

26 CFR 601.602: *Forms and instructions.*
(Also Part I, §§ 6011, 6051, 6071; 31.6011(a)-4,
31.6051-1, 31.6071(a)-1.)

Rev. Proc. 96-60

SECTION 1. PURPOSE

.01 This revenue procedure modifies and supersedes Rev. Proc. 84-77, 1984-2 C.B. 753. This revenue procedure explains both the standard procedure and an alternate procedure for preparing and filing Form W-2, Wage and Tax Statement; Form W-3, Transmittal of Income and Tax Statements; Form 941, Employer's Quarterly Federal Tax Return; Form W-4, Employee's Withholding Allowance Certificate; and Form W-5, Earned Income Credit Advance Payment Certificate in certain acquisitions. This revenue procedure applies when an employer (successor) acquires substantially all the property (1) used in a trade or business of another employer (predecessor), or (2) used in a separate unit of a trade or business of a predecessor, and in connection with, or immediately after the acquisition (but during the same calendar year) the successor employs individuals who immediately prior to the acquisition were employed in the trade or business of the predecessor. (The term "trade or business," for purposes of this revenue procedure, may include the activity of a nonprofit organization or of a federal or state agency.)

.02 This revenue procedure does not apply to the situation described in Rev. Rul. 62-60, 1962-1 C.B. 186, which relates to the absorption of one corpora-

tion by another in a statutory merger or consolidation, where the resultant entity is regarded as the same taxpayer and the same employer as the absorbed corporation.

SECTION 2. CHANGES

.01 Section 4.01, which provided the time frame for a predecessor to furnish Forms W-2 under the standard procedure, has been modified to explain that the predecessor must furnish Forms W-2 to its former employees, and file Forms W-2 and W-3 with the Social Security Administration (SSA) on an expedited basis, if the predecessor has ceased to pay wages and is required to file a final Form 941.

.02 Section 5.01, which provided the alternate procedure for furnishing Forms W-2, has been modified to provide that the expedited furnishing and filing requirements do not apply to the successor.

.03 Section 5.02, which provided the alternate procedure for the predecessor to submit Form 941, has been modified to provide that if the predecessor is required to file a final Form 941, the predecessor must both furnish Forms W-2 to its employees who are not acquired by the successor and file Forms W-2 and W-3 with SSA on an expedited basis.

.04 Section 5.06 has been added to provide procedures for transferring electronically filed Forms W-4 from the predecessor to the successor.

SECTION 3. BACKGROUND

.01 Section 6011(a) of the Internal Revenue Code provides that any person made liable for any tax, or for the collection of the tax, must make a return or statement according to the forms or regulations prescribed by the Secretary.

.02 Section 31.6011(a)-1 of the Employment Tax Regulations prescribes Form 941 as the form to use for persons required to make a quarterly return under the Federal Insurance Contributions Act.

.03 Section 31.6011(a)-4 prescribes Form 941 as the form to use for persons required to make a quarterly return of income tax withheld from wages.

.04 Section 31.6011(a)-6 provides that an employer who ceases to pay wages reportable on Form 941 shall file a final Form 941.

.05 Section 31.6071(a)-1 provides that the Form 941 generally must be filed on or before the last day of the

first calendar month following the quarter for which it is made.

.06 Section 6051(a) provides that (1) every person required to deduct and withhold income tax, or who would have been required to deduct and withhold if the employee had claimed no more than 1 withholding exemption, or (2) every employer engaged in a trade or business who pays remuneration for services performed by an employee, must furnish a written statement to an employee regarding the remuneration paid to the employee during the calendar year. Section 31.6051-1(a) provides that the statement is Form W-2. Form W-2 must be furnished to the employee on or before January 31 of the following calendar year. If the employee's employment is terminated before the close of the calendar year, however, and the employee requests the Form W-2 in writing, the Form W-2 must be furnished to the employee within 30 days of the later of the written request from the employee or the last payment of wages, provided such 30-day period ends before January 31.

