

of *Current year testing method* to read as follows:

§ 1.401(m)-5 Definitions.

* * * * *

Designated Roth contributions.

Designated Roth contributions means designated Roth contributions as defined in § 1.401(k)-1(f)(1).

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 9.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 10.** In § 602.101, paragraph (b) is amended by adding an entry for “1.401(k)-1” in numerical order to the table to read, in part, as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|--|-------------------------|
| * * * | * * |
| 1.401(k)-1 | 1545-1930 |
| * * * | * * |

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 13, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary for Tax Policy.

[FR Doc. 05-24495 Filed 12-30-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[TD 9239]

RIN 1545-BE00

Time for Filing Employment Tax Returns and Modifications to the Deposit Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations establishing the Employers' Annual Federal Tax Program (Form 944) (hereinafter referred to as the Form 944 Program). The

temporary regulations relate to sections 6011 and 6302 of the Internal Revenue Code (Code) concerning reporting and paying income taxes withheld from wages and reporting and paying taxes under the Federal Insurance Contributions Act (FICA) (collectively, employment taxes). These temporary regulations provide requirements for filing returns under FICA and returns of income tax withheld under section 6011 and §§ 31.6011(a)-1 and 31.6011(a)-4 of the Employment Tax Regulations.

These temporary regulations generally require employers who receive written notification from the Commissioner of their qualification for the Form 944 Program to file a Form 944, “Employer’s Annual Federal Tax Return,” rather than Form 941, “Employer’s Quarterly Federal Tax Return.” In addition, these temporary regulations provide requirements for employers to make deposits of employment taxes under section 6302 and § 31.6302-1. These temporary regulations permit employers in the Form 944 Program to deposit or remit their accumulated employment taxes annually with their Form 944 if they satisfy the provisions of the *de minimis* deposit rule, as modified. Also, these temporary regulations modify the lookback period used to determine an employer’s status as a monthly or semi-weekly depositor.

The portions of this document that are final regulations provide necessary cross-references to the temporary regulations as well as technical revisions. The technical revisions correct the table of contents in § 31.6302-0 and a cross-reference in § 31.6302-1(e)(2) and remove all references to an IRS district director, as that position no longer exists within the IRS. In addition, a cross-reference to the temporary regulations under section 6011 was added to the final regulations under section 6071, regarding the time for filing returns. The text of the temporary regulations also serves, in part, as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**. In addition to the provisions contained in these temporary regulations related to the Form 944 Program, the proposed regulations provide a modification to the *de minimis* deposit rule applicable to quarterly return filers.

DATES: *Effective Date:* These regulations are effective as of January 1, 2006.

Applicability Date: These regulations apply with respect to taxable years beginning on or after January 1, 2006. The applicability of §§ 31.6011-1T,

31.6011-4T, and 31.6302-1T will expire on or before December 30, 2008.

FOR FURTHER INFORMATION CONTACT:

Raymond Bailey, (202) 622-4910 (filing requirements under section 6011), or Audra Dineen, (202) 622-4940 (deposit requirements under section 6302) (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

These temporary regulations amend the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under section 6011 relating to the Federal employment tax return filing requirements and section 6302 relating to the employment tax deposit requirements.

Section 31.6011(a)-1 of the Employment Tax Regulations provides rules requiring employers to file returns quarterly to report FICA taxes. Section 31.6011(a)-4 of the Employment Tax Regulations requires that every person required to make a return of income tax withheld from wages pursuant to section 3402 shall make a return quarterly. Under these existing regulations, employers must file Form 941, “Employer’s Quarterly Federal Tax Return,” each quarter reporting FICA taxes and income tax withheld. Certain employers, however, file returns reporting FICA and income tax withheld annually, such as agricultural employers who file Form 943, “Employer’s Annual Federal Tax Return for Agricultural Employees.” Section 31.6011(a)-4(a)(3). Existing regulations also provide certain exceptions to the quarterly filing requirement for wages paid for domestic service.

