

[4830-01-p]

Published February 18, 2004

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 301, and 602

TD 9114

RIN 1545-AY50

Electronic Payee Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the voluntary electronic furnishing of statements on Forms W-2, **AW**age and Tax Statement,[@] under sections 6041 and 6051, and statements on Forms 1098-T, **AT**uition Statement,[@] and Forms 1098-E, **AS**tudent Loan Interest Statement,[@] under section 6050S. These final regulations affect businesses, other for-profit institutions, and eligible educational institutions that wish to furnish these required statements electronically. The regulations will also affect individuals (recipients), principally employees, students, and borrowers, who consent to receive these statements electronically.

DATES: Effective Date: These regulations are effective February 18, 2004.

Applicability Date: These regulations apply to statements and reports required to be furnished after February 13, 2004. The rules relating to maintenance of access to website statements also apply to statements and reports required to be furnished after December 31, 2003. FOR FURTHER INFORMATION CONTACT: Michael E. Hara at (202) 622-4910 (not a toll free number).

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 1545-1729. Responses to this collection of information are required to obtain the benefit of providing payee statements electronically.

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 assigned by the Office of Management and Budget.

The estimated annual burden per respondent or recordkeeper varies depending on individual circumstances, with an estimated average of 6 minutes.

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, SE:W:CAR:MP:T:SP 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 February 14, 2001, the IRS published a notice of proposed rulemaking (by cross reference to temporary regulations) and a notice of public hearing, (REG-107186-00) (66 FR 10247). The regulations proposed to permit the voluntary electronic furnishing of (1) statements on Form W-2 under sections 6041 and 6051, (2) **A**Tuition Statements@ (Form 1098-T) under section 6050S, and (3) **A**Student Loan Interest Statements@ (Form 1098-E) under section 6050S. These proposed amendments were intended (1) to increase electronic filing consistent with section 2001 of the

Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (July 22, 1998); and (2) to facilitate the use of electronic communication and record keeping consistent with the Electronic Signatures in Global and National Commerce Act (E-SIGN Act) Public Law No. 106-229, 114 Stat. 464 (2000), 15 U.S.C. sections 7001 through 7006 (2000). The IRS received written comments on the proposed regulations. A public hearing was held on July 25, 2001. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury Decision. The temporary regulations under sections 6041, 6050S, 6051, and 6724 are removed.

On December 18, 2002, final regulations were issued under section 6050S (TD 9029), addressing information reporting for qualified tuition payments and reimbursements; TD 9029 also renumbered the regulations under section 6050S.

Explanation of Revisions and Summary of Comments

1. Expansion to Additional Statements, Notices, and Reports

Five commentators recommended that the regulations be expanded to allow the electronic furnishing of additional statements and reports, including Forms 5498 and 1099-R. After the IRS issued the proposed regulations, Congress

enacted the Job Creation and Worker Assistance Act of 2002 (JCWAA), Public Law 107-147 (March 9, 2002). Section 401 of JCWAA permits the electronic furnishing of any statement required under subpart B of part III of subchapter A of chapter 61 of Title 26 (sections 6041 through 6050T). Section 401 of JCWAA specifically eliminated the first-class-mailing requirement that prevented electronic furnishing of statements under sections 6042(c), 6044(e), and 6049(c)(2). In addition, Congress expressed its support for electronic furnishing of all statements required by the Code. See Joint Committee on Taxation Staff, Technical Explanation of the "Job Creation and Worker Assistance Act of 2002," 107th Cong., 2d Sess. (2002) at page 27.

Section 401 of JCWAA permits the electronic furnishing of all statements required under sections 6041 through 6050T, if the recipient consents to receive the statement in a manner similar to the one permitted by regulations under section 6051 or in such other manner as provided by the Secretary. Because section 401 of JCWAA authorizes the electronic furnishing of all statements required under sections 6041 through 6050T, final regulations are not necessary to allow the voluntary electronic furnishing of statements required under sections 6041 through 6050T, as

long as the recipient consents to receive the statement in a manner similar to the one permitted under these final regulations. In addition, Notice 2004-10 permits electronic furnishing of the Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA, Insurance Contracts, Form 1099-MSA, Distributions From an Archer MSA or Medicare+Choice MSA, Form 1099-Q, Payments from Qualified Education Programs (Under Section 529 or 530), Form 5498, Individual Retirement Arrangement Contribution Information, Form 5498-ESA, Coverdell ESA Contribution Information, and Form 5498-MSA, Archer MSA or Medicare+Choice MSA Information, payee statements.

