 31.6413(a)–1 and 31.6413(a)–2.

(b) *Period of limitation.* For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)–1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 9405, 73 FR 37379, July 1, 2008]

§ 31.6402(a)–2 Credit or refund of tax under Federal Insurance Contributions Act or Railroad Retirement Tax Act.

(a) *Claim by person who paid tax to IRS*—(1) *In general.* (i) Except as provided in paragraph (a)(1)(iii) of this section, any person may file a claim for credit or refund for an overpayment (except to the extent that the overpayment must be credited pursuant to § 31.3503–1) if the person paid to the Internal Revenue Service (IRS) more than the correct amount of employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employer FICA tax under section 3111, employee Railroad Retirement Tax Act (RRTA) tax under section 3201, employee representative RRTA tax under section 3211, or employer RRTA tax under section 3221, or interest, addition to the tax, additional amount, or penalty with respect to any such tax.

(ii) Except as provided in paragraph (a)(1)(iii) of this section, the claim for credit or refund must be made in the manner and subject to the conditions stated in this section. The claim for credit or refund must be filed on the form prescribed by the IRS and must designate the return period to which the claim relates, explain in detail the grounds and facts relied upon to support the claim, and set forth such other information as may be required by this section and by the instructions relating to the form used to make such claim. No refund or credit pursuant to this section for employer tax will be allowed unless the employer has first repaid or reimbursed its employee or has secured the employee's consent to the allowance of the claim for refund and includes a claim for the refund of such employee tax. However, this requirement does not apply to the extent that the taxes were not withheld from the employee or, after the employer makes reasonable efforts to repay or reimburse the employee or secure the employee's consent, the employer cannot locate the employee or the employee will not provide consent. No refund or credit of employee FICA or RRTA tax overcollected in an earlier year will be allowed if the employee has claimed a refund or credit of the amount of the overcollection which has not been rejected or if the employee has taken the amount of such tax into account in claiming a credit against or refund of the employee's income tax, including instances in which the employee has included an overcollection of employee FICA or RRTA tax in computing a special refund (see § 31.6413(c)–1).

(iii) *Additional Medicare Tax.* No refund or credit to the employer will be allowed for the amount of any overpayment of Additional Medicare Tax imposed under section 3101(b)(2) or section 3201(a) (as calculated under section 3101(b)(2)), which the employer deducted or withheld from an employee.

(iv) For adjustments without interest of overpayments of FICA or RRTA taxes, including Additional Medicare Tax, see § 31.6413(a)–2.

(v) For corrections of FICA and RRTA tax paid under the wrong chapter, see § 31.6205–1(b)(2)(ii) and (b)(2)(iii) and § 31.3503–1.

(vi) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041–2 and 31.6051–1. For provisions relating to filing information returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041–2 and 31.6051–2.

(vii) For the period of limitations on credit or refund of taxes, see § 301.6511(a)–1.

(2) *Statements supporting employer's claims for employee tax.* (i) Every employer who files a claim for refund or credit of employee FICA tax under section 3101 or employee RRTA tax under section 3201 collected from an employee must certify as part of the claim process that the employer has repaid or reimbursed the tax to its employee or has secured the employee's written consent to allowance of the filing of the claim for refund except to the extent that the taxes were not withheld from the employee. The employer must retain as part of its records the written receipt of the employee showing the date and amount of the repayment, evidence of reimbursement, or the written consent of the employee, whichever is used in support of the claim.

(ii) Every employer who files a claim for refund or credit of employee FICA tax under section 3101 or employee RRTA tax under section 3201 collected from an employee in a calendar year prior to the year in which the credit or refund is claimed, also must certify as part of the claim process that the employer has obtained the employee's written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of the amount. The employer must retain the employee's written statement as part of the employer's records.

(b) *Claim by employee*—(1) *In general.* Except as provided in (b)(3) of this section, if more than the correct amount of employee tax under section 3101 or section 3201 is collected by an employer from an employee and paid to the IRS, the employee may file a claim for refund of the overpayment if—

(i) The employee does not receive repayment or reimbursement in any manner from the employer and does not authorize the employer to file a claim and receive refund or credit,

(ii) The overcollection cannot be corrected under § 31.3503–1, and

(iii) In the case of overpaid employee social security tax due to having received wages or compensation from multiple employers, the employee has not taken the overcollection into account in claiming a credit against, or refund of, his or her income tax, or if so, such claim has been rejected. See § 31.6413(c)–1.

(2) *Statements supporting employee's claim.* (i) Except as provided in (b)(3) of this section, each employee who makes a claim under paragraph (b)(1) of this section shall submit with such claim a statement setting forth (a) the extent, if any, to which the employer has repaid or reimbursed the employee in any manner for the overcollection, and (b) the amount, if any, of credit or refund of such overpayment claimed by the employer or authorized by the employee to be claimed by the employer. The employee shall obtain such statement, if possible, from the employer, who should include in such statement the fact that it is made in support of a claim against the United States to be filed by the employee for refund of employee tax paid by such employer to the IRS. If the employer's statement is not submitted with the claim, the employee shall make the statement to the best of his or her knowledge and belief, and shall include therein an explanation of his or her inability to obtain the statement from the employer.

(ii) Except as provided in paragraph (b)(3) of this section, each individual who makes a claim under paragraph (b)(1) of this section also shall submit with such claim a statement setting forth whether the individual has taken the amount of the overcollection into account in claiming a credit against, or refund of, his or her income tax, and the amount, if any, so claimed (see § 31.6413(c)–1).

