

Part III

Administrative, Procedural and Miscellaneous

26 CFR 601.602: Forms and instructions.

(Also Part I, §§ 6011, 6051, 6071; 31.6011(a)-4, 31.6051-1, 31.6071(a)-1.)

Rev. Proc. 2004-53

SECTION 1. PURPOSE

.01 This revenue procedure supersedes Rev. Proc. 96-60, 1996-2 C.B. 399. This revenue procedure explains both the standard procedure and an alternate procedure for preparing and filing Form W-2, Wage and Tax Statement; Form 941, Employer's Quarterly Federal Tax Return; Form W-4, Employee's Withholding Allowance Certificate; and Form W-5, Earned Income Credit Advance Payment Certificate, in certain acquisitions. This revenue procedure applies when an employer (successor) acquires substantially all the property (1) used in a trade or business of another employer (predecessor), or (2) used in a separate unit of a trade or business of a predecessor, and, in connection with or immediately after the acquisition (but during the same calendar year), the successor employs individuals who immediately prior to the acquisition were employed in the trade or business of the predecessor. (The term

"trade or business," for purposes of this revenue procedure, may include the activity of a nonprofit organization or of a federal or state agency.)

.02 This revenue procedure provides guidance on the new schedule (Schedule D (Form 941), Report of Discrepancies Caused by Acquisitions, Statutory Mergers, or Consolidations) that the Internal Revenue Service is currently developing. Employers will be able to use Schedule D (Form 941) to explain the discrepancies between Forms W-2 (Copy A) and Forms 941 in the totals of social security wages, Medicare wages and tips, social security tips, federal income tax withheld, and advance earned income credit (EIC) payments, caused by acquisitions, statutory mergers, or consolidations. If Form 941 is filed electronically, an employer will be able to file Schedule D (Form 941) separately on paper, until the electronic specifications for Schedule D (Form 941) become available.

.03 This revenue procedure also amplifies Rev. Rul. 62-60, 1962-1 C.B. 186. Rev. Rul. 62-60 describes the information a resultant corporation (now known as a surviving corporation) should provide on an absorbed corporation (now known as an acquired corporation) after a statutory merger or consolidation. If the surviving corporation completes and files Schedule D (Form 941) to explain discrepancies between the totals on Forms W-2 (Copy A) and the totals on Forms 941, Schedule D (Form 941) will also provide notice of a statutory merger or consolidation under Rev. Rul. 62-60.

SECTION 2. CHANGES FROM REV. PROC. 96-60

.01 Section 5.03, provides that the predecessor can file Schedule D (Form 941) to explain discrepancies under the alternate procedure, in lieu of a statement as was described in Rev. Proc. 96-60. In addition, if Form 941 is filed electronically, an employer will be able to file Schedule D (Form 941) separately on paper, until the electronic specifications for Schedule D (Form 941) become available.

.02 Section 5.04, provides that the successor can also file Schedule D (Form 941) to explain discrepancies under the alternate procedure, in lieu of a statement as was described in Rev. Proc. 96-60 . In addition, if Form 941 is filed electronically, an employer will be able to file Schedule D (Form 941) separately on paper, until the electronic specifications for Schedule D (Form 941) become available.

.03 Section 5.08 is added to provide procedures for transferring electronically filed Forms W-5 from the predecessor to the successor.

.04 Section 6.02 is added to amplify Rev. Rul. 62-60 which describes the information a surviving corporation should provide after a statutory merger or consolidation. Section 6.02 provides that, if the surviving corporation completes and files Schedule D (Form 941) to explain discrepancies between the totals on Forms W-2 (Copy A) and the totals on Forms 941, Schedule D (Form 941) will also provide notice of a statutory merger or consolidation under Rev. Rul. 62-60.

SECTION 3. BACKGROUND

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

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

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

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

.05 Section 31.6071(a)-1 provides that the Form 941 generally must be filed on or before the last day of the first calendar month following the period for which it is made.

.06 Section 6051(a) provides that (1) every person required to deduct and withhold FICA or income tax, or who would have been required to deduct and withhold income tax if the employee had claimed no more than 1 withholding exemption, or (2) every employer engaged in a trade or business who pays remuneration for services performed by an employee, must furnish a written statement to an employee regarding the remuneration paid to the employee during the calendar year. Section 31.6051-1(a) provides that the statement is Form W-2.

.07 Section 31.6051-1(d)(1)(i) provides that Form W-2 must be furnished to the employee on or before January 31 of the following calendar year. If the employee's

employment is terminated before the close of the calendar year, however, and the employee requests the employer to furnish the Form W-2 at an earlier time, the Form W-2 must be furnished to the employee on or before the later of the 30th day after the written request from the employee or the 30th day after the day on which the last payment of wages is made.