Section 31.6302-1 of the Employment Tax Regulations provides rules for employers to make deposits of employment taxes. Under these rules, deposits of employment taxes reported on Form 941 are generally made either monthly or semi-weekly. In order for an employer to determine its status as a monthly or semi-weekly depositor, an employer determines the aggregate amount of employment taxes reported in the 12-month period ending the preceding June 30 (the lookback period). New employers are treated as having an employment tax liability of zero for any part of the lookback period before the date they started or acquired their business. All employers are subject to a “One-Day rule” requiring employment taxes to be deposited on the next banking day if the employer has accumulated \$100,000 or more of employment taxes. If an employer fails to make timely deposits of employment

taxes, then, absent reasonable cause, the employer will be subject to a penalty for failure to deposit under section 6656.

Section 31.6302-1(f)(4) (the *de minimis* deposit rule) provides that for quarterly and annual return periods, if the total amount of employment taxes for the return period is less than \$2,500 and that amount is deposited or remitted with a timely filed return for that return period, the amount will be deemed to have been timely deposited. Under existing regulations, employers who file annual employment tax returns (such as Form 943 for agricultural workers) are required to deposit employment taxes at least monthly if their annual employment tax liability equals or exceeds the *de minimis* deposit rule amount of \$2,500.

The purpose of these temporary regulations is to generally require employers who receive written notification of their qualification for the Form 944 Program to file an annual employment tax return, Form 944, rather than the quarterly Form 941 return. For these employers, Form 944 will replace Form 941. Form 944 will not replace Form 943 for agricultural employers or Schedule H, Form 1040, for employers with only household employees. Notwithstanding notification from the IRS of qualification for the Form 944 Program, employers who prefer to file Form 941 may be eligible to do so if they timely contact the IRS and satisfy one of the following two conditions: (1) The employer notifies the IRS of its preference to electronically file Forms 941 quarterly in lieu of filing Form 944 annually, or (2) the employer notifies the IRS that it anticipates its annual employment tax liability will exceed \$1,000. Employers otherwise meeting the criteria of the Form 944 Program will be permitted to file Form 941 only if they receive written notification from the IRS that their filing requirement has been changed to Form 941.

Under these temporary regulations, most employers who file Form 944 will be able to remit employment taxes annually with their returns rather than making monthly or semi-weekly deposits. Form 944 will generally be due January 31 of the year following the year for which the return is filed. If the employer timely deposits all accumulated employment taxes on or before January 31 of the year following the year for which the return is filed, then the employer will have 10 extra calendar days to file Form 944 pursuant to § 31.6071(a)-1(a).

The Form 944 Program is limited to employers meeting certain eligibility requirements described in the

temporary regulations. Currently, the Form 944 Program will be limited to employers whose estimated annual employment tax liability is \$1,000 or less. The IRS will send written notifications of qualification for the Form 944 Program to the employers that the IRS has estimated will have an annual employment tax liability of \$1,000 or less (based on the employers' prior Form 941 reporting history). As this estimate may not reflect recent or imminent changes in an employer's payroll, employers receiving notices may contact the IRS to discuss their qualification if they anticipate that their annual employment tax liability will exceed \$1,000. In addition, employers who do not receive a notice may contact the IRS to request to be in the Form 944 Program if they anticipate that their annual employment tax liability will be \$1,000 or less. New employers will receive notification of qualification for the Form 944 Program if they notify the IRS that they anticipate their annual employment tax liability will be \$1,000 or less. For example, new employers can indicate their estimated employment tax liability on their Form SS-4, Application for Employer Identification Number. The IRS and Treasury Department are considering expanding the Form 944 Program in the future and seek comments on the eligibility requirements and how best to change them.

If an employer is required to file Form 944 to report its employment tax liability for the current calendar year, the employer must file Form 944 even if the employer's actual employment tax liability for the current year exceeds the eligibility requirement threshold (\$1,000 under these regulations). If the Form 944 shows that the employer's employment tax liability exceeds the eligibility threshold, then the employer will be required to file Form 941 to report its employment tax liability in the future. The IRS will send written notification to the employer that the employer's filing requirement has changed.