(3) *Additional Medicare Tax.* (i) If more than the correct amount of Additional Medicare Tax under section 3101(b)(2) or section 3201(a) (as calculated under section 3101(b)(2)), is collected by an employer from an employee and paid to the IRS, the employee may file a claim for refund of the overpayment and receive a refund or credit if the overcollection cannot be corrected under §31.3503–1 and if the employee has not received repayment or reimbursement from the employer in the context of an interest-free adjustment. The claim for refund shall be made on Form 1040, ''U.S. Individual Income Tax Return,'' by taking the overcollection into account in claiming a credit against, or refund of, tax. The form to be used by residents of the U.S. Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands is Form 1040–SS, ''U.S. Self-Employment Tax Return (Including Additional Child Tax Credit for Bona Fide Residents of Puerto Rico).'' The form to be used by residents of Puerto Rico is either Form 1040–SS or Form 1040–PR, ''Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico).'' The employee may not authorize the employer to claim the credit or refund for the employee. See §31.6402(a)–2(a)(1)(iii).

(ii) In the case of an overpayment of Additional Medicare Tax under section 3101(b)(2) or section 3201(a) for a taxable year of an individual for which a Form 1040 (or other applicable return in the Form 1040 series) has been filed, a claim for refund shall be made by the individual on Form 1040X, ''Amended U.S. Individual Income Tax Return.''

(c) *Effective/applicability date.* This section applies to claims for refund filed on or after November 29, 2013.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 9405, 73 FR 37379, July 1, 2008; T.D. 9645, 78 FR 71474, Nov. 29, 2013]

§31.6402(a)–3 Refund of Federal unemployment tax.

Any person who pays to the district director more than the correct amount of—

(a) Tax under section 3301 of the Federal Unemployment Tax Act or a corresponding provision of prior law, or

(b) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for refund of the overpayment, in the manner and subject to the conditions stated in §301.6402–2 of this chapter (Regulations on Procedure and Administration). See §31.6413(d) and the corresponding section of prior law for provisions which bar the allowance or payment of interest on the amount of any refund based on credit allowable for contributions paid under the unemployment compensation law of a State.

§31.6404(a)–1 Abatements.

For regulations under section 6404 of general application to the abatement of taxes, see §301.6404–1 of this chapter (Regulations on Procedure and Administration). Every claim filed by an employer for abatement of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, shall be made in the manner and subject to the conditions stated in paragraphs (a) (2) and (c) of §31.6402(a)–2, as if the claim for abatement were a claim for refund.

§31.6413(a)–1 Repayment or reimbursement by employer of tax erroneously collected from employee.

(a) *Federal Insurance Contributions Act and Railroad Retirement Tax Act*—(1) *Overcollection ascertained before return is filed.* (i) If an employer during any return period collects from an employee more than the correct amount of employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employee Railroad Retirement Tax Act (RRTA) tax under section 3201, and if the employer ascertains the error before filing the return on which the employee tax is required to be reported, repays or reimburses the amount of the overcollection to the employee before filing the return for such return period, and obtains and keeps as part of its records the written receipt of the employee showing the date and amount of

the repayment or evidence of reimbursement, the employer shall not report on any return or pay to the IRS the amount of the overcollection.

(ii) Any overcollection not repaid or reimbursed to the employee as provided in paragraph (a)(1)(i) of this section shall be reported and paid to the IRS on the return for reporting such tax for the return period in which the overcollection is made. However, the reporting and payment of the overcollection may subsequently be treated as an overpayment error ascertained after the return is filed for purposes of paragraph (a)(2) of this section.

(iii) For purposes of this paragraph (a)(1), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(2) *Error ascertained after return is filed.* (i) Except as provided in paragraph (a)(2)(ii) of this section, if an employer files a return for a return period on which FICA tax or RRTA tax is reported, collects from an employee and pays to the IRS more than the correct amount of the employee FICA or RRTA tax, and if the employer ascertains the error after filing the return and within the applicable period of limitations on credit or refund, the employer shall repay or reimburse the employee in the amount of the overcollection prior to the expiration of such limitations period. However, this paragraph (a)(2) does not apply to the extent that, after reasonable efforts, the employer cannot locate the employee, or the employee does not provide the employer with the written statement required by §31.6413(a)–1(a)(2)(iv). This paragraph (a)(2) has no application in any case in which an overcollection is made the subject of a claim by the employer for refund or credit under the procedure provided in §31.6402(a)–2.

(ii) If an employer files a return for a return period on which Additional Medicare Tax under section 3101(b)(2) or section 3201(a) is reported, collects from an employee and pays to the IRS more than the correct amount of Additional Medicare Tax required to be withheld from wages or compensation, and if the employer ascertains the error after filing the return but before the end of the calendar year in which the wages or compensation were paid, the employer shall repay or reimburse the employee in the amount of the overcollection prior to the end of the calendar year. However, this paragraph does not apply to the extent that, after reasonable efforts, the employer cannot locate the employee.

(iii) If the employer repays the amount of the overcollection to an employee, the employer shall obtain and keep as part of its records the written receipt of the employee, showing the date and amount of the repayment.

(iv) If the employer reimburses the amount of the overcollection to an employee, the employer shall keep as part of its records evidence of reimbursement. However, for purposes of overcollected Additional Medicare Tax under section 3101(b)(2) or section 3201(a), the employer shall reimburse the employee by applying the amount of the overcollection against the employee FICA or RRTA tax which attaches to wages or compensation paid by the employer to the employee in the calendar year in which the overcollection is made. The employer shall reimburse the employee by applying the amount of the overcollection against the employee FICA or RRTA tax which attaches to wages or compensation paid by the employer to the employee prior to the expiration of the applicable period of limitations on credit or refund. If the amount of the overcollection exceeds the amount so applied against such employee tax, the excess amount shall be repaid to the employee as required by this section.

(v) If, in any calendar year, an employer repays or reimburses an employee in the amount of an overcollection of employee FICA or RRTA tax that was collected from the employee in a prior calendar year, the employer shall obtain from the employee and keep as part of its records a written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of such amount. For this purpose, a claim for refund or credit by the employee includes instances in which the employee has included an overcollection of employee FICA or RRTA tax in computing a special refund (see

§ 31.6413(c)–1). This paragraph (a)(2)(v) does not apply for purposes of overcollected Additional Medicare Tax under section 3101(b)(2) or section 3201(a) which must be repaid or reimbursed to the employee in the calendar year in which the overcollection is made.

