



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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Dear [REDACTED]:

This letter responds to your request dated September 4, 2001, for information regarding whether the Internal Revenue Service ("IRS") has incorporated by reference a requirement for an individual to file a Form 1040 with the IRS, and a requirement for an employee to file a Form W-4 with their respective employer. In addition, you have also requested information about the requirements to file a Form 1040 tax return and for an employee to provide a Form W-4 to his respective employer. As is discussed below, regulations which are published in the Federal Register require taxpayers to file a tax return with the IRS and require employees to provide a Form W-4 to their respective employer. Further, all individuals who have received more than a statutorily determined amount of gross income are required to file a tax return. Finally, all employees are required to provide a completed Form W-4 to their respective employer.

The Federal Register publishes regulations promulgated with respect to the Internal Revenue Code. As is discussed below, both the Code and the regulations thereunder, which are published in the Federal Register, require that an individual file a tax return using the forms prescribed by the Secretary of Treasury, and that an employee provide a Form W-4 to his respective employer.

With respect to the Form 1040, all individuals who have received gross income that exceeds their respective exemption deductions and standard deduction are required by law to file an income tax return. 26 U.S.C. Section 6012(a)(1).¹ Such individuals are required to use the forms prescribed by the Secretary. 26 U.S.C. Section 6011(a), 26 C.F.R. Section 1.6011-1(b) of the Regulations on Income Tax. The Secretary has prescribed that the Form 1040 is the form that individuals must use when they file a

¹ Code sections that are published under Title 26 are commonly referred to as the "Internal Revenue Code."

GENIN-153691-01

return. Williams v. Commissioner, 114 T.C. 136 (2000); Steines v. Commissioner, T.C. Memo. 1991-588.

Based on the above, both the Code and the regulations thereunder require individuals to file a tax return using the forms prescribed by the Secretary. In the case of an individual taxpayer, the prescribed form is the Form 1040.

Further, employees are required to complete a Form W-4, and provide such form to their respective employer. 26 U.S.C. Section 3402(f)(2) requires all employees to provide a withholding exemption certificate to their employer, which explains such individual's marital status and the number of withholding exemptions claimed by the individual. See also 26 C.F.R. Section 31.3402(f)(2)-1(a) of the Regulations on Employment Taxes and Collection of Income Tax at Source. The Secretary has prescribed that the Form W-4 is the form that individuals must use when providing a withholding exemption certificate to their employer. 26 C.F.R. Section 31.3402(f)(5)-1(a) of the Regulations on Employment Taxes and Collection of Income Tax at Source.

Finally, there is no requirement that either the Form 1040 or the Form W-4 be published in the Federal Register. See Billman v. Commissioner, 83 T.C. 534 (1984); United States of America v. Justis, 84-2 U.S. Tax Cas. ¶ 9842 (1984); United States v. O'Ferrall, 84-2 U.S. Tax Cas. ¶ 9843 (1984).

We hope that this information is helpful. If you have any further questions, please call Michael Skeen at (202) 622-4910.

Sincerely,

Pamela W. Fuller
Senior Technical Reviewer
Administrative Provisions and
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