.07 Section 31.6051-1(d)(1)(ii) provides that, effective January 1, 1997, an employer who is required to file a final Form 941 must furnish Forms W-2 to its employees on or before the date required for filing the final Form 941. If the final Form 941 is a monthly return as described in § 31.6011(a)-5, the Forms W-2 must be furnished on or before the last day of the month in which the final Form 941 is required to be filed.

.08 Section 31.6071(a)-1(a)(3)(ii) provides that, effective January 1, 1997, an employer who is required to file a final Form 941 must file Forms W-2 and W-3 on or before the last day of the second calendar month following the period for which the final Form 941 is filed.

.09 Section 31.3402(f)(5)-1(c) provides that an employer may establish a system for its employees to file Form W-4 electronically.

SECTION 4. STANDARD PROCEDURE

.01 *In general.* Under the standard procedure, the predecessor performs all the reporting duties for the wages and other compensation it pays. These duties include the filing of quarterly Forms 941 and the furnishing and filing of Forms W-2 and W-3. In connection with the successor's acquisition of prop-

erty and hiring of employees from the predecessor, as described in section 1.01, the predecessor may cease to pay any wages required to be reported on Form 941 (for example, the predecessor may go out of business). In that case, the predecessor must file the Form 941 for the quarter of the acquisition as a final Form 941. If the predecessor does not cease to pay any wages required to be reported on Form 941, (for example, the predecessor remains in business) a final Form 941 is not required. Instead, the predecessor would file its quarterly Form 941 for the quarter of the acquisition. The successor, under the standard procedure, performs all the reporting duties for the wages and other compensation it pays.

.02 *Forms W-2.*

(1) *In general.* If, under the circumstances described in section 1.01, the predecessor is not required to file a final Form 941, the predecessor and successor both must furnish Forms W-2 to their respective employees no later than January 31 of the following calendar year. If an employee requests the Form W-2 earlier, however, the Form W-2 must be furnished within 30 days of the written request, or within 30 days after the final payment of wages to the employee, whichever is later, provided the 30 day period ends before January 31. The predecessor and successor must file Forms W-2 and W-3 for their respective employees with SSA no later than the last day of February of the following calendar year.

(2) *Expedited Forms W-2.* If, under the circumstances described in section 1.01, the predecessor is required to file a final Form 941, the predecessor must furnish Forms W-2 to its former employees on an expedited basis. The Forms W-2 are due on or before the date required for filing the final Form 941. If the predecessor is required to file Form 941 on a monthly basis, the Forms W-2 are due on or before the last day of the month in which the final Form 941 is required to be filed. The predecessor must also file Forms W-2 and W-3 with SSA on an expedited basis. The Forms W-2 and W-3 are due on or before the last day of the second calendar month following the period for which the final Form 941 is required to be filed.

.03 *Forms W-4.* The predecessor must keep on file the Forms W-4 provided by its former employees. The transferred employees must provide the successor with new Forms W-4 as the

successor now becomes responsible for deducting and withholding tax from wages paid to the transferred employees.

.04 *Forms W-5.* The predecessor must also keep on file the Forms W-5 provided by its former employees. The transferred employees must provide the successor with new Forms W-5 for the current year.

SEC. 5. ALTERNATE PROCEDURE

.01 *In general.* If, in connection with the circumstances described in section 1.01, the predecessor and successor so agree, the predecessor will be relieved from furnishing Forms W-2 to any employees who will be employed in the same calendar year by the successor (acquired employees). In such circumstances the acquired employees presumably will be paid wages by the successor in the same calendar year and the Forms W-2 furnished to the acquired employees by the successor for the year will include wages paid, and taxes withheld, by both the predecessor and the successor. The predecessor will also be relieved from filing Forms W-2 with SSA for the acquired employees. The predecessor's entire Form W-2 reporting obligations for the acquired employees will be assumed by the successor. The predecessor remains responsible for the Form W-2 reporting obligations for those employees who are not employed by the successor.