(vi) For purposes of this paragraph (a)(2), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(vii) For the period of limitations on credit or refund of taxes, see § 301.6511(a)–1.

(viii) For corrections of FICA and RRTA tax paid under the wrong chapter, see § 31.6205–1(b)(2)(ii) and (iii) and § 31.3503–1.

(b) *Income tax withheld from wages*—(1) *Overcollection ascertained before return is filed.* (i) If an employer during any return period collects from an employee more than the correct amount of tax required to be withheld from wages under section 3402, and if the employer ascertains the error before filing the return on which such tax is required to be reported, repays or reimburses the amount of the overcollection to the employee before filing the return for such return period and before the end of the calendar year in which the overcollection was made, and obtains and keeps as part of its records the written receipt of the employee showing the date and amount of the repayment or evidence of reimbursement, the employer shall not report on any return or pay to the IRS the amount of the overcollection.

(ii) Any overcollection not repaid or reimbursed to the employee as provided in paragraph (b)(1)(i) of this section shall be reported and paid to the IRS on the return for reporting such tax for the return period in which the overcollection is made. However, the reporting and payment of the overcollection may subsequently be treated as an overpayment error ascertained after the return is filed for purposes of paragraph (b)(2) of this section.

(iii) For purposes of this paragraph (b)(1), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(2) *Error ascertained after return is filed.* (i) If an employer files a return for a return period on which tax required to be withheld from wages is reported, collects from an employee and pays to the IRS more than the correct amount of the tax required to be withheld from wages, and if the employer ascertains the error after filing the return but before the end of the calendar year in which the wages were paid, the employer shall repay or reimburse the employee in the amount of the overcollection prior to the end of the calendar year. However, this paragraph does not apply to the extent that, after reasonable efforts, the employer cannot locate the employee.

(ii) If the employer repays the amount of the overcollection to an employee, the employer shall obtain and keep as part of its records the written receipt of the employee, showing the date and amount of the repayment.

(iii) If the employer reimburses the amount of the overcollection to an employee, the employer shall keep as part of its records evidence of reimbursement. The employer shall reimburse the employee by applying the amount of the overcollection against the tax under section 3402, which otherwise would be required to be withheld from wages paid by the employer to the employee in the calendar year in which the overcollection is made. If the amount of the overcollection exceeds the amount so applied against such tax, the excess amount shall be repaid to the employee as required by this section.

(iv) For purposes of this paragraph (b)(2), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(c) *Effective/applicability date.* Paragraph (a) of this section applies to adjusted returns filed on or after November 29, 2013.

[T.D. 9405, 73 FR 37380, July 1, 2008, as amended by T.D. 9645, 78 FR 71475, Nov. 29, 2013]

§ 31.6413(a)–2 Adjustments of overpayments.

(a) *In general.* (1) An employer who has overcollected or overpaid employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employer FICA tax under section 3111, employee Railroad Retirement Tax (RRTA) tax under section 3201 or employer RRTA tax under section 3221, or

income tax required under section 3402 to be withheld, and has repaid or reimbursed the amount of the overcollection of such tax to the employee, shall correct such error as provided in this section. However, this section only applies to overcollected or overpaid Additional Medicare Tax under section 3101(b)(2) or section 3201(a) if the employer has repaid or reimbursed the amount of the overcollection of such tax to the employee in the year in which the overcollection was made. Such correction may constitute an interest-free adjustment as provided in paragraph (b) or (c) of this section.

(2) Every correction under this section of an overpayment of tax shall be made on the form prescribed by the IRS that corresponds to the return being corrected. The form, filed in accordance with this section and the instructions, will constitute an adjusted return for the return period being corrected.

(3) Every adjusted return on which an overpayment is corrected pursuant to this section shall certify that the employer has repaid or reimbursed its employee, except where taxes were not withheld from the employee or where, after reasonable efforts, the employer cannot locate the employee. Every adjusted return shall designate the return period in which the error was ascertained and the return period being corrected, explain in detail the grounds and facts relied upon to support the correction, and set forth such other information as may be required by this section and §31.6413(a)–1 and by the instructions relating to the adjusted return. Every adjusted return, filed by an employer, for overpayment of employee FICA tax under section 3101 or employee RRTA tax under section 3201 collected from an employee in a calendar year prior to the year in which the adjusted return is filed, must also certify that the employer has obtained the employee's written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of the amount.

(4) For purposes of this section, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(5) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§1.6041–2 and 31.6051–1. For provisions relating to filing information returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§1.6041–2 and 31.6051–2.

(b) *Federal Insurance Contributions Act and Railroad Retirement Tax Act*—(1) *Overcollection ascertained before return is filed*. If an employer collects more than the correct amount of employee FICA or RRTA tax from an employee, and if the employer ascertains the error before filing the return on which the employee tax with respect to such wages or compensation is required to be reported, and repays or reimburses the employee under §31.6413(a)–1(a)(1), the employer shall not report on any return or pay to the IRS the amount of the overcollection. If the employer does not repay or reimburse the amount of the overcollection under §31.6413(a)–1(a)(1) before filing the return, the employer must report the amount of the overcollection on the return. However, the payment of the overcollection may subsequently be treated as an overpayment error ascertained after the return is filed for purposes of paragraph (b)(2) of this section.

