

activities. The employee is not covered by the State workers' compensation law, but is covered by a local government ordinance that requires the local government to pay the employee's full salary when the employee is out of work as a result of an injury incurred while performing services for the local government. The ordinance does not limit or otherwise affect the local government's liability to the employee for the work-related injury. The local ordinance is not a workers' compensation law, but it is in the nature of a workers' compensation act. Therefore, the salary the employee receives while out of work as a result of the work-related injury is excluded from wages under section 3121(a)(2)(A).

*Example 2.* The facts are the same as in Example 1 except that the local ordinance requires the employer to continue to pay the employee's full salary while the employee is unable to work due to an injury whether or not the injury is work-related. Thus, the local ordinance does not limit benefits to instances of work-related disability. A benefit paid under an ordinance that does not limit benefits to instances of work-related injuries is not a statute in the nature of a workers' compensation act. Therefore, the salary the injured employee receives from the employer while out of work is wages subject to FICA even though the employee's injury is work-related.

*Example 3.* The facts are the same as in Example 1 except that the local ordinance includes a rebuttable presumption that certain injuries, including any heart attack incurred by a firefighter or other law enforcement personnel is work-related. The presumption in the ordinance does not eliminate the requirement that the injury be work-related in order to entitle the injured worker to full salary. Therefore, the ordinance is a statute in the nature of a workers' compensation act, and the salary the injured employee receives pursuant to the ordinance is excluded from wages under section 3121(a)(2)(A).

\* \* \* \* \*

**Mark E. Matthews,**

*Deputy Commissioner of Services and Enforcement.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-147195-04]

RIN 1545-BE08

#### Disclosure of Return Information to the Bureau of the Census

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of **Federal Register**, the IRS is issuing temporary regulations relating to additions to, and deletions from, the list of items of return information disclosed to the Bureau of the Census (Bureau) for use in producing demographic statistics programs, including the Bureau's Small Area Income and Poverty Estimates (SAIPE). These temporary regulations provide guidance to IRS personnel responsible for disclosing the information. The text of these temporary regulations published in the Rules and Regulation section of this issue of the **Federal Register** serves as the text of the proposed regulations.

**DATES:** Written and electronic comments and requests for a public hearing must be received by June 9, 2005.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-147195-04), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-148864-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS and REG-148864-03).

**FOR FURTHER INFORMATION CONTACT:** Concerning submission of comments, Treena Garrett, (202) 622-7180 (not a toll-free number); concerning the temporary regulations, James O'Leary, (202) 622-4580 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under section 6103(j)(1), upon written request from the Secretary of Commerce, the Secretary of the Treasury is to furnish to the Bureau of the Census (Bureau) return information that is prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring censuses and national economic accounts and conducting related statistical activities authorized by law. Section 301.6103(j)(1)-1 of the regulations provides an itemized description of the return information authorized to be disclosed for this purpose. Periodically, the disclosure regulations are amended to reflect the changing needs of the Bureau for data for its statutorily authorized statistical activities.

This document contains proposed regulations authorizing IRS personnel to disclose additional items of return

information that have been requested by the Secretary of Commerce, and to remove certain items of return information that are enumerated in the existing regulations but that the Secretary of Commerce has indicated are no longer needed.

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR part 301) relating to Internal Revenue Code (Code) section 6103(j). The temporary regulations contain rules relating to the disclosure of return information reflected on returns to officers and employees of the Department of Commerce for structuring censuses and national economic accounts and conducting related statistical activities authorized by law.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the proposed regulations.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these regulations is James C. O'Leary, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure and Privacy Law Division.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

**PART 301—PROCEDURE AND ADMINISTRATION**

**Paragraph 1.** The authority citation for part 301 is amended in part, by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 301.6103(j)(1)–1 also issued under 26 U.S.C. 6103(j)(1); \* \* \*.

