

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has 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 1545-1435. Responses to this collection of information are mandatory.

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 estimated annual burden per respondent is 20 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and 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.

Books or records relating to this 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

On April 15, 1994, a notice of proposed rulemaking [EE-45-93] containing proposed regulations relating to Form W-4, Employee's Withholding Allowance Certificate, was published in the Federal Register (59 FR 18057).

On December 21, 1994, temporary regulations (T.D. 8577) clarifying the existing proposed regulations were published in the **Federal Register** (59 FR 65712). A notice of proposed rulemaking (EE-45-93) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (59 FR 65740).

Written comments responding to these notices were received. Public hearings were requested and were held on July 15, 1994, and November 7, 1995.

After consideration of all the comments, the proposed regulations under section 3402(f) are adopted as revised by this Treasury decision. The comments and revisions are discussed below.

Explanation of Revisions and Summary of Comments

1. Relationship between paper and electronic Forms W-4. A withholding exemption certificate (Form W-4) may be in either paper or electronic form. Therefore, an employee will furnish a Form W-4 to the employer either on paper or electronically. To clarify that an electronic Form W-4 has the same status as a paper Form W-4, the final regulations make minor revisions to § 31.3402(f)(5)-1, Form and contents of withholding exemption certificates. Further, the final regulations appear as § 31.3402(f)(5)-1(c), rather than in a separate regulations section limited to electronic forms.

2. Electronic filing by all employees. The existing proposed and temporary regulations require employers that establish electronic systems to provide employees with the option of filing paper or electronic Forms W-4. Several commentators requested that employers be allowed to adopt systems under which all employees file Forms W-4 electronically. These commentators stated that a system under which all employees file electronically would reduce employer burden in terms of costs and time (for example, eliminate maintenance of duplicative paper and electronic systems). Similarly, it would reduce employee burden in terms of time and choosing a filing option.

The IRS and Treasury want to assist in reducing burdens on both employers and employees and to make it as easy as possible for employers to adopt less burdensome systems. The final regulations permit an employer to adopt a system under which all employees file Forms W-4 electronically. The IRS and Treasury expect, however, that an employer will make a paper option reasonably available upon request to any employee who has a serious objection to using the electronic system or whose access to, or ability to use, the system may be limited (for example, as a result of a disability). The paper option would be satisfied, for example, if the employer informs employees how they can obtain a paper Form W-4 and where they should submit the completed paper Form W-4. The IRS and Treasury also expect that employers will comply with all applicable law governing the workplace and terms and conditions of employment, such as the Americans with

Section 3402.—Income Tax Collected at Source

26 CFR 31.3402(f)(5)-1: Form and contents of withholding exemption certificates.

T.D. 8706

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 31 and 602

Electronic Filing of Form W-4

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to Form W-4, Employee's Withholding Allowance Certificate. The final regulations authorize employers to establish electronic systems for use by employees in filing their Forms W-4. The regulations provide employers and employees with guidance necessary to comply with the law. The regulations affect employers that establish electronic systems and their employees.

EFFECTIVE DATE: These final regulations are effective January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Karin Loverud, (202) 622-6060 (not a toll-free number).

Disabilities Act (42 U.S.C. 12112(a)). Compliance with these regulations does not guarantee that a system for filing Forms W-4 electronically is in compliance with those applicable laws.

3. Electronic Forms W-4. Several commentators recommended that electronic systems be allowed for all Forms W-4 without exception. The prior proposed and temporary regulations specifically exclude (1) Forms W-4 required upon commencement of employment (initial Form W-4), and (2) Forms W-4 required to be furnished to the IRS by employers because more than 10 withholding exemptions are claimed or, if the employee is expected to earn more than \$200 per week, exemption from withholding is claimed.

Initial Form W-4. Section 3402(f)(2)(A) of the Internal Revenue Code (Code) requires a new employee to furnish the employer with a signed withholding exemption certificate. Section 6061 requires all Forms W-4 to be signed. See discussion below under "5. Signature under penalties of perjury" and § 301.6061-1(b), which states 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. The final regulations permit electronic systems to include Forms W-4 required upon commencement of employment.