(2) *Error ascertained after return is filed*—(i) *Employee tax*. If an employer files a return for a return period on which FICA tax or RRTA tax is required to be reported and reports on the return more than the correct amount of employee FICA or RRTA tax, and if the employer ascertains the error after filing the return, and repays or reimburses the employee the amount of the overcollection of employee tax, as provided in §31.6413(a)–1(a)(2), the employer may correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the overpayment of tax by reporting the overpayment on an adjusted return for the return period in which the wages or compensation was paid, accompanied by a detailed explanation of the amount being

reported on the adjusted return as required by paragraph (a)(3) of this section. However, for purposes of Additional Medicare Tax under section 3101(b)(2) or section 3201(a), if the amount of the overcollection is not repaid or reimbursed to the employee under §31.6413(a)–1(a)(2)(ii), there is no overpayment to be adjusted under this section and the employer may only adjust an overpayment of such tax attributable to an administrative error, that is, an error involving the inaccurate reporting of the amount withheld, pursuant to this section. Except as provided in paragraph (d) of this section, the reporting of the overpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed before the expiration of the period of limitations on credit or refund. The employer shall take the adjusted amount as a credit towards payment of employment tax liabilities for the return period in which the adjusted return is filed unless the IRS notifies the employer that the adjustment is not permitted under paragraph (d) of this section.

(ii) *Employer tax.* If an employer files a return for a return period on which FICA or RRTA tax is required to be reported and reports on the return more than the correct amount of employer FICA or RRTA tax, and if the employer ascertains the error after filing the return, the employer may correct the error through an interest-free adjustment as provided in this section. The employer must first repay or reimburse the employee the amount of any overcollection of employee tax, if any, as required by §31.6413(a)–1(a)(2), before making the adjustment for the employer tax. The employer shall adjust the overpayment of tax by reporting the overpayment on an adjusted return for the return period in which the wages or compensation was paid, accompanied by a detailed explanation of the amount being reported on the adjusted return as required by paragraph (a)(3) of this section. Except as provided in paragraph (d) of this section, the reporting of the overpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed before the expiration of the period of limitations on credit or refund. The employer shall take the adjusted amount as a credit towards payment of employment tax liabilities for the return period in which the adjusted return is filed unless the IRS notifies the employer that the adjustment is not permitted under paragraph (d) of this section.

(c) *Income tax withheld from wages*—(1) *Overcollection ascertained before return is filed.* If an employer collects more than the correct amount of income tax required to be withheld from wages, and if the employer ascertains the error before filing the return on which the tax is required to be reported, and repays or reimburses the employee under §31.6413(a)–1(b)(1), the employer shall not report on any return or pay to the IRS the amount of the overcollection. If the employer does not repay or reimburse the amount of the overcollection under §31.6413(a)–1(b)(1) before filing the return, the employer must report the amount of the overcollection on the return. However, the reporting and payment of the overcollection may subsequently be treated as an overpayment error ascertained after the return is filed for purposes of paragraph (c)(2) of this section.

(2) *Error ascertained after return is filed.* If an employer files a return for a return period on which income tax required to be withheld from wages is required to be reported and reports on the return more than the correct amount of income tax required to be withheld, and if the employer ascertains the error after filing the return, and repays or reimburses the employee in the amount of the overcollection as provided in §31.6413(a)–1(b)(2), the employer may correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the overpayment of tax by reporting the overpayment on an adjusted return for the return period in which the wages were paid, accompanied by a detailed explanation of the amount being reported on the adjusted return as required in paragraph (a)(3) of this section. Except as provided in paragraph (d) of this section, the reporting of the overpayment on an adjusted return constitutes an adjustment within the

meaning of this section. If the amount of the overcollection is not repaid or reimbursed to the employee under §31.6413(a)–1(b)(2), there is no overpayment to be adjusted under this section. However, the employer may adjust an overpayment of tax attributable to an administrative error, that is, an error involving the inaccurate reporting of the amount withheld, pursuant to this section. The employer shall take the adjusted amount as a credit towards payment of employment tax liabilities for the return period in which the adjusted return is filed unless the IRS notifies the employer that the adjustment is not permitted under paragraph (d) of this section.

(d) *Adjustments not permitted*—(1) *In general.* If an adjustment cannot be made, a claim for refund or credit may be filed in accordance with §31.6402(a)–2 or §31.6414–1.

(2) *90-day exception.* No adjustment in respect of an overpayment may be made if the overpayment relates to a return period for which the period of limitations on credit or refund of such overpayment will expire within 90 days of filing the adjusted return.

(3) *No adjustment after claim for refund filed.* No adjustment in respect of an overpayment may be made after the filing of a claim for credit or refund of such overpayment under §31.6402(a)–2.

(4) *No adjustment after IRS notification.* No adjustment may be made upon notification by the IRS that the adjustment is not permitted.

(e) *Effective/applicability date.* Paragraphs (a) and (b) of this section apply to adjusted returns filed on or after November 29, 2013.

[T.D. 9405, 73 FR 37381, July 1, 2008, as amended by T.D. 9645, 78 FR 71475, Nov. 29, 2013; T.D. 9645, 79 FR 4623, Jan. 29, 2014]

§31.6413(a)–3 Repayment by payor of tax erroneously collected from payee.

(a) *In general*—(1) *Erroneous withholding under section 3406 of the Internal Revenue Code.* If a payor or broker withholds under section 3406 from a payee in error or withholds more than the proper amount of the tax under section 3406, the payor or broker may refund the amount erroneously withheld as provided in section 6413 and this section. A payor or broker will be considered to have withheld erroneously under section 3406 only if the amount is withheld because of an error by the payor or broker (e.g., an error in flagging or identifying an account that is subject to withholding under section 3406). The payor or broker may, in its discretion, treat the amount withheld as an amount erroneously withheld and refund it to the payee if—

(i) The payor or broker requires a payee described in §31.3406(g)–1(a) or described in a provision of the Internal Revenue Code requiring the reporting of a payment subject to withholding under section 3406 to certify that it is an exempt recipient, the payee fails to make the required certification, and the payor or broker subsequently withholds under section 3406 from a payment to the payee;

(ii) The payor or broker does not require the payee to certify concerning its exempt status and the payor or broker withholds under section 3406;

(iii) The payor or broker withholds under section 3406 from a payee after the payee provides a taxpayer identification number or required certification (including the documentation described in §1.1441–1(e)(1)(ii), 1.6045–1(g)(3), or 1.6049–5(c) of this chapter) to the payor, but before the payor or broker treats the number or required certification as having been received under §31.3406(e)–1(b); or

(iv) The amount is withheld because a payor imposed backup withholding on a payment made to a person because the payee failed to furnish the documentation described in §1.1441–1(e)(1)(ii) of this chapter and the payee subsequently furnishes, completes, or corrects the documentation. The documentation must be furnished, completed, or corrected prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred.

