

Notice of Proposed Rulemaking
Electronic Transmission of Form
W-8

REG-107872-97

AGENCY: Internal Revenue Service
(IRS), Treasury.

ACTION: Notice of proposed rulemak-
ing.

SUMMARY: This document contains proposed regulations relating to the submission of Form W-8, a withholding certificate, needed for purposes of chapters 3 and 61 of the Internal Revenue Code (Code) and other withholding or reporting provisions of the Code, such as section 3402, 3405, or 3406. The proposed regulations provide guidance to withholding agents and payors who wish to establish an electronic system for use by beneficial owners or payees in furnishing Form W-8. The proposed regulations state the general requirements that such an electronic system must satisfy so that a withholding agent or payor may rely on a Form W-8 transmitted through such a system. These regulations affect withholding agents and payors that establish electronic systems and beneficial owners and payees who use these systems.

DATES: Written comments and requests for a public hearing must be received by January 12, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-107872-97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-107872-97), 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 Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at www.irs.us/treas.gov/prod/tax_regsg/comments.html.

FOR FURTHER INFORMATION CON-
TACT: Concerning the regulations, Lilo

Hester, 202-622-3840; concerning sub-
missions, Evangelista Lee, 202-622-8452
(not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1441 of the Internal Revenue Code (Code). These amendments are proposed to provide general procedures for withholding agents and payors to establish acceptable electronic systems.

T.D. 8734, 1997-44 I.R.B. 5 adds §1.1441-1(e)(4)(iv) which authorizes the electronic transmission of a Form W-8 described in §1.1441-1(e)(1)(i). In addition, by cross-reference contained in §1.6049-5(c)(2) (published as a final rule in T.D. 8734), the regulation authorizes electronic transmission of a Form W-8 furnished for purposes of chapter 61 of the Code (i.e., information reporting) or for purposes of another income tax withholding provision of the Code, such as section 3406.

Pursuant to chapter 3 (or, in certain cases, chapter 61) of the Code, a beneficial owner or a payee (i.e., a person who receives a payment) must furnish a withholding certificate to a withholding agent or payor in order to establish its status as a foreign person and entitlement to a reduced rate of withholding. By establishing foreign status, and other relevant characteristics, a beneficial owner or payee may be entitled to a reduction or exemption in the amount of withholding under chapter 3 of the Code or an exemption from information reporting under chapter 61 of the Code or from backup withholding under section 3406. The receipt of a withholding certificate affects the amount of tax that the withholding agent or payor may be required to withhold from the payment, and the type and form of information that it must provide to the IRS. The regulations under sections 1441 and 1443 specifically identify Form W-8 (or an acceptable substitute form) as the required form of the withholding certificate.

These proposed regulations apply to electronic transmission of Forms W-8.

The regulations do not apply to Form 8233 for use by individuals who claim a reduced rate of withholding under an income tax convention for services performed in the United States. See §1.1441-4(b)(2). In addition, the regulations do not apply to documentary evidence (described in §1.6049-5(c)(1)) that may be substituted for the Form W-8 with respect to certain payments made to accounts maintained outside of the United States. However, the IRS and Treasury invite comments on any computer technology (e.g., imaging) that could make electronic transmission of documentary evidence possible.

Explanation of Provisions

1. *Type and Design of System
Determined by Withholding Agent or
Payor Subject to Specific Requirements.*

Under the proposed regulations, a withholding agent or payor may choose to establish an electronic system to receive or transmit Forms W-8 (or such other form as the IRS may prescribe), including a payor or withholding agent that is an intermediary. The withholding agent or payor may determine the type of system (such as telephone or computer) available for that purpose. The system must, however, (1) reliably identify the user, (2) ensure that the information received is the information sent, and (3) document occasions of user access that result in a submission, renewal, or modification of the withholding certificate. The proposed regulations envision that implementation of these specific requirements necessitates a direct relationship between the withholding agent or payor and the beneficial owner or payee. The proposed regulations reserve on applicable standards for systems used by intermediaries to transmit forms received from another payor or withholding agent. The IRS and Treasury recognize the importance of allowing the electronic transmission of Forms W-8 through one or more intermediaries (i.e., persons not acting for their own account). Therefore, comments are solicited regarding the logistical operation of an electronic transmission system for use by an intermediary satisfying the IRS requirements that the integrity, accuracy,

and reliability of the original electronic transmission through an intermediary system is adequately protected.

2. Relationship Between Paper and Electronic Withholding Certificate.

The electronic transmission must contain exactly the same information as the paper Form W-8 (or such other form as the IRS may prescribe). Any guidance, such as regulations or instructions, that applies to the paper Form W-8 also applies to electronically transmitted forms.