2. Electronic Mail Attachments

The only method of electronic furnishing specifically authorized by the proposed regulations required posting on websites. Two commentators recommended that the regulations allow taxpayers to send statements as attachments to e-mail. One commentator stated that some organizations might not wish to provide tax statements by e-mail because of security and privacy concerns.

The final regulations do not restrict furnishers solely to the use of website technology. Treasury and the IRS believe that website technology currently provides the

most secure method of furnishing statements electronically but do not intend to limit the technology to be used in furnishing statements electronically. Accordingly, under the final regulations, taxpayers are permitted to furnish statements through any electronic means to which the recipient consents, including by e-mail.

3. Standards to Ensure Confidentiality of Taxpayer Information

One commentator recommended that the IRS adopt security requirements that require simply a sign-on and a password. Two commentators recommended against adoption of specific standards. The final regulations do not adopt specific security standards to ensure the confidentiality of recipient information. Rather, the final regulations leave room for security methodologies to evolve through advances in technology.

4. Consent Consistent With the E-SIGN Act's Notice and Consent Provisions

The proposed regulations adopted notice and consent requirements consistent with the E-SIGN Act. Three commentators stated that the notice and consent requirements of the regulation should not apply to the electronic transmission of statements between employers and employees. One commentator observed that the notice and consent requirement will require the employer to modify

existing databases and/or create a separate data base to distinguish between employees who have consented to receive statements electronically and those who will receive a paper statement. The commentator asserted that the cost of these database changes would offset any savings from electronic furnishing. Two commentators stated that credit unions could not efficiently provide statements to their employees electronically, if the credit unions were subject to the regulations (E-SIGN Act's) notice and consent requirements.

The final regulations retain the notice and consent requirements. The notice and consent requirements are justified on tax administration grounds; it is important that taxpayers be able to demonstrate the ability to receive the tax statements electronically and then actually receive them. Moreover, the IRS and Treasury continue to believe that electronic furnishing should be voluntary for recipients as well as furnishers to accommodate recipients who prefer to receive their statements by traditional paper delivery for perceived security and privacy reasons. Section 401 of JCWAA, which adopted the notice and consent requirements in the temporary regulations, suggests that Congress also believes that electronic furnishing should be voluntary.

5. Verification of Receipt

Two commentators stated that, since the recipient chooses whether to receive information electronically, the recipient should be responsible for having the hardware and software necessary to receive the information electronically. The commentators pointed out that electronic mail systems are not standardized and some systems do not provide verification of delivery.

The regulations were not changed to reflect these comments. Both the furnisher and the recipient must voluntarily participate in the electronic delivery system. Both parties are responsible for ensuring that the system complies with the requirements of the regulations.

6. Consent Demonstrating Ability to Obtain Statements

One commentator recommended clarification of the example provided in the regulations regarding consent from the recipient. The commentator noted that a recipient's being able to receive and send e-mail does not necessarily prove that the recipient can access a website and download the statement. The commentator recommended an example describing alternatives to consent by e-mail.

The rule for consent requires that the recipient demonstrate the ability to access statements, which is done in the regulation's example by opening the attachment.

However, the IRS agrees with the commentator's observation and has added two examples of alternative methods of providing consent in the final regulation.

7. Posting Despite Lack of Consent to Electronic Delivery

Two commentators recommended that the regulations expressly permit furnishers to post all their statements to a website and to send each recipient his/her statement as an e-mail attachment, even if the recipient has not consented to electronic furnishing. The furnisher could then provide paper copies of the statements to recipients who did not consent to electronic furnishing. The commentators cited the ease and economy of total versus piecemeal posting.

The final regulations do not expressly adopt the recommendation. However, the regulations do not prohibit a furnisher from storing all statements on the web server. Whether the furnisher stores all statements or only those statements for which consents are received is a business decision for the furnisher.

8. Contact Information of Person to Whom a Withdrawal of Consent Should Be Furnished

Three commentators noted that providing the contact information for a specific individual to whom withdrawal of consent should be furnished may cause confusion, because in

many large companies no single individual can accommodate communications from a potentially large number of recipients. The commentators suggest that the regulations provide that the recipients may be provided the name, address, phone number and e-mail address of an individual or department, such as a Human Resources Department, or Payroll Department on the disclosure statement. The regulations have been amended to provide that either the name of an individual or of a department may be included in the disclosure statement.