(2) For purposes of paragraph (a)(1) of this section (other than erroneous withholding occurring under the circumstances described in paragraph (a)(1)(iv) of this section), if a payor or broker withholds because the payor or

broker has not received a taxpayer identifying number or required certification and the payee subsequently provides a taxpayer identifying number or a required certification to the payor, the payor or broker may not refund the amount to the payee.

(b) *Refunding amounts erroneously withheld*—(1) *Time and manner.* If a payor or broker withholds under section 3406 from a payee in error (including withholding more than the correct amount, as described in paragraph (a) of this section), the payor or broker may refund the amount erroneously withheld to the payee if the refund is made prior to the end of the calendar year and prior to the time the payor or broker furnishes a Form 1099 to the payee with respect to the payment for which the erroneous withholding occurred. If the amount of the erroneous withholding is refunded to the payee, the payor or broker must—

(i) Keep as part of its records a receipt showing the date and amount of refund and must provide a copy of the receipt to the payee (a canceled check or an entry in a statement is sufficient, provided that the check or statement contains a specific notation that it is a refund of tax erroneously withheld);

(ii) Not report on a Form 1099 as tax withheld any amount which the payor or broker has refunded to a payee; and

(iii) Not deposit the amount erroneously withheld if the payor or broker has not deposited the amount of the tax prior to the time that the refund is made to the payee.

(2) *Adjustment after the deposit of the tax*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, if the amount erroneously withheld has been deposited prior to the time that the refund is made to the payee, the payor or broker may adjust any subsequent deposit of the tax collected under chapter 24 of the Internal Revenue Code that the payor or broker is required to make in the amount of the tax that has been refunded to the payee.

(ii) *Erroneous withholding from a payee that is a foreign person.* Where a payor withholds in error from a payee that is a nonresident alien or foreign person, as described in paragraph (a)(1)(iv) of this section, the payor may refund some or all of the amount subject to backup withholding under section 3406. A refund may be paid in accordance with the requirements of this paragraph (b)(2)(ii) where the documentation is furnished, completed, or corrected prior to the end of the calendar year in which the payment is made and prior to the time the payor furnishes a Form 1099 to the payee with respect to the payment for which the withholding erroneously occurred. The amount of the refund will be the amount erroneously withheld less the amount of tax required to be withheld, if any, under chapter 3 of the Internal Revenue Code and the regulations under that chapter. With respect to the amount of the payment to the foreign person and the amount of tax required to be withheld under chapter 3 of the Internal Revenue Code (and the regulations thereunder), returns must be made in accordance with the requirements of §1.1461–1 (b) and (c) of this chapter.

[T.D. 8637, 60 FR 66133, Dec. 21, 1995, as amended by T.D. 8734, 62 FR 53494, Oct. 14, 1997]

§ 31.6413(b)–1 Overpayments of certain employment taxes.

For provisions relating to the adjustment of overpayments of tax imposed by section 3101, 3111, 3201, 3221, or 3402, see §31.6413(a)–2. For provisions relating to refunds of tax imposed by section 3101, 3111, 3201, or 3221, see §§31.6402(a)–1 and 31.6402(a)–2. For provisions relating to refunds of tax imposed by section 3402, see §§31.6402(a)–1 and 31.6414–1.

§ 31.6413(c)–1 Special refunds.

(a) *Who may make claims*—(1) *In general.* (i) If an employee receives wages, as defined in section 3121(a), from two or more employers in any calendar year:

(*a*) After 1954 and before 1959 in excess of $4,200,

(*b*) After 1958 and before 1966 in excess of $4,800,

(*c*) After 1965 and before 1968 in excess of $6,600,

(*d*) After 1967 and before 1972 in excess of $7,800,

(*e*) After 1971 and before 1973 in excess of $9,000,

(*f*) After 1972 and before 1974 in excess of $10,800,

(*g*) After 1973 and before 1975 in excess of $13,200, or

(*h*) After 1974 in excess of the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective with respect to such year,

the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed by section 3101 with respect to such wages and deducted therefrom (whether or not paid) exceeds the employee tax with respect to the amount specified in (*a*) through (*h*) of this subdivision for the calendar year in question. Employee tax imposed by section 3101 with respect to tips reported by an employee to his employer and collected by the employer from funds turned over by the employee to the employer (see section 3102(c)) shall be treated, for purposes of this paragraph, as employee tax deducted from wages received by the employee. If the employee is required to file an income tax return for such calendar year (or for his last taxable year beginning in such calendar year) he may obtain the benefit of the special refund only by claiming credit as provided in §1.31–2 of this chapter (Income Tax Regulations).

(ii) The application of this subparagraph may be illustrated by the following examples:

Example 1. Employee A in the calendar year 1968 receives taxable wages in the amount of $5,000 from each of his employers, B, C, and D, for services performed during such year (or at any time after 1936), or a total of $15,000. Employee tax (computed at 4.4 percent, the aggregate employee tax rate in effect in 1968) is deducted from A's wages in the amount of $220 by B and $220 by C, or a total of $440. Employer D pays employee tax in the amount of $220 without deducting such tax from A's wages. The employee tax with respect to the first $7,800 of such wages is $343.20. A is entitled to a special refund of $96.80 ($440 minus $343.20). The $5,000 of wages received from employer D and the $220 of employee tax paid with respect thereto have no bearing in computing A's special refund since such tax was not deducted from his wages.