.08 Section 31.6051-1(d)(1)(ii) provides that an employer who is required to file a final Form 941 must furnish Forms W-2 to its employees on or before the date required for filing the final Form 941. An employer is not permitted to furnish Form W-2 pursuant to the rule in § 31.6051-1(d)(1)(i) relating to written requests by terminated employees for Form W-2, if that would be at a time later than that required under the rule in § 31.6051-1(d)(1)(ii)(B) for an employer who ceases to pay wages.

.09 Section 31.6071(a)-1(a)(3)(i) provides the general rule that a Form W-2 (Copy A) must be filed on or before the last day of February (or March 31 if filed electronically) of the year following the calendar year for which it is made.

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

.11 Section 31.6051-2 provides that Forms W-2 (Copy A) must be filed with the Social Security Administration (SSA).

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

.13 Announcement 99-3, 1999-1 C.B. 324, provides that an employer may establish a system for its employees to submit Form W-5 electronically.

SECTION 4. STANDARD PROCEDURE FOR PREDECESSORS AND SUCCESSORS

.01 In general. Under the standard procedure, the predecessor performs all the reporting duties for the wages and other compensation it pays. These duties include the filing of quarterly Forms 941 and the furnishing and filing of Forms W-2. In connection with the successor's acquisition of property and hiring of employees from the predecessor, as described in section 1.01, the predecessor may cease to pay any wages required to be reported on Form 941 (for example, the predecessor may go out of business). In that case, the predecessor must file the Form 941 for the quarter of the acquisition as a final Form 941. If the predecessor does not cease to pay any wages required to be reported on Form 941, (for example, the predecessor remains in business) a final Form 941 is not required. Instead, the predecessor would file its quarterly Form 941 for the quarter of the acquisition. The successor, under the standard procedure, performs all the reporting duties for the wages and other compensation it pays.

.02 Forms W-2.

(1) In general. If, under the circumstances described in section 1.01, the predecessor is not required to file a final Form 941, the predecessor and successor both must furnish Forms W-2 to their respective employees on or before January 31 of the following calendar year. However, if an employee, whose employment is terminated

before the close of the calendar year, requests the Form W-2 earlier, the Form W-2 must be furnished on or before the 30th day after the written request or the 30th day after the final payment of wages to the employee, whichever is later. The predecessor and successor must file Forms W-2 (Copy A) for their respective employees with SSA on or before the last day of February (or March 31 if filed electronically) of the following calendar year.

(2) Expedited Forms W-2. If, under the circumstances described in section 1.01, the predecessor is required to file a final Form 941, the predecessor must furnish Forms W-2 to its former employees on an expedited basis. Forms W-2 must be furnished on or before the date required for filing the final Form 941 (generally one month after the end of the quarter). However, if an employee, whose employment is terminated before the close of the calendar year, requests the Form W-2 earlier, the predecessor must furnish Form W-2 on or before the 30th day after the written request or the 30th day after the final payment of wages to the employee, whichever is later. The predecessor must also file Forms W-2 (Copy A) with SSA on an expedited basis. The Forms W-2 (Copy A) must be filed on or before the last day of the second calendar month following the period for which the final Form 941 is required to be filed.

.03 Forms W-4. The predecessor must keep on file the Forms W-4 provided by its former employees. The transferred employees must provide the successor with new Forms W-4 as the successor now becomes responsible for deducting and withholding tax from wages paid to the transferred employees.

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

SECTION 5. ALTERNATE PROCEDURE FOR PREDECESSORS AND SUCCESSORS

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

.02 Forms W-2.

(1) In general. If, under the circumstances described in section 1.01, the predecessor is not required to file a final Form 941, the predecessor must furnish Forms W-2 on or before January 31 of the following calendar year to employees who are not

employed by the successor. However, if an employee, whose employment is terminated before the close of the calendar year, requests the Form W-2 earlier, the predecessor must furnish Form W-2 on or before the 30th day after the written request or the 30th day after the final payment of wages to the employee, whichever is later. Forms W-2 (Copy A) filed by the predecessor with SSA for employees who are not employed by the successor must be filed on or before the last day of February (or March 31 if filed electronically) of the following calendar year. If the successor assumes the predecessor's obligation to furnish Forms W-2 to the acquired employees for a calendar year, the successor must assume the predecessor's entire Form W-2 obligation for acquired employees. Thus, Forms W-2 furnished by the successor to the acquired employees must include the wages paid and the taxes withheld by both the predecessor and the successor. The successor must include on the Form W-2 any amount reportable by the predecessor, including "other compensation" or uncollected employee social security and Medicare taxes on tips, if applicable. Forms W-2 must be furnished by the successor to its employees (both the acquired employees and any other employees of the successor) on or before January 31 of the following calendar year. However, if an employee, whose employment is terminated before the close of the calendar year, requests the Form W-2 earlier, the successor must furnish Form W-2 on or before the 30th day after the written request or the 30th day after the final payment of wages to the employee, whichever is later. Forms W-2 (Copy A) must be

filed by the successor with SSA on or before the last day of February (or March 31 if filed electronically) of the following calendar year.