9. Definition of High Importance

Two commentators requested clarification of the term high importance in proposed §§1.6050S-1(a)(6)(i), 1.6050S-2(a)(6)(i), and 31.6051-1(j)(6)(i). The commentators noted that if this term refers to assigning a high priority to the e-mail, as some e-mail software allows, there must be allowances made for e-mail software that does not have that capability. The commentators suggest that in a case where the sending or receiving software does not offer or recognize levels of priority, the regulations should allow the use of a subject line stating **AHIGH IMPORTANCE - IMPORTANT TAX RETURN DOCUMENT AVAILABLE.@**

The final regulations do not require furnishers to assign high priority to e-mail because some software does

not have this capability and the IRS and Treasury do not intend to favor any particular technology. Accordingly, furnishers will not be required to use e-mail software with the capability of assigning high priority.

10. Use of Other Subject Lines

One commentator expressed concern that requiring use of the language `AIMPORTANT TAX RETURN DOCUMENT AVAILABLE@` on the subject line of e-mail notices could be exploited to spread a computer virus through e-mails with the same subject line. The commentator suggests that each organization be permitted to create its own subject line containing the name of the issuing organization.

The regulations have not been amended to include this modification of the subject line. It is important to use standard language to identify the statement. Moreover, to prevent the spread of computer viruses, the recipient need only monitor who sent the e-mail.

11. Undeliverable Notice

One commentator suggested that when an electronic notice is returned and the furnisher notifies the recipient, the recipient may give the furnisher a corrected electronic address to receive the statement electronically. The consent rule in the final regulations allows the

furnisher to obtain a new address from the recipient and resend the notice.

12. Allowable Period to Deliver Paper Statement

Two commentators recommended that if the recipient states that he or she no longer has an e-mail address or internet access, and desires a paper statement, the furnisher should construe the recipient's statement as a withdrawal of consent. Furnishers will then be allowed a certain number of days to furnish the paper statement to the recipient. In addition, several members of the information reporting industry requested that a cut-off date be provided for withdrawing consent.

The final regulations retain the rules regarding withdrawal of consent, but allow the furnisher to treat a request for a paper statement as a withdrawal of consent. Treasury and the IRS do not think the regulations should impose a cut-off date for withdrawing consent. Furnishers may, however, provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date, thereby imposing their own cut-off date for withdrawing consents.

The final regulations retain the rule that a withdrawal of consent will not affect a statement that has been furnished electronically. Thus, if the withdrawal

takes effect after the statement is furnished electronically, the statement will be considered timely if it was furnished electronically by the applicable due date. The final regulations also provide that if the withdrawal of consent takes effect before the statement is furnished electronically a paper statement must be furnished. In this case, a paper statement furnished after the statement due date will be considered timely if furnished within 30 days after the date the withdrawal of consent is received by the furnisher. This extension of time eliminates the need to address reasonable cause for late filing under section 6724. Therefore, the proposed amendment to the regulations under section 6724 is not adopted and temporary regulation §301.6724-1T is removed.

13. Corrected Statements

Two commentators requested that the furnisher be able to post both Forms W-2c and replacement Forms W-2 on the website. The commentators noted that an employer may prefer to completely replace an employee's W-2, if it can be done before W-2s are filed with the Social Security Administration, thereby avoiding the W-2c process. The regulations have not been amended to allow a replacement Form W-2 if a Form W-2c is otherwise required. The purpose of the regulations is to describe the manner in which

statements may be furnished electronically. The regulations are not intended to change the established procedures for correcting statements. Employers should consult IRS forms and instructions for the appropriate correction procedures.

14. Access Period

Two commentators recommended shortening the period of time during which statements can be accessed by changing the period's end date from October 15th to April 30th (or August 15) to reduce the amount of time computer hackers will have to access the confidential information on the website. One commentator noted that even if a recipient intends to apply for two extensions, it is highly likely that the recipient will have accessed the Form W-2 on the website by April 15 to determine whether a payment was necessary by that date. One commentator suggested that furnishers have the option to maintain statements on the website until April 30, as long as they provide replacements through October 15 by paper or as attachments to an e-mail.