Example 2. Employee E in the calendar year 1968 performs services for employers F and G, for which E is entitled to wages of $7,800 from each employer, or a total of $15,600. On account of such services, E in 1967 received an advance payment of $1,800 of wages from F; and in 1968, receives wages in the amount of $6,000 from F and $7,800 from G. Employee tax was deducted as follows: In 1967, $79.20 ($1,800 × 4.4 percent, the aggregate employee tax rate in effect in 1967) by employer F; and in 1968, $264.00 ($6,000 × 4.4 percent, the aggregate employee tax rate in effect in 1968) by employer F, and $343.20 ($7,800 × 4.4 percent) by employer G. Thus, E in the calendar year 1968 received $13,800 in wages from which $607.20 of employee tax was deducted. The amount of employee tax with respect to the first $7,800 of such wages received in 1968 is $343.20. E is entitled to a special refund of $264.00 ($607.20 minus $343.20). The $1,800 advance of wages received in 1967 from F, and the $79.20 of employee tax with respect thereto, have no bearing in computing E's special refund for 1968, because the wages were not received in 1968. Such amounts could not form the basis for a special refund unless E during 1967 received from F and at least one more employer wages totaling more than $6,600.

(2) *Federal employees.* For purposes of special refunds of employee tax, each head of a Federal agency or of a wholly owned instrumentality of the United States who makes a return pursuant to section 3122 (and each agent designated by a head of a Federal agency or instrumentality who makes a return pursuant to such section) is considered a separate employer. For such purposes, the term ''wages'' includes the amount which each such head (or agent) determines to constitute wages paid an employee, but not in excess of the amount specified in paragraph (a)(1)(i) (*a*) through (*h*) of this section for the calendar year in question. For example, if wages received by an employee during calendar year 1974 are reportable by two or more agents of one or more Federal agencies and the amount of such wages is in excess of $13,200 the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax with respect to the first $13,200 of such wages. Moreover, if an employee receives wages during any calendar year from an agency or wholly owned instrumentality of the United States and from one or more other employers, either private or governmental, the total amount of such wages shall be taken into account

for purposes of the special refund provisions.

(3) *State employees.* For purposes of special refunds of employee tax, the term ''wages'' includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act, relating to voluntary agreements for coverage of employees of State and local governments, as would be wages if such services constituted employment (see § 31.3121(a)–1, relating to wages); the term ''employer'' includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; and the term ''tax'' or ''tax imposed by section 3101'' includes an amount equivalent to the employee tax which would be imposed by section 3101 if such services constituted employment. The provisions of paragraph (a)(1) of this section are applicable whether or not any amount deducted from an employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid pursuant to such agreement. Thus, the special refund provisions are applicable to amounts equivalent to employee tax deducted from employees' remuneration by States, political subdivisions, or instrumentalities by reason of agreements made under section 218 of the Social Security Act. Moreover, if during any calendar year an employee receives remuneration for services covered by such an agreement and during the same calendar year receives wages from one or more other employers, either private or governmental, the total amount of such remuneration and wages shall be taken into account for purposes of the special refund provisions.

(4) *Employees of certain foreign corporations.* For purposes of special refunds of employee tax, the term ''wages'' includes such remuneration for services covered by an agreement made pursuant to section 3121(l), relating to agreements for coverage of employees of certain foreign corporations, as would be wages if such services constituted employment (see § 31.3121(a)–1, relating to wages); the term ''employer'' includes any domestic corporation which has entered into an agreement pursuant to section 3121(l); and the term ''tax'' or ''tax imposed by section 3101'' includes, in the case of services covered by an agreement entered into pursuant to section 3121(l), an amount equivalent to the employee tax which would be imposed by section 3101 if such services constituted employment. The provisions of paragraph (a)(1) of this section are applicable whether or not any amount deducted from the employee's remuneration by reason of such agreement has been paid to the district director. Thus, the special refund provisions are applicable to amounts equivalent to employee tax deducted from employees' remuneration by reason of agreements made under section 3121(l). A domestic corporation which enters into an agreement pursuant to section 3121(l) shall, for purposes of this paragraph, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as an employer employing individuals on its own account (see section 3121(l)(9)). If during any calendar year an employee receives remuneration for services covered by such an agreement and during the same calendar year receives wages for services in employment, the total amount of such remuneration and wages shall be taken into account for purposes of the special refund provisions. For provisions relating to agreements entered into under section 3121(l), see the regulations in part 36 of this chapter (Regulations on Contract Coverage of Employees of Foreign Subsidiaries).

(5) *Governmental employees in American Samoa.* For purposes of special refunds of employee tax, the Governor of American Samoa and each agent designated by him who makes a return pursuant to section 3125(b) (see § 31.3125) is considered a separate employer. For such purposes, the term ''wages'' includes the amount which the Governor (or any agent) determines to constitute wages paid an employee, but not in excess of the amount specified in paragraph (a)(1)(i) (*a*) through (*h*) of this section for the calendar year in question. For example, if wages received by an employee during calendar year 1974 are reportable by two or more agents pursuant to section 3125(b) and

the total amount of such wages is in excess of $13,200, the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax with respect to the first $13,200 of such wages. Moreover, if an employee receives wages during any calendar year from the Government of American Samoa, from a political subdivision thereof, or from any wholly-owned instrumentality of such government or political subdivision and from one or more other employers, either private or governmental, the total amount of such wages shall be taken into account for purposes of the special refund provisions.

(6) *Governmental employees in the District of Columbia.* For purposes of special refunds of employee tax, the Commissioner of the District of Columbia (or, prior to the transfer of functions pursuant to Reorganization Plan No. 3 of 1967 (81 Stat. 948), the Commissioners of the District of Columbia) and each agent designated by him who makes a return pursuant to section 3125(c) (see §31.3125) is considered a separate employer. For such purposes, the term ''wages'' includes the amount which the Commissioner (or any agent) determines to constitute wages paid an employee, but not in excess of the amount specified in paragraph (a)(1)(i) (*a*) through (*h*) of this section for the calendar year in question. For example, if wages received by an employee during calendar year 1974 are reportable by two or more agents pursuant to section 3125(c) and the total amount of such wages is in excess of $13,200 the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax with respect to the first $13,200 of such wages. Moreover, if an employee receives wages during any calendar year from the Government of the District of Columbia or from a wholly-owned instrumentality thereof and from one or more other employers, either private or governmental, the total amount of such wages shall be taken into account for purposes of the special refund provisions.