3. Electronic Filing Optional.

Section 1.1441-1(e)(4)(iv) authorizing the use of electronic systems was promulgated to assist in reducing burdens (in terms of cost and time) on withholding agents, payors, payees, and beneficial owners. The use of an electronic system for the transmission of Form W-8 is merely an alternative to the use of a paper form. Electronic transmission of Form W-8 is not mandatory. A withholding agent or payor may not mandate the use of electronic systems to receive or transmit the forms. Thus, a payee or beneficial owner may furnish a Form W-8 to the withholding agent or payor on paper.

4. Signature Under Penalties of Perjury.

Section 6061 generally provides that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary. Section 301.6061-1(b) provides that the Secretary may prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations. Section 6065 provides that, except as provided by the Secretary, any return, statement or other document shall contain or be verified by a written declaration that it is made under the penalties of perjury. These requirements apply to a Form W-8 (or such other form as the Internal Revenue Service may prescribe), including one that is filed electronically, as provided in §1.1441-1(e)-(2)(ii), (3)(ii), (3)(iii), and (3)(v), and §1.1441-5(c)(2)(iv) and (3)(iii) of the final regulations. The proposed regula-

tions, therefore, include guidance on the perjury statement and the signature requirements for Forms W-8 that are filed electronically.

5. IRS Requests for Electronic Data.

Upon request by the IRS in the course of an examination, a withholding agent or payor must supply a hard copy of the information contained on the electronically transmitted Form W-8 and a statement that, to the best of the withholding agent's knowledge, the electronic Form W-8 was furnished by the person whose name is on the form. The printout of the Form W-8 information must be provided to the IRS in English.

Proposed Effective Date

These regulations are proposed to become effective January 1, 1999.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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 proposed 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, this notice of proposed rulemaking will be submitted to the Small Business Administration for comment on its 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 written comments (a signed original and eight copies) that are submitted timely (in the manner described in the ADDRESSES portion of this preamble) to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by any person that submits written 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 Lilo A. Hester, Office of the Associate Chief Counsel (International), IRS. 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 part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

Par. 2. In §1.1441-1, paragraph (e)(4)(iv) is revised to read as follows:

§1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(e) * * *

(4) * * *

(iv) *Electronic transmission of information—(A) In general.* A withholding agent may establish a system for beneficial owners or payees to furnish electronically Forms W-8 (or such other form as the Internal Revenue Service may prescribe). The system also may enable the withholding agent to electronically transmit Forms W-8 to another person. The system must meet the requirements described in paragraph (e)(4)(iv)(B) of this section.

(B) *Requirements—(1) In general.* The electronic system must ensure that the information received is the information sent, and must document all occasions of user access that result in the submission, renewal, or modification of a Form W-8. 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 furnishing Form W-8 is the person named in the form.

(2) *Same information as paper Form W-8.* The electronic transmission must provide the withholding agent or payor with exactly the same information as the paper Form W-8.

(3) *Perjury statement and signature requirements.* The electronic transmission

must be signed by way of an electronic signature by the person whose name is on the Form W-8 and the signature must be under penalties of perjury in the manner described in this paragraph (e)(4)(iv)(B)(3).

(i) *Perjury statement.* The perjury statement must contain the language that appears on the paper Form W-8. The electronic system must inform the person whose name is on the Form W-8 that the person must make the declaration contained in the perjury statement and that the declaration is made by signing the Form W-8. The instructions and the language of the perjury statement must immediately follow the person's certifying statements and immediately precede the person's electronic signature.

(ii) *Electronic signature.* The act of the electronic signature must be effected by the person whose name is on the electronic Form W-8. The signature must also authenticate and verify the submission. For this purpose, the terms *authenticate* and *verify* have the same meanings as they do when applied to a written signature on a paper Form W-8. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the person's Form W-8 submission.

(4) *Requests for electronic Forms W-8 data.* Upon request by the Internal Revenue Service during an examination, the withholding agent must supply a hard copy of the electronic Form W-8 and a statement that, to the best of the withholding agent's knowledge, the electronic Form W-8 was filed by the person whose name is on the form. The hard copy of the electronic Form W-8 must provide exactly the same information as, but need not be a facsimile of, the paper Form W-8.

(C) *Special requirements for transmission of Forms W-8 by an intermediary.* [Reserved].

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Michael P. Dolan,
*Acting Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on October 6, 1997, 8:45 a.m., and published in the issue of the Federal Register for October 14, 1997, 62 F.R. 53504)