The final regulations do not change the access period. It is the responsibility of the furnisher to maintain a secure website. It is important to allow access to the website during the entire filing season (including the

period of extensions) to enable taxpayers to import the information directly to their returns if they choose to file electronically.

Special Analyses

It has been determined that these final regulations are 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.

Final Regulatory Flexibility Analysis

The collection of information contained in §§1.6041-2, 1.6050S-2, 1.6050S-4, and 31.6051-1 is required if a person required to furnish a taxpayer with a statement wishes to furnish the statement electronically. This information will be used to determine that the recipient has consented to receive the statement electronically. The objectives of these final regulations are to provide uniform, practicable, and administrable rules for providing information statements electronically. The types of small entities to which the regulations may apply are small eligible educational institutions (such as colleges and universities), small corporations and partnerships, and small employers.

There are no known Federal rules that duplicate, overlap, or conflict with these regulations. The regulations impose the least economic burden on small entities of all of the alternatives considered. The collection of information is required only from persons receiving the statements electronically using a method authorized by the final regulations.

Drafting Information

The principal author of these final regulations is Michael E. Hara, of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 301

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

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, 301, and 602 are amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for "Section 1.6041-2T, "Section 6050S-4T," and "Section 6050S-2T" and 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-2 also issued under 26 U.S.C. 6050S(g). * * *
Section 1.6050S-4 also issued under 26 U.S.C. 6050S(g). * * *

Par. 2. Section 1.6041-2(a)(5) is added to read as follows:

'1.6041-2 Return of information as to payments to employees.

(a) * * *

(5) Statement for employees. An employer required under this paragraph (a) to file Form W-2 with respect to an employee is also required under sections 6041(d) and 6051 to furnish a written statement to the employee. This written

statement must be furnished on Form W-2 in accordance with section 6051 and the regulations.

* * * * *

' **1.6041-2T [Removed]**

Par. 3. Section 1.6041-2T is removed.

Par. 4. Section 1.6050S-2 is added to read as follows:
'1.6050S-2 Information reporting for payments and reimbursements or refunds of qualified tuition and related expenses.

(a) Electronic furnishing of statements--(1) In general. A person required by section 6050S(d) to furnish a written statement regarding payments and reimbursements or refunds of qualified tuition and related expenses (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the required statement.

(2) Consent--(i) In general. The recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the

recipient can access the statement in the electronic format in which it will be furnished to the recipient.

Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) Withdrawal of consent. The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) Change in hardware or software requirements. If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph

(a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) Examples. The following examples illustrate the rules of this paragraph (a)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive statements required by section 6050S(d) electronically on a website instead of in a paper format. The letter contains instructions explaining how to consent to receive the statements electronically by accessing the website, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the website uses the same electronic format that F will use for the electronically furnished statements. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive statements required by section 6050S(d) electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its website stating that Recipient R may receive statements required by section 6050S(d) electronically instead of in a paper format. The website contains instructions on how R may access a secure webpage and consent to receive the statements electronically. By accessing the secure webpage and giving consent, R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) Required disclosures--(i) In general. Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) Paper statement. The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) Scope and duration of consent. The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section or only to the statement required to be furnished on or before the January 31 immediately following the date on which the consent is given.

(iv) Post-consent request for a paper statement. The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) Withdrawal of consent. The recipient must be informed that--

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) Notice of termination. The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient.

(vii) Updating information. The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) Hardware and software requirements. The recipient must be provided with a description of the

hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the website.

(4) Format. The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) Notice--(i) In general. If the statement is furnished on a website, the furnisher must notify the recipient that the statement is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, **IMPORTANT TAX RETURN DOCUMENT AVAILABLE.**@ If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) Undeliverable electronic address. If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) Corrected statements. If the furnisher has corrected a recipient's statement that was furnished electronically, the furnisher must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished through a website posting and the furnisher has corrected the statement, the furnisher must notify the recipient that it has posted the corrected statement on the website within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if--

(A) An electronic notice of the website posting of an original statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) Access Period. Statements furnished on a website must be retained on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if

October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later.

(b) Paper statements after withdrawal of consent. If a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished electronically, a paper statement must be furnished. A paper statement furnished after the statement due date under this paragraph (b) will be considered timely if furnished within 30 days after the date the withdrawal of consent is received by the furnisher.