(b) *Claims for special refund*—(1) *In general.* An employee who is entitled to a special refund under section 6413(c) may claim such refund under the provisions of this section only if the employee is not entitled to claim the amount thereof as a credit against income tax as provided in §1.31–2 of this chapter (Income Tax Regulations). Each claim under this section shall be made with respect to wages received within one calendar year (regardless of the year or years after 1936 during which the services were performed for which such wages are received), and shall be filed after the close of such year.

(2) *Form of claim.* Each claim for special refund under this section shall be made on Form 843, in accordance with the regulations in this subpart and the instructions relating to such form. In the case of a claim filed prior to April 15, 1968, the claim shall be filed with the district director for the internal revenue district in which the employee resides or, if the employee does not reside in any internal revenue district, with the District Director, Baltimore, Md. 21202. Except as provided in paragraph (b) of §301.6091–1 (relating to hand-carried documents), in the case of a claim filed after April 14, 1968, the claim shall be filed with the service center serving such internal revenue district. However, in the case of an employee who does not reside in any internal revenue district and who is outside the United States, the claim shall be filed with the Director of International Operations, U.S. Internal Revenue Service, Washington, D.C. 20225, unless the employee resides in Puerto Rico or the Virgin Islands, in which case the claim shall be filed with the Director of International Operations, U.S. Internal Revenue Service, Hato Rey, P.R. 00917. The claim shall include the employee's account number and the following information with respect to each employer from whom he received wages during the calendar year: (i) The name and address of such employer, (ii) the amount of wages received during the calendar year to which the claim relates, and (iii) the amount of employee tax collected by

the employer from the employee with respect to such wages. Other information may be required but should be submitted only upon request.

(3) *Period of limitation.* For the period of limitation upon special refund of employee tax imposed by section 3101, see § 301.6511(a)–1 of this chapter (Regulations on Procedure and Administration).

(c) *Special refunds with respect to compensation as defined in the Railroad Retirement Tax Act*—(1) *In general.* In the case of any individual who, during any calendar year after 1967, receives wages (as defined by section 3121(a)) from one or more employers and also receives compensation (as defined by section 3231(e)) which is subject to the tax imposed on employees by section 3201 or the tax imposed on employee representatives by section 3211 such compensation shall, solely for purposes of applying section 6413(c)(1) and this section with respect to the hospital insurance tax imposed by section 3101(b), be treated as wages (as defined by section 3121(a)) received from an employer with respect to which the hospital insurance tax imposed by section 3101(b) was deducted. For purposes of this section, compensation received shall be determined under the principles provided in chapter 22 of the Code and the regulations thereunder (see section 3231(e) and § 31.3231(e)–1). Therefore, compensation paid for time lost shall be deemed earned and received for purposes of this section in the month in which such time is lost, and compensation which is earned during the period for which a return of taxes under chapter 22 is required to be made and which is payable during the calendar month following such period shall be deemed to have been received for purposes of this section during such period only. Further, compensation is deemed to have been earned and received when an employee or employee representative performs services for which he is paid, or for which there is a present or future obligation to pay, regardless of the time at which payment is made or deemed to be made.

(2) *Example.* The application of this paragraph may be illustrated by the following example.

Example. Employee A rendered services to X during 1973 for which he was paid compensation at the monthly rate of $650 which was taxable under the Railroad Retirement Tax Act. A was paid $550 by X in January 1973 which was earned and deemed received in December 1972 and $650 in January of 1974 which was earned and deemed received in December of 1973. A also earned and received wages in 1973 from employer Y, which were subject to the employee tax under the Federal Insurance Contributions Act, in the amount of $6,000. A paid hospital insurance tax on $13,800 ($7,800 compensation from X including $650 earned and deemed received in December 1973 but paid in January 1974 and not including $550 paid in January 1973 but earned and deemed received in December 1972, $6,000 compensation from Y) received or deemed received or earned in 1973. For purposes of the hospital insurance tax imposed by section 3101(b), these amounts are all wages received from an employer in 1973. Therefore, A is entitled to a special refund for 1973 under section 6413(c) and this section of $30 (1.0% × $13,800 − 1.0% × $10,800).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6950, 33 FR 5359, Apr. 4, 1968; T.D. 6983, 33 FR 18020, Dec. 4, 1968; T.D. 7374, 40 FR 30954, July 24, 1975; T.D. 7374, 69 FR 57639, Sept. 27, 2004]

§ 31.6414–1 Credit or refund of income tax withheld from wages.

(a) *In general.* (1) Any employer who pays to the IRS more than the correct amount of income tax required to be withheld from wages under section 3402 or interest, addition to the tax, additional amount, or penalty with respect to such tax, may file a claim for refund of the overpayment in the manner and subject to the conditions stated in this section on the form prescribed by the IRS. The claim for refund must designate the return period to which the claim relates, explain in detail the grounds and facts relied upon to support the claim, and set forth such other information as may be required by the regulations in this section and by the instructions relating to the form used to make such claim. No refund to the employer will be allowed under this section for the amount of any overpayment of tax which the employer deducted or withheld from an employee.

(2) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041–2 and 31.6051–

1. For provisions relating to filing information returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041–2 and 31.6051–2.

(3) For interest-free adjustments of overpayments of income tax withheld from wages, see § 31.6413(a)–2.

(b) *Period of limitation.* For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)–1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 9405, 73 FR 37382, July 1, 2008]

§ 31.6652(c)–1 Failure of employee to report tips for purposes of the Federal Insurance Contributions Act.

