

# Notice of Proposed Rulemaking By Cross Reference to Temporary Regulations and Notice of Public Hearing

## Electronic Payee Statements

### REG-107186-00

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

**ACTION:** Notice of proposed rulemaking by cross reference to temporary regulations and notice of public hearing.

**SUMMARY:** The IRS is issuing proposed regulations under sections 6041 and 6051 relating to the voluntary electronic furnishing of payee statements on Forms W-2. The proposed regulations also provide rules under section 6050S relating to the voluntary electronic furnishing of statements to individuals for whom Forms 1098-T, "Tuition Payments Statement," and Forms 1098-E, "Student Loan Interest Statement," are filed. The proposed regulations will affect persons required by the foregoing Internal Revenue Code sections to furnish these statements (furnishers) who wish to furnish these statements electronically. The proposed regulations will also affect individuals, principally employees, students, and borrowers (recipients), who consent to receive these statements electronically. The text of the temporary regulations also serves as the text of these proposed regulations. These proposed regulations do not affect the requirement to file copy A of Forms W-2 with the Social Security Administration or the requirement to file Forms 1098-T or Forms 1098-E with the IRS.

**DATES:** Written or electronic comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for June 4, 2001, at 10 a.m. must be submitted by May 14, 2001.

**ADDRESSES:** Send submissions to: CC:M&SP:RU (REG-107186-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG-107186-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers

may submit comments electronically via the Internet by selecting the "Tax Regulations" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at [http://www.irs.gov/tax\\_regs/regslst.html](http://www.irs.gov/tax_regs/regslst.html). The public hearing will be held in the IRS Auditorium, Seventh Floor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Laura C. Nash (202) 622-4910; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### **Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by April 16, 2001. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and

purchase of services to provide information.

The collections of information in these proposed regulations are in §§1.6041-2(a)(5), 1.6050S-1(a), 1.6050S-2(a), and 31.6051-1(i). These temporary regulations state that furnishers may provide the written statements required by sections 6041(d), 6050S(d), and 6051 in an electronic format in lieu of a paper format. In addition, the proposed regulations provide furnishers with a method to furnish a statement in connection with a Form 1098-T or Form 1098-E under section 6050S(d), or a Form W-2 under section 6041(d) or 6051, electronically using website technology. In general, a furnisher may furnish the statement electronically using the method described in the proposed regulations if the recipient consents to receive the statement electronically, and if the furnisher makes certain disclosures to the recipient, annually notifies the recipient that the statement is available on a website, and provides access to the statement on that website for a prescribed period of time. This collection of information is required only for persons who wish to furnish the statements electronically using the method described in the proposed regulations. The likely respondents are businesses, other for-profit institutions, and eligible educational institutions.

Estimated total annual reporting/recordkeeping burden: 2,844,950 hours.

Estimated average annual burden hours per response: 6 minutes.

Estimated number of responses: 28,449,495.

Estimated annual frequency of responses: Once.

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 OMB control number assigned by the Office of Management and Budget.

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.

## Background

Temporary regulations (T.D. 8942) on page 929 of this Bulletin amend the Regu-

lations on Income Taxes (26 CFR part 1) relating to sections 6041 and 6050S(d), the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) relating to section 6051, and the Regulations on Procedure and Administration (26 CFR part 301) relating to section 6724. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the 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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations. An initial regulatory flexibility analysis has been prepared for this notice of proposed rulemaking under 5 U.S.C. 603 and is set forth under the heading "Initial Regulatory Flexibility Act Analysis" in this preamble. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Initial Regulatory Flexibility Act Analysis

This initial analysis is required under the Regulatory Flexibility Act. (5 U.S.C. chapter 6). The collection of information contained in §§1.6041-2(a)(5), 1.6050S-1(a), 1.6050S-2(a), and 31.6051-1(i) is required if a furnisher implements the method described in the proposed regulations to furnish statements electronically.

The types of small entities to which the proposed regulations may apply are small eligible educational institutions (such as colleges and universities), certain payees of interest on qualified education loans, and small employers. It is estimated that furnishers will seek consents from approximately 28,449,495 individuals to receive these statements electronically. There are no known Federal rules that duplicate, overlap, or conflict with these proposed regulations. The regulations proposed are considered to have the least

economic effect on small entities of all alternatives considered.

## Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 4, 2001, beginning at 10 a.m., in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 14, 2001. A period of ten minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

## Drafting Information

The principal author of these proposed regulations is Eric Lucas, formerly of the Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and Treasury Department participated in their development.

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**Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 31, and 301 are proposed to be amended as follows:

**PART 1—INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*  
Section 1.6041-2 also issued under 26 U.S.C. 6041(d). \* \* \*

Section 1.6050S-1 also issued under 26 U.S.C. 6050S(g).

Section 1.6050S-2 also issued under 26 U.S.C. 6050S(g). \* \* \*

Par. 2. Section 1.6041-2 is amended by adding a new paragraph (a)(5) to read as follows:

*§1.6041-2 Return of information as to payments to employees.*

(a) \* \* \*

(5) [The text of proposed paragraph (a)(5) is the same as the text of §1.6041-2T(a)(5) published in T.D. 8942].

\* \* \* \* \*

Par. 3. Sections 1.6050S-1 and 1.6050S-2 are added to read as follows:

*§1.6050S-1 Information reporting for payments and reimbursements or refunds of qualified tuition and related expenses.*

[The text of these proposed regulations is the same as the text of §1.6050S-1T published in T.D. 8942].

*§1.6050S-2 Information reporting for payments of interest on qualified education loans.*

[The text of these proposed regulations is the same as the text of §1.6050S-2T published in T.D. 8942].

**PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE**

Par. 4. The authority citation continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 5. Section 31.6051-1 is amended by:

1. Redesignating paragraph (i) as paragraph (j).

2. Adding a new paragraph (i).  
The addition reads as follows:

*§31.6051-1 Statements for employees.*

\* \* \* \* \*

(i) [The text of proposed paragraph (i) is the same as the text of §31.6051-1T(j) published in T.D. 8942].

\* \* \* \* \*

**PART 301 - - PROCEDURE AND ADMINISTRATION**

Par. 6. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 5. Section 301.6724-1 is amended by adding a new paragraph (d)(3) to read as follows:

*§301.6724-1 Reasonable cause.*

\* \* \* \* \*

(d) \* \* \*

(3) [The text of proposed paragraph (d)(3) is the same as the text of §301.6724-1T(d)(3) published in T.D. 8942].

\* \* \* \* \*

Robert E. Wenzel,  
*Deputy Commissioner  
of Internal Revenue.*

(Filed by the Office of the Federal Register on February 13, 2001, 8:45 a.m., and published in the issue of the Federal Register for February 14, 2001, 66 F.R. 10247)