**Par. 2.** In § 301.6103(j)(1)–1 paragraphs (b)(1), (b)(3), and (e) are revised to read as follows:

**§ 301.6103(j)(1)–1 Disclosure of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.**  
\* \* \* \* \*

[The text of proposed paragraphs (b)(1), (b)(3) and (e) are the same as the text of § 301.6103(j)(1)–1T(b)(1), (b)(3), and (e) published elsewhere in this issue of the *Federal Register*.]

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

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**GENERAL SERVICES ADMINISTRATION****48 CFR Parts 546 and 552**

[GSAR ANPR 2005–N01]

**General Services Administration Acquisition Regulation; Waiver of Consequential Damages and “Post Award” Audit Provisions.**

**AGENCY:** Office of the Chief Acquisition Officer, General Services Administration (GSA).

**ACTION:** Advance notice of proposed rulemaking and notice of public meeting.

**SUMMARY:** The General Services Administration (GSA) is requesting

comments from both Government and industry on whether the General Services Administration Acquisition Regulation (GSAR) should be revised to include a waiver of consequential damages for contracts awarded for commercial item under the FAR. GSA is also requesting comments on whether “post award” audit provisions should be included in its Multiple Award Schedules (MAS) contracts and Governmentwide acquisition contracts (GWACs).

**DATES:** *Comment Date:* Comments are due on or before March 25, 2005.

**ADDRESSES:** Submit comments identified by GSAR ANPR 2005–N01 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web Site: <http://www.acqnet.gov/GSAM/gsamproposed.html>. Click on the GSAR ANPR number to submit comments.
- E-mail: [gsaranpr.2005-N01@gsa.gov](mailto:gsaranpr.2005-N01@gsa.gov). Include GSAR ANPR 2005–N01 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

**Instructions:** Please submit comments only and cite GSAR ANPR 2005–N01 in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

**Public Meeting:** The meeting will be held on April 14, 2005, from 9 a.m. to 4:00 p.m. EST.

To facilitate discussions at the public meeting, interested parties are encouraged to provide, no later than March 25, 2005 written comments on issues they would like addressed at the meeting. There will be no record kept of this meeting, any comments to be made a part of the administrative record must be in writing and must be submitted to GSA at the address below within two weeks following the public meeting.

The meeting will be held at the General Services Administration, National Capital Region, 301 7th and D Street, SW, Washington, DC 20407, Auditorium. Participants are encouraged to check the Web site prior to the public meeting to ensure the location has not changed. Interested parties may register and submit electronic comments at <http://www.acqnet.gov/GSAM/gsamproposed.html>.

**Special Accommodations:** The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Ernest Woodson, at 202–501–3775, at least 5 working days prior to the meeting date.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest Woodson, Procurement Analyst, Contract Policy Division, 202–501–3775.

**SUPPLEMENTARY INFORMATION: Background**

Currently, FAR Part 12, Acquisition of Commercial Items, prescribes polices and procedures unique to the acquisition of commercial items under FAR Part 12. FAR Part 12 implements the Government's preference for the acquisition of commercial items as contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 by establishing policies more closely resembling those of the commercial marketplace. The clause, FAR 52.212–4, Contract Terms and Conditions—Commercial Items, that includes terms and conditions applicable to each acquisition procured under FAR Part 12 is, to the maximum extent practicable, consistent with customary commercial practices. The clause includes a provision, FAR 52.212–4(p), Limitation of liability, that provides; “Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.” Also, FAR 12.302(b) allows the contracting officer to tailor the clause at FAR 52.212–4 to adapt to market conditions for each commercial acquisition. In addition to the limitation of liability clause and the provision at FAR 12.302, Federal contracts typically include a broad range of standard contract clauses such as warranties and liquidated damages that provide exclusive remedies for nonperformance that limit the Government to the specific remedies set forth in the clause.

Likewise, the Contract Disputes Act of 1978 provides for the resolution of any failure on the part of the Government and the contractor to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to a Government contract to be a dispute to be resolved in accordance with FAR 52.233–1, Disputes.

Notwithstanding specific adjustments and other remedies provided in Government contracts for contractor deficiencies or nonperformance, concerns have been raised that—