(a) *In general.* In the case of failure by an employee to furnish, pursuant to the provisions of section 6053(a), to his employer a report of tips received by him in the course of his employment, which constitute wages (as defined in section 3121(a)), there shall be paid by the employee, in addition to the tax imposed by section 3101 with respect to the amount of tips which he so failed to report, an amount equal to 50 percent of such tax. The additional amount imposed for such failure shall be paid in the same manner as tax upon notice and demand by the district director.

(b) *Reasonable cause.* Payment of an amount equal to 50 percent of the tax imposed by section 3101 with respect to the tips which the employee failed to report will not be required if it is established to the satisfaction of the district director or the director of the regional service center that such failure was due to reasonable cause and not due to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it is made under the penalties of perjury, setting forth all the facts alleged as a reasonable cause. An employee's reluctance to disclose to his employer the amount of tips received by him will not establish that the employee's failure to report tips to his employer was due to reasonable cause and not due to willful neglect.

[T.D. 7001, 34 FR 1005, Jan. 23, 1969]

§ 31.6674–1 Penalties for fraudulent statement or failure to furnish statement.

Any person required to furnish a statement to an employee under the provisions of section 6051 or 6053(b) is subject to a civil penalty for willful failure to furnish such statement in the manner, at the time, and showing the information required under such section (or § 31.6051–1 or § 31.6053–2), or for willfully furnishing a false or fraudulent statement to an employee. The penalty for each such violation is $50, which shall be assessed and collected in the same manner as the tax imposed on employers under the Federal Insurance Contributions Act. See section 7204 for criminal penalty.

[T.D. 7001, 34 FR 1006, Jan. 23, 1969]

§ 31.6682–1 False information with respect to withholding.

(a) *Civil penalty.* If any individual makes a statement under section 3402 (relating to income tax collected at source) which results in a lesser amount of income tax actually deducted and withheld than is properly allowable under section 3402 and, at the time the statement was made, there was no reasonable basis for the statement, the individual shall pay a penalty of $500 for the statement. There was a reasonable basis for a statement of the number of exemptions an individual claimed on a Form W–4, if the individual properly completed the Form W–4 by taking into account only allowable amounts for items which are allowable and by computing the number of exemptions in accordance with the instructions on the Form W–4. This penalty is in addition to any criminal penalty provided by law. This penalty may be assessed at any time after the statement is made, until the expiration of the applicable statute of limitations.

(b) *Deficiency procedures not to apply.* The civil penalty imposed by section 6682 may be assessed and collected

without regard to the deficiency procedures provided by Subchapter B of Chapter 63 of the Code.

[T.D. 7963, 49 FR 28706, July 16, 1984]

§ 31.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of employment tax returns or claims for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, see § 1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78453, Dec. 22, 2008, as amended by T.D. 9436, 74 FR 5105, Jan. 29, 2009]

§ 31.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78454, Dec. 22, 2008]

§ 31.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78454, Dec. 22, 2008, as amended by T.D. 9436, 74 FR 5105, Jan. 29, 2009]

§ 31.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78454, Dec. 22, 2008]

§ 31.6695–1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 9436, 73 FR 78454, Dec. 22, 2008]

§ 31.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for employment tax under chapters 21 through 25 of subtitle C of

the Internal Revenue Code, the rules under §1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78454, Dec. 22, 2008]

§ 31.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

[T.D. 9436, 73 FR 78454, Dec. 22, 2008]

§ 31.7701–2 Definitions; spouse, husband and wife, husband, wife, marriage.

(a) *In general.* For the definition of the terms spouse, husband and wife, husband, wife, and marriage, see §301.7701–18 of this chapter.

(b) *Applicability date.* The rules of this section apply to taxable years ending on or after September 2, 2016.

[T.D. 9785, 81 FR 60616, Sept. 2, 2016]

§ 31.7805–1 Promulgation of regulations.

In pursuance of section 7805 of the Internal Revenue Code of 1954, the foregoing regulations are hereby prescribed. (See §31.0–3 of subpart A of the regulations in this part relating to the scope of the regulations.)

PART 32—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE ACT OF DECEMBER 29, 1981 (PUB. L. 97–123)

Sec.

AUTHORITY: 95 Stat. 1662 and 1663, 26 U.S.C. 3121(a) and 3231(e)(4); 68A Stat. 917, 26 U.S.C. 7805.

§ 32.1 Social security taxes with respect to payments on account of sickness or accident disability.

(a) *General rule.* The amount of any payment on or after January 1, 1982, made to, or on behalf of, an employee or any of his dependents on account of sickness or accident disability is not excluded from the term wages as defined in section 3121(a)(2)(A) unless such payment is—

(1) Received under a workmen's compensation law (as defined in §31.3121(a)(2)–1(d)(3) for payments made on or after December 15, 2005), or

(2) Made by a third party pursuant to a contractual agreement between the employer and third party entered into prior to December 14, 1981, but then only if—

(i) The third party's coverage for that employee's group ceases prior to March 1, 1982,

(ii) No third party payment is made to such employee under that contract after February 28, 1982, and

(iii) The cessation of the third party's coverage for that employee's group indefinitely terminates the contractual relationship between the third party and the employer as to sickness and accident disability benefits for that employee's group.

See section 3121(a)(4) and §31.3121(a)(4)–1 for the exclusion from the term ''wages'' of any payment on account of sickness or accident disability made after the expiration of 6 calendar months following the last calendar month in which the employee worked.

(b) *Examples.* The application of the provisions of subparagraph (2) of paragraph (a) may be illustrated by the following examples:

Example 1. Company Q enters into a contract on August 31, 1981, with Insurance Company R to provide sickness and accident disability payments to Q's employees. The contract expires on February 28, 1982. On March 1, 1982, Q enters into a new contract with R to provide sickness and accident disability payments to Q's employees. Payments made by R pursuant to the contract expiring February 28, 1982, are included in ''wages'' as defined in section 3121(a)(2)(B).

Example 2. Company S enters into a contract on November 15, 1981, with Insurance Company T to provide sickness and accident disability payments to S's employees. The