For employers in the Form 944 Program during the current or previous calendar year, the temporary regulations also modify the lookback period for determining whether an employer is a monthly or semi-weekly depositor. This change is necessary because once an employer begins to file annual Form 944 returns, it may not be possible to determine the employer's aggregate amount of employment tax liability during the lookback period set forth in the existing regulations (12-month period ending the preceding June 30). In the event that an employer exceeds the

de minimis deposit amount that employer will need to determine whether it is a monthly or semi-weekly depositor. Consequently, these temporary regulations change the lookback period for employers in the Form 944 Program during the current, or preceding, calendar year. With respect to those employers, the lookback period is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2007 is calendar year 2005.

These temporary regulations also modify the *de minimis* deposit rules in certain situations to accommodate employers in the Form 944 Program during the current, or preceding, calendar year. These modifications are designed to assist employers who qualified for the Form 944 Program because their annual employment tax liability satisfied the eligibility requirements (\$1,000 or less), but ultimately had a total employment tax liability for the year exceeding the *de minimis* deposit amount (\$2,500 under existing regulations). The deposit rules in § 31.6302-1, including the *de minimis* deposit rule in § 31.6302-1(f)(4), apply to employers who file Form 944. Therefore, these employers will not have to make deposits and can pay their employment tax liability when they timely file their Forms 944 on or before January 31 only if their total employment tax liability for the year is less than \$2,500. Under the existing *de minimis* deposit rule, if an employer's employment tax liability equals or exceeds \$2,500 for the year, the employer would be required to deposit employment taxes and, absent reasonable cause, would be subject to the penalty for failure to deposit if the employer did not make timely deposits. Any employer that accumulates \$100,000 or more of employment taxes is subject the One-Day rule of § 31.6302-1(c)(3), and is required to deposit those taxes on the next banking day.

To assist employers whose tax liability exceeds the *de minimis* amount while in the Form 944 Program, these regulations modify the deposit rules in two ways. First, as employers who file Form 941 quarterly would be allowed a quarterly \$2,500 *de minimis* amount when they timely filed their quarterly returns instead of an annual *de minimis* amount, these regulations modify the *de minimis* deposit rule to mirror the treatment employers would have if they continued to file Form 941 quarterly instead of Form 944 annually. Thus, these regulations allow employers in the Form 944 Program to apply a quarterly *de minimis* deposit rule if they deposit

the employment taxes that accumulated during a quarter by the last day of the month following the close of the quarter (the day their quarterly Forms 941 would have been due). If an employer's employment tax liability for a quarter will not be *de minimis*, then the employer should make deposits either monthly or semi-weekly, depending on their deposit schedule, to avoid being subject to the failure-to-deposit penalty.

Second, because employers may not realize their prior year's employment tax liability exceeded the eligibility requirement (currently, \$1,000 or less) until they file Form 944 on January 31 of the year following the year for which the return is filed, these employers might not realize that they will be required to file Form 941 in the current year until after the date on which to timely make their January deposit obligation(s) for the current year. Therefore, these regulations allow employers who were in the Form 944 Program in the prior year to avoid a failure-to-deposit penalty during the first month they fail to deposit any required deposit(s), if they fully pay their January employment taxes by March 15 of the current year. For example, an employer who was in the Form 944 Program during 2006 and had an employment tax liability for 2006 of \$4,000 would not qualify for the Form 944 Program for 2007. Under these regulations, if the employer was a monthly depositor for 2007, it would be required to deposit the employment taxes it accumulated in January 2007 by February 15, 2007. If the employer does not deposit these accumulated taxes by

February 15, 2007, then it will be deemed to have timely deposited if it deposits them by March 15, 2007.

Lastly, these regulations contain final regulations that provide cross-references to the temporary regulations, correct and amend the table of contents in § 31.6302-0, correct a cross-reference in § 31.6302-1(e)(2), and revise the regulations under section 6302 to remove all references to an IRS district director, a position that no longer exists in the IRS.