(c) Effective date. This section applies to statements required to be furnished after February 13, 2004. Paragraph (a)(6) of this section also applies to statements required to be furnished after December 31, 2003.

' 1.6050S-4T [Removed]

Par. 5 Section 1.6050S-4T is removed.

Par. 6 Section 1.6050S-4 is added to read as follows:

'1.6050S-4 Information reporting for payments of interest on qualified education loans.

(a) Electronic furnishing of statements--(1) In general. A person required by section 6050S(d) to furnish a

written statement regarding payments of interest on qualified education loans (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the required statement.

(2) Consent--(i) In general. The recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) Withdrawal of consent. The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) Change in hardware or software requirements. If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) Examples. The following examples illustrate the rules of this paragraph (a)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive statements required by section 6050S(d) electronically on a website instead of in a paper format. The letter contains instructions explaining how to consent to receive the statements electronically by accessing the website, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the website uses the same electronic format that F will use for the electronically furnished statements. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive statements required by section 6050S(d) electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its website stating that Recipient R may receive statements required by section 6050S(d) electronically instead of in a paper format. The website contains instructions on how R may access a secure webpage and consent to receive the statements electronically. By accessing the secure webpage and giving consent, R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) Required disclosures--(i) In general. Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) Paper statement. The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) Scope and duration of consent. The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after

the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section or only to the statement required to be furnished on or before the January 31 immediately following the date on which the consent is given.

(iv) Post-consent request for a paper statement. The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) Withdrawal of consent. The recipient must be informed that--

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) Notice of termination. The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient.

(vii) Updating information. The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) Hardware and software requirements. The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the website.

(4) Format. The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) Notice--(i) In general. If the statement is furnished on a website, the furnisher must notify the recipient that the statement is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include

the following statement in capital letters, **IMPORTANT TAX RETURN DOCUMENT AVAILABLE.** If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) Undeliverable electronic address. If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) Corrected statements. If the furnisher has corrected a recipient's statement that was furnished electronically, the furnisher must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished through a website posting and the furnisher has corrected the statement, the furnisher must notify the recipient that it has posted the corrected statement on the website within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if--

(A) An electronic notice of the website posting of an original statement or the corrected statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) Access Period. Statements furnished on a website must be retained on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the website through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later.

(b) Effective date. This section applies to statements required to be furnished after February 13, 2004. Paragraph (a)(6) of this section also applies to statements required to be furnished after December 31, 2003.

' 1.6050S-2T [Removed]

Par. 7 Section 1.6050S-2T is removed.

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

Par. 8. The authority citation for part 31 is amended by revising the entry for "31.6051-1(d)" and removing the entry for "Section 31.6051-1T" to read, in part, as follows:

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

Section 31.6051-1 also issued under 26 U.S.C. 6051. * * *

Par. 9. In §31.6051-1, paragraph (j) is added to read as follows:

'31.6051-1 Statements for employees.

* * * * *

(j) Electronic furnishing of statements--(1) In general. A person required by section 6051 to furnish a written statement on Form W-2 (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the Form W-2 in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (j)(2) through (6) of this section is treated as furnishing the Form W-2 in a timely manner.

(2) Consent--(i) In general. The recipient must have affirmatively consented to receive the Form W-2 in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the

recipient can access the Form W-2 in the electronic format in which it will be furnished to the recipient.

Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) Withdrawal of consent. The consent requirement of this paragraph (j)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) Change in hardware or software requirements. If a change in hardware or software required to access the Form W-2 creates a material risk that the recipient will not be able to access the Form W-2, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the Form W-2 and inform the recipient that a new consent to receive the Form W-2 in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (j)(2)(i)

of this section, a new consent or confirmation of consent to receive the Form W-2 electronically.

(iv) Examples. The following examples illustrate the rules of this paragraph (j)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive Form W-2 electronically on a website instead of in a paper format. The letter contains instructions explaining how to consent to receive Form W-2 electronically by accessing the website, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the website uses the same electronic format that F will use for the electronically furnished Form W-2. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (j)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive Form W-2 electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive Form W-2 electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished Form W-2. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive Form W-2 electronically in the manner described in paragraph (j)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its website stating that Recipient R may receive Form W-2 electronically instead of in a paper format. The website contains instructions on how R may access a secure webpage and consent to receive the statements electronically. By accessing the secure webpage and giving consent, R has consented to receive Form W-2 electronically in the manner described in paragraph (j)(2)(i) of this section.

(3) Required disclosures--(i) In general. Prior to, or at the time of, a recipient's consent, the furnisher must

provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (j)(3)(ii) through (viii) of this section.

(ii) Paper statement. The recipient must be informed that the Form W-2 will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) Scope and duration of consent. The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to each Form W-2 required to be furnished after the consent is given until it is withdrawn in the manner described in paragraph (j)(3)(v)(A) of this section or only to the first Form W-2 required to be furnished following the date on which the consent is given.

(iv) Post-consent request for a paper statement. The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (j)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) Withdrawal of consent. The recipient must be informed that--

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department

whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (j) before the date on which the withdrawal of consent takes effect.

(vi) Notice of termination. The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient (for example, termination of the recipient's employment with furnisher-employer).

(vii) Updating information. The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) Hardware and software requirements. The recipient must be provided with a description of the hardware and software required to access, print, and retain the Form W-2, and the date when the Form W-2 will no longer be available on the website. The recipient must be

informed that the Form W-2 may be required to be printed and attached to a Federal, State, or local income tax return.

(4) Format. The electronic version of the Form W-2 must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) Notice--(i) In general. If the statement is furnished on a website, the furnisher must notify the recipient that the statement is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, **IMPORTANT TAX RETURN DOCUMENT AVAILABLE.**@ If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) Undeliverable electronic address. If an electronic notice described in paragraph (j)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) Corrected Form W-2. If the furnisher has corrected a recipient's Form W-2 that was furnished electronically, the furnisher must furnish the corrected Form W-2 to the recipient electronically. If the recipient's Form W-2 was furnished through a website posting and the furnisher has corrected the Form W-2, the furnisher must notify the recipient that it has posted the corrected Form W-2 on the website within 30 days of such posting in the manner described in paragraph (j)(5)(i) of this section. The corrected Form W-2 or the notice must be furnished by mail or in person if--

(A) An electronic notice of the website posting of an original Form W-2 or the corrected Form W-2 was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) Access period. Forms W-2 furnished on a website must be retained on the website through October 15 of the year following the calendar year to which the Forms W-2 relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected Forms W-2 that are posted on the website through October 15 of the year following the calendar year to which the Forms W-2

relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(7) Paper statements after withdrawal of consent. If a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished electronically, a paper statement must be furnished. A paper statement furnished after the statement due date under this paragraph (j)(7) will be considered timely if furnished within 30 days after the date the withdrawal of consent is received by the furnisher.

(8) Effective date. This paragraph (j) applies to Forms W-2 required to be furnished after February 13, 2004. Paragraph (j)(6) of this section also applies to Forms W-2 required to be furnished after December 31, 2003.

' **31.6051-1T [Removed]**

Par. 10. Section 31.6051-1T is removed.

PART 301--REGULATIONS ON PROCEDURE AND ADMINISTRATION

Par. 11. The authority citation for part 301 continues to read, in part, as follows:

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

' **301.6724-1T [Removed]**

Par. 12. Section 301.6724-1T is removed.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 13. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 14. In '602.101, paragraph (b) is amended by:

1. Removing the following entries from the table:

| | |
|------------------|-----------|
| 1.6041-2T | 1545-1729 |
| 1.6050S-2T | 1545-1729 |
| 1.6050S-4T | 1545-1729 |
| 31.6051-1T | 1545-1729 |

2. Revising the entry for "31.6051-1" in the table to read as follows:

'602.101 OMB Control numbers.

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|----------------------------|
|---|----------------------------|

* * * * *

| | |
|-----------------|-----------|
| 31.6051-1 | 1545-0008 |
| | 1545-0182 |
| | 1545-0458 |
| | 1545-1729 |

* * * * *

3. Adding the following entries in numerical order to the table to read as follows:

'602.101 OMB Control numbers.

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|----------------------------|
| * * * * * | |
| 1.6041-2 | 1545-1729 |
| * * * * * | |
| 1.6050S-2 | 1545-1729 |
| 1.6050S-4 | 1545-1729 |
| * * * * * | |

Mark E. Mathews

Deputy Commissioner for Services and Enforcement.

Approved: February 12, 2004

Pamela F. Olson

Assistant Secretary of the Treasury.