Forms W-4 claiming more than 10 exemptions or exemption from withholding. Section 31.3402(f)(2)-1(g) requires employers to submit to the IRS copies of certain Forms W-4 furnished to them by their employees. The Forms W-4 required to be submitted are those on which the employee claims either (1) more than 10 withholding exemptions, or (2) exemption from withholding (and the employee is expected to earn more than \$200 per week).

Under § 31.3402(f)(2)-1(g)(5), if the IRS determines that a Form W-4, a copy of which was submitted to the IRS, is defective, the IRS will notify in writing both the employer and the employee. (The notice is referred to as a "lock-in letter.") A Form W-4 is defective if (1) the IRS determines that the Form W-4 contains a materially incorrect statement, or (2) following communication with the employee, the IRS lacks sufficient information to determine whether the certificate is correct. The

lock-in letter issued by the IRS advises the employer that the employee either is not entitled to claim exemption from withholding or is not entitled to claim more withholding exemptions than the number specified by the IRS in the notice, or both. If the employee subsequently files a new Form W-4, the employer may withhold on the basis of that new Form W-4 only if the new Form W-4 is consistent with the lock-in letter. The employer must continue to withhold on the basis of that advice until the IRS revokes in writing its lock-in letter.

The final regulations permit electronic systems to include Forms W-4 on which employees claim more than 10 withholding exemptions or exemption from withholding. However, the IRS and Treasury expect that electronic systems, alone or in conjunction with the rest of an employer's payroll system, will ensure compliance with the advice contained in a lock-in letter. For instance, an electronic system can ensure compliance with a lock-in letter by prohibiting an employee for whom a lock-in letter was issued from filing any electronic Form W-4 or prohibiting the employee from claiming more withholding exemptions than the number specified in the IRS notice. Additionally, an employer may choose to require any employee to file a paper Form W-4 if the employee wishes to claim more than 10 withholding exemptions or exemption from withholding.

4. Submission of certain Forms W-4 to IRS. Section 31.3402(f)(2)-1(g) requires employers to submit to the IRS copies of Forms W-4 on which the employee claims either more than 10 withholding exemptions or exemption from withholding (and the employee is expected to earn more than \$200 per week). Generally, the copies are sent quarterly to the IRS along with the employer's Form 941, Employer's Quarterly Federal Tax Return. Copies can also be submitted earlier and more often to the employer's IRS service center.

Employers that establish electronic systems will satisfy the requirement of § 31.3402(f)(2)-1(g) if they furnish the Form W-4 information on magnetic media. Before using magnetic media, employers must submit Form 4419, Application for Filing Information Returns Magnetically/Electronically, to request authorization. Rev. Proc. 92-80 (1992-2 C.B. 465) contains specifications for filing Forms W-4 on magnetic tape and

on 5/4- and 3/2-inch magnetic diskettes. Electronic transmission of Form W-4 information to the IRS is not yet available.

5. Signature under penalties of perjury. Section 6061 of the Code requires that any return, statement, or other document required to be made under any provision of the Code or regulations be signed. Section 6065 requires that any such document contain or be verified by a written declaration that it is made under the penalties of perjury. These requirements apply to all Forms W-4, including those filed electronically, and are reflected in § 31.3402(f)(5)-1(c)(iii) of the final regulations.

Although sections 6061 and 6065 apply to all Forms W-4, the IRS and Treasury are concerned that some electronic systems established under the temporary regulations may not include a signature under penalties of perjury. The final regulations, therefore, include guidance on the perjury statement and the electronic signature.

For certain Forms W-4, the final regulations treat the signature-under-penalties-of-perjury-statement requirement as satisfied until January 1, 1999. This special rule applies only if the system precludes the electronic filing of Forms W-4 required upon commencement of employment and Forms W-4 claiming more than 10 withholding exemptions or exemption from withholding. Moreover, the special rule applies only to Forms W-4 filed electronically before the earlier of (1) January 1, 1999, or (2) the first date on which the employer's electronic system permits the filing of Forms W-4 required upon commencement of employment or Forms W-4 claiming more than 10 withholding exemptions or exemption from withholding.