(2) Expedited Forms W-2. If, under the circumstances described in section 1.01, the predecessor is required to file a final Form 941, the predecessor must furnish Forms W-2 to the employees who are not employed by the successor on an expedited basis. Forms W-2 must be furnished on or before the date required for filing the final Form 941 (generally one month after the end of the quarter). However, if an employee, whose employment is terminated before the close of the calendar year, requests the Form W-2 earlier, the predecessor must furnish the Form W-2 on or before the 30th day after the written request or the 30th day after the final payment of wages to the employee, whichever is later. Forms W-2 (Copy A) filed with SSA by the predecessor must also be filed on an expedited basis. Forms W-2 (Copy A) must be filed on or before the last day of the second calendar month following the period for which the final Form 941 is required to be filed. The successor is not required to either furnish Forms W-2 to the acquired employees or to file the Forms W-2 (Copy A) with SSA on an expedited basis.

.03 Form 941 filed by predecessor. To the extent the wages paid and the taxes withheld by the predecessor are to be included on the Forms W-2 (Copy A) filed by the successor for the acquired employees, there will be a difference between the amounts shown on the predecessor's Forms W-2 (Copy A) and its Forms 941. The predecessor should complete a Schedule D (Form 941) to explain the discrepancies (between Forms W-2 (Copy A) and Forms 941 in the totals of social security wages, Medicare wages

and tips, social security tips, federal income tax withheld, and advance earned income credit (EIC) payments). Schedule D (Form 941) should include the date of the acquisition and the name, trade name, address, telephone number, and employer identification number of the successor. Schedule D (Form 941) should be filed after Forms W-2 (Copy A) are prepared. Thus, Schedule D (Form 941) should be filed with the first quarter return for the year after the calendar year of the acquisition, or with the final Form 941 if the predecessor is filing a final Form 941 and it is due before the first quarter return for the year after the calendar year of the acquisition. For example, if the acquisition occurred in the third quarter of 2006 and the predecessor's business is continuing to operate, the predecessor would file Schedule D (Form 941) with the Form 941 for the first quarter of 2007. However, if the predecessor's business did not continue to operate, the predecessor would file Schedule D (Form 941) with the predecessor's final Form 941 which would also be the Form 941 for the third quarter of 2006. If Form 941 is filed electronically, an employer will be able to file Schedule D (Form 941) separately on paper, until the electronic specifications for Schedule D (Form 941) become available.

.04 Form 941 filed by successor. To the extent the wages paid and the taxes withheld by the predecessor are to be included on the Forms W-2 (Copy A) filed by the successor for the acquired employees, there will be a difference between the amounts shown on the successor's Forms W-2 (Copy A) and its Forms 941. When the successor files its Form 941, it should also file Schedule D (Form 941) to explain the

discrepancies between Forms W-2 (Copy A) and Forms 941 in the totals of social security wages, Medicare wages and tips, social security tips, federal income tax withheld, and advance earned income credit (EIC) payments. Schedule D (Form 941) should include the date of the acquisition and the name, trade name, address, telephone number, and employer identification number of the predecessor. Schedule D (Form 941) should be filed after Forms W-2 (Copy A) are prepared. Thus, Schedule D (Form 941) should be filed with the first quarter return for the year after the calendar year of the acquisition, or with the final Form 941 if the successor is filing a final return and it is due before the first quarter return for the year after the calendar year of the acquisition. If Form 941 is filed electronically, an employer will be able to file Schedule D (Form 941) separately on paper, until the electronic specifications for Schedule D (Form 941) become available. For instructions relating to the annual wage limitation, see § 31.3121(a)(1)-1.

.05 Forms W-4. The predecessor must transfer to the successor all current Forms W-4 that were provided to the predecessor by the acquired employees and any written notices received from the Service under § 31.3402(f)(2)-1(g)(5). The successor must keep the transferred Forms W-4 on file. Generally, the successor employer must deduct and withhold from the wages it pays to the acquired employees according to the information supplied on the transferred Forms W-4 until an employee submits a revised form. The successor employer must submit to the Service, in accordance with § 31.3402(f)(2)-1(g), copies of the Forms W-4 received by the predecessor during the

current calendar quarter and the preceding calendar quarter. The successor employer must comply with all other requirements under § 31.3402(f)(2)-1(g). For example, the successor employer must withhold amounts from the employees on the basis of the maximum number specified in any written notices from the Service under § 31.3402(f)(2)-1(g)(5).