These temporary regulations are part of the IRS's effort to reduce taxpayer burden by requiring certain employers to file employment tax returns annually rather than quarterly and allowing them, in most circumstances, to remit employment taxes annually with their return. By reducing the number of returns employers are required to file per year, the IRS will reduce each eligible employer's burden.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 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. For applicability of the Regulatory Flexibility Act, please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the

Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these final and temporary regulations are Raymond Bailey, Audra M. Dineen, and Emily B. Berndt of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects

26 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.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 31 are to be amended as follows:

PART 1—INCOME TAXES

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

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

§§ 1.6302-1 and 1.6302-2 [Amended]

■ **Par. 2.** Sections 1.6302-1 and 1.6302-2 are amended as follows:

| Section | Remove | Add |
|------------------------------------|---|-----|
| 1.6302-1(c) third sentence | to the district director (or director of a service center). | |
| 1.6302-1(c) fourth sentence | the district director or director of a service center with. | |
| 1.6302-2(b)(6) last sentence | to the district director or director of a service center. | |

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

■ **Par. 3.** The authority citation for part 31 continues to read, in part, as follows:

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

§§ 31.6302-1, 31.6302(c)-1, 31.6302(c)-2 and 31.6302(c)-3 [Amended]

■ **Par. 4.** In the list below, for each section indicated in the left column,

remove the language in the middle column and add the language in the right column:

| Section | Remove | Add |
|--|---|---------------------------------|
| 31.6302-1(e)(2) first sentence | § 31.6011(a)(4) or (5) | § 31.6011(a)-4 or 31.6011(a)-5. |
| 31.6302-1(k)(1) first sentence | District Director notice | Notice. |
| 31.6302-1(k)(1) first sentence | from the district director. | |
| 31.6302-1(k)(1) first sentence, second parenthetical | district director | Commissioner. |
| 31.6302(c)-1(a)(3) last sentence | to the district director or director of a service center. | |
| 31.6302(c)-1(b)(1) first sentence | from the district director. | |
| 31.6302(c)-1(b)(1) first sentence, third parenthetical | by the district director. | |
| 31.6302(c)-2(c) last sentence | to the district director or director of a service center. | |
| 31.6302(c)-3(b)(4) last sentence | to the district director or director of a service center. | |

■ **Par. 5.** Section 31.6011(a)–1 is amended by adding paragraph (a)(5) to read as follows:

§ 31.6011(a)–1 Returns under Federal Insurance Contributions Act.

(a) * * *

(5) [Reserved]. For further guidance, see § 31.6011(a)–1T(a)(5).

* * * * *

■ **Par. 6.** Section 31.6011(a)–1T is added to read as follows:

§ 31.6011(a)–1T Returns under Federal Insurance Contributions Act (temporary).

(a)(1) through (a)(4) [Reserved]. For further guidance, see § 31.6011(a)–1(a)(1) through (a)(4).

(5) *Employers in the Employers' Annual Federal Tax Program (Form 944)*—(i) *In general.* For taxable years beginning on or after January 1, 2006, employers notified of their qualification for the Employers' Annual Federal Tax Program (Form 944) are required to file Form 944, "Employer's Annual Federal Tax Return." The Internal Revenue Service (IRS) will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

(ii) *Qualification for the Employers' Annual Federal Tax Program (Form 944).* The IRS will send notifications of qualification for the Employers' Annual Federal Tax Program (Form 944) to employers with an estimated annual employment tax liability of \$1,000 or less. New employers who timely notify the IRS that they anticipate their estimated annual employment tax liability to be \$1,000 or less will be notified of their qualification for the Employers' Annual Federal Tax Program (Form 944). If an employer in the Employers' Annual Federal Tax Program (Form 944) reports an annual employment tax liability of more than \$1,000, the IRS will notify the employer that the employer's filing status has changed and the employer will be required to file the quarterly Form 941 for succeeding tax years.