The IRS and Treasury will consider written comments pertaining to the provisions relating to signatures under penalties of perjury. Submissions should be sent to: CC:DOM:CORP:R (T.D. 8706), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. 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 http://www.irs.ustreas.gov/prod/tax_regs/comments.html. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R

(T.D. 8706), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

6. Employer retention of Forms W-4 and predecessor and successor employers. One commentator requested guidance concerning the period for which paper Forms W-4 are required to be retained under § 31.6001-1(e) after the employer establishes an electronic system and in predecessor-employer/successor-employer situations. Electronic Forms W-4 have the same status as paper Forms W-4. Therefore, guidance that applies to paper Forms W-4 also applies to electronic Forms W-4. For further information, see Rev. Proc. 91-59 (1991-2 C.B. 841) (information regarding the retention of records using a variety of automatic data processing systems); and section 5 of Rev. Proc. 96-60 (1996-53 I.R.B.) (predecessor/successor situations).

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 notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Karin Loverud, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 602 are amended as follows:

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

Paragraph 1. The authority citation for part 31 is amended by adding an entry for Section 31.3402(f)(5)-1 to read as follows:

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

Section 31.3402(f)(5)-1 also issued under 26 U.S.C. 3402(i) and (m). * * *

Par. 2. Section 31.3402(f)(5)-1 is amended as follows:

1. Headings are added to paragraphs (a) and (b).

2. The fourth sentence of paragraph (a) is revised.

3. Paragraph (c) is added.

4. The authority citation which follows the end of the section is removed.

The revisions and additions read as follows:

§ 31.3402(f)(5)-1 *Form and contents of withholding exemption certificates.*

(a) *Form W-4.* * * * Blank copies of paper Forms W-4 will be supplied to employers upon request to the Internal Revenue Service. * * *

(b) *Invalid Form W-4.* * * *

(c) *Electronic Form W-4*—(1) *In general.* An employer may establish a system for its employees to file withholding exemption certificates electronically.

(2) *Requirements*—(i) *In general.* The electronic system must ensure that the information received is the information sent, and must document all occasions of employee access that result in the filing of a Form W-4. 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 filing the Form W-4 is the employee identified in the form.

(ii) *Same information as paper Form W-4.* The electronic filing must provide the employer with exactly the same information as the paper Form W-4.

(iii) *Jurat and signature requirements.* The electronic filing must be signed by the employee under penalties of perjury.

(A) *Jurat.* The jurat (perjury statement) must contain the language that appears on the paper Form W-4. The electronic program must inform the employee that he or she must make the declaration contained in the jurat and that the declaration is made by signing the Form W-4. The instructions and the

language of the jurat must immediately follow the employee's income tax withholding selections and immediately precede the employee's electronic signature.

(B) *Electronic signature.* The electronic signature must identify the employee filing the electronic Form W-4 and authenticate and verify the filing. 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-4. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the employee's Form W-4 submission.

(iv) *Copies of electronic Forms W-4.* Upon request by the Internal Revenue Service, the employer must supply a hardcopy of the electronic Form W-4 and a statement that, to the best of the employer's knowledge, the electronic Form W-4 was filed by the named employee. The hardcopy of the electronic Form W-4 must provide exactly the same information as, but need not be a facsimile of, the paper Form W-4.

(3) *Effective date*—(i) *In general.* This paragraph applies to all withholding exemption certificates filed electronically by employees on or after January 2, 1997.

(ii) *Special rule for certain Forms W-4.* In the case of an electronic system that precludes the filing of Forms W-4 required on commencement of employment and Forms W-4 claiming more than 10 withholding exemptions or exemption from withholding, the requirements of paragraph (c)(2)(iii) of this section will be treated as satisfied if the Form W-4 is filed electronically before January 1, 1999.

§ 31.3402(f)(5)-2T [Removed]

Par. 3. Section 31.3402(f)(5)-2T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (c) is amended by:

1. Removing the entry for 31.3402(f)(5)-2T from the table.

§ 602.101 OMB Control numbers.

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 (c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
31.3402(f)(5)–2T	1545–1435
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2. Revising the entry for 31.3402(f)(5)–1 to read as follows:

§ 602.101 OMB Control numbers.

* * * * *
 (c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
31.3402(f)(5)–1	1545–0010 1545–1435
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Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved December 12, 1996.

Donald C. Lubick,
*Acting Assistant Secretary
 of the Treasury.*

(Filed by the Office of the Federal Register on December 31, 1996, 8:45 a.m., and published in the issue of the Federal Register for January 2, 1997, 62 F.R. 22)