.02 *Forms W-2.*

(1) *In general.* If, under the circumstances described in section 1.01, the predecessor is not required to file a final Form 941, the predecessor must furnish Forms W-2 to employees who are not employed by the successor by January 31 of the following calendar year. Forms W-2 and W-3 filed by the predecessor with SSA for employees who are not employed by the successor are due the last day of February of the following calendar year. If the successor assumes the predecessor's obligation to furnish Forms W-2 to the acquired employees for a calendar year, the successor must assume the predecessor's entire Form W-2 reporting obligation. Thus, Forms W-2 furnished by the successor to the acquired employees must include the wages paid and the taxes withheld by both the predecessor and the successor. The successor must include on the Forms W-2 any amount reportable by the predecessor, including "Other compensation" or uncollected employee tax on tips, if applicable.

Forms W-2 must be furnished by the successor to its employees (both the acquired employees and any other employees of the successor) by January 31 of the following calendar year. Forms W-2 and W-3 must be filed by the successor with SSA by the last day of February of the following calendar year.

(2) *Expedited Forms W-2.* If, under the circumstances described in section 1.01, the predecessor is required to file a final Form 941, the predecessor must furnish Forms W-2 to the employees who are not employed by the successor on an expedited basis. Forms W-2 and W-3 filed with SSA by the predecessor must also be filed on an expedited basis. The successor is not required to either furnish Forms W-2 to the acquired employees or to file the Forms W-2 and W-3 with SSA on an expedited basis.

.03 *Form 941 filed by predecessor.* To the extent the wages paid and the taxes withheld by the predecessor are to be included in the Forms W-2 furnished to the acquired employees by the successor, there will be a difference between the amounts shown on the predecessor's Form W-3 and its Form 941. When the predecessor files its Form 941, it should attach a statement explaining the discrepancy and include the name, address, and identification number of the successor and a reference to this revenue procedure. This Form 941 cannot be filed electronically. See Rev. Proc. 96-19, 1996-4 I.R.B. 80, section 3.03.

.04 *Form 941 filed by successor.* There will be a corresponding difference between the amounts shown on the successor's Form W-3 and its Form 941. When the successor files its Form 941, it should also attach a statement to its Form 941 explaining the discrepancy, and include the name, address, and identification number of the predecessor and a reference to this revenue procedure. This Form 941 cannot be filed electronically. See Rev. Proc. 96-19, 1996-4 I.R.B. 80, section 3.03. For instructions relating to annual wage limitations, see § 31.3121(a)(1)-1.

.05 *Forms W-4.* The predecessor must transfer to the successor all current Forms W-4 that were provided to the predecessor by the acquired employees. The successor must keep the transferred Forms W-4 on file and deduct and withhold from the wages it pays to the acquired employees according to the information supplied on those forms until an employee submits a revised

form. The successor employer must submit to the Service, in accordance with § 31.3402(f)(2)-1(g), copies of the Forms W-4 received by the predecessor during the current calendar quarter and the preceding calendar quarter.

.06 *Transfer of Forms W-4 furnished electronically.* If the predecessor and successor both maintain an electronic system for use by employees in filing Forms W-4, and the systems are compatible, the predecessor may electronically transfer the Forms W-4 of the acquired employees to the successor. The successor may also choose to acquire and maintain the predecessor's system. If these options do not apply, the transferred employees must provide the successor with a new Form W-4, either electronically or on paper, as prescribed by the successor.

.07 *Forms W-5.* The predecessor must transfer to the successor all Forms W-5 for the current year that were provided to the predecessor by the acquired employees.

SECTION 6. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 84-77 is modified and superseded.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective January 1, 1997.

SECTION 8. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1510.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 5.03 and 5.04. This information is required to explain the discrepancy between the amounts reported on Forms 941 and W-3 filed by both the predecessor and successor who use the Alternate Procedure. This information will be used to assist the IRS in reconciling Forms 941 and W-3. The collections of information are required to use the Alternate Procedure. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 110,700 hours.

The estimated annual burden per respondent is 12 minutes. The estimated number of respondents is 553,500.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Jean M. Casey of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this revenue procedure, contact Ms. Casey on (202) 622-6040 (not a toll-free call).