(iii) *Exception to qualification for the Employers' Annual Federal Tax Program (Form 944).* Notwithstanding notification by the IRS of qualification for the Employers' Annual Federal Tax Program (Form 944), an employer may file Form 941 if—

(A) One of the following conditions applies—

(1) The employer anticipates that its annual employment tax liability will exceed \$1,000, or

(2) The employer prefers to electronically file Forms 941 quarterly in lieu of filing Form 944 annually;

(B) The employer contacts the IRS, pursuant to the instructions in the IRS' written notification, to request to file Form 941; and

(C) The IRS sends the employer a written notification that the employer's filing requirement has been changed to Form 941.

(b) through (f) [Reserved]. For further guidance, see § 31.6011(a)–1(b) through (f).

■ **Par. 7.** Section 31.6011(a)–4 is amended by adding paragraph (a)(4) to read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

(a) * * *

(4) [Reserved]. For further guidance, see § 31.6011(a)–4T(a)(4).

* * * * *

■ **Par. 8.** Section 31.6011(a)–4T is added to read as follows:

§ 31.6011(a)–4T Returns of income tax withheld (temporary).

(a)(1) through (a)(3) [Reserved]. For further guidance, see § 31.6011(a)–4(a)(1) through (a)(3).

(4) *Employers in the Employers' Annual Federal Tax Program (Form 944)*—(i) *In general.* For taxable years beginning on or after January 1, 2006, employers notified of their qualification for the Employers' Annual Federal Tax Program (Form 944) are required to file a Form 944, "Employer's Annual Federal Tax Return." The Internal Revenue Service (IRS) will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

(ii) *Qualification for the Employers' Annual Federal Tax Program (Form 944).* The IRS will send notifications of qualification for the Employers' Annual Federal Tax Program (Form 944) to employers with an estimated annual employment tax liability of \$1,000 or less. New employers who timely notify the IRS that they anticipate their estimated annual employment tax liability to be \$1,000 or less will be notified of their qualification for the Employers' Annual Federal Tax Program (Form 944). If an employer in the Employers' Annual Federal Tax Program (Form 944) reports an annual employment tax liability of more than \$1,000, the IRS will notify the employer that the employer's filing status has changed and that the employer will be

required to file the quarterly Form 941 for succeeding tax years.

(iii) *Exception to qualification for the Employers' Annual Federal Tax Program (Form 944).* Notwithstanding notification by the IRS of qualification for the Employers' Annual Federal Tax Program (Form 944), an employer may file Form 941 if—

(A) One of the following conditions applies—

(1) The employer anticipates that its annual employment tax liability will exceed \$1,000, or

(2) The employer prefers to electronically file Forms 941 quarterly in lieu of filing Form 944 annually;

(B) The employer contacts the IRS, pursuant to the instructions in the IRS' written notification, to request to file Form 941; and

(C) The IRS sends the employer a written notification that the employer's filing requirement has been changed to Form 941.

(b) through (c) [Reserved]. For further guidance, see § 31.6011(a)–4(b) through (c).

■ **Par. 9.** In § 31.6071(a)–1, the first sentence in paragraph (a)(1) is revised to read as follows:

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) * * *

(1) *Quarterly or annual returns.*

Except as provided in subparagraph (4) of this paragraph, each return required to be made under §§ 31.6011(a)–1 and 31.6011(a)–1T, in respect of the taxes imposed by the Federal Insurance Contributions Act (26 U.S.C. 3101–3128), or required to be made under §§ 31.6011(a)–4 and 31.6011(a)–4T, in respect of income tax withheld, shall be filed on or before the last day of the first calendar month following the period for which it is made. * * *

* * * * *

■ **Par. 10.** Section 31.6302–0 is amended by:

■ 1. Adding new entries for § 31.6302–1(b)(4), (c)(5) and (6), (d), (f)(4), and (f)(5).

■ 2. Removing the entries for § 31.6302–1(b)(5) and (i).

■ 3. Redesignating the entries for § 31.6302–1(h), (j), (k), and (m) as (i), (k), (m), and (n), respectively.

■ 4. Adding new entries