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

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

.08 Transfer of Forms W-5 furnished electronically. If the predecessor and successor both maintain an electronic system for use by employees in furnishing Forms W-5, and the systems are compatible, the predecessor may electronically transfer the Forms W-5 of the acquired employees to the successor. The successor may also choose to acquire and maintain the predecessor's system. If these options do not apply, an acquired employee must provide the successor with a new Form W-5, either electronically or on paper, as prescribed by the successor.

SECTION 6. PROCEDURE AFTER STATUTORY MERGER OR CONSOLIDATION

.01 Surviving corporation. After a statutory merger or consolidation, if the wages paid and the taxes withheld by the acquired corporation are to be included on the Forms W-2 (Copy A) filed by the surviving corporation, there will be a difference between the amounts shown on the surviving corporation's Forms W-2 (Copy A) and its Forms 941. The surviving corporation should use Schedule D (Form 941) to explain the discrepancies between Forms W-2 (Copy A) and Forms 941 in the totals of social security wages, Medicare wages and tips, social security tips, federal income tax withheld, and advance earned income credit (EIC) payments. Schedule D (Form 941) should be filed after Forms W-2 (Copy A) are prepared. Thus, Schedule D (Form 941) should be filed with the first quarter return for the year after the calendar year of the statutory merger or consolidation, or with the final Form 941 if the surviving corporation is filing a final return and it is due before the first quarter return for the year after the calendar year of the statutory merger or consolidation. If Form 941 is filed electronically, an employer will be able to file Schedule D (Form 941) separately on paper, until the electronic specifications for Schedule D (Form 941) become available.

.02 Notice under Rev. Rul. 62-60. As described in Rev. Rul. 62-60, a surviving corporation should provide certain information to the Service after a statutory merger or consolidation. A completed Schedule D (Form 941) will include notice that a statutory merger or consolidation has taken place, the date of the change, and the name, trade name, address, telephone number, and employer identification number of the acquired

corporation. Thus, if the surviving corporation completes and files Schedule D (Form 941) to explain discrepancies between the totals on Forms W-2 (Copy A) and the totals on Forms 941, Schedule D (Form 941) will also provide notice of a statutory merger or consolidation under Rev. Rul. 62-60.

.03 Acquired corporation. To the extent the wages paid and the taxes withheld by the acquired corporation are to be included in the Forms W-2 (Copy A) by the surviving corporation, there may be amounts shown on the acquired corporation's Forms 941 which are not shown on Forms W-2 (Copy A) reported under the employer identification number of the acquired corporation. If an acquired corporation files a final Form 941, it should also file a Schedule D (Form 941) with the Form 941 to explain any discrepancies between Forms W-2 (Copy A) and Forms 941 in the totals of social security wages, Medicare wages and tips, social security tips, federal income tax withheld, and advance earned income credit (EIC) payments. Schedule D (Form 941) should include notice that a statutory merger or consolidation has taken place, the date of the statutory merger or consolidation, and the name, trade name, address, telephone number, and employer identification number of the surviving corporation. If Form 941 is filed electronically, an employer will be able to file Schedule D (Form 941) separately on paper, until the electronic specifications for Schedule D (Form 941) become available.

SECTION 7. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 96-60 is superseded. Rev. Rul. 62-60 is amplified to provide that, if the surviving corporation completes and files Schedule D (Form 941) to explain

discrepancies between the totals on Forms W-2 (Copy A) and the totals on Forms 941, Schedule D (Form 941) will also provide notice of a statutory merger or consolidation under Rev. Rul. 62-60.

SECTION 8. EFFECTIVE DATES

.01 Schedule D (Form 941) - Acquisitions, statutory mergers, or consolidations effective after December 31, 2004. Schedule D (Form 941) should be used to explain the discrepancies between Forms W-2 (Copy A) and Forms 941 in the totals of social security wages, Medicare wages and tips, social security tips, federal income tax withheld, and advance earned income credit (EIC) payments caused by acquisitions, statutory mergers, or consolidations that are effective after December 31, 2004.

.02 Forms W-5 - Transfer of Forms W-5 furnished electronically. Employers are permitted to apply the rules in section 5.08 regarding Forms W-5 submitted electronically by employees on or after January 19, 1999, the date Announcement 99-3 was published in the Internal Revenue Bulletin.

SECTION 9. ADDITIONAL INFORMATION

.01 After December 31, 2004, an employer may obtain Schedule D (Form 941) from the IRS Distribution Center by calling (800) TAX-FORM ((800) 829-3676) or from the IRS web site (www.irs.gov).

.02 An employer may obtain information on the submission of Schedule D (Form 941) by calling the Business and Specialty Tax Line (800-829-4933).

DRAFTING INFORMATION

The principal authors of this revenue procedure are Margaret A. Owens and A. G. Kelley of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact Ms. Owens or Mr. Kelley on (202) 622-6040 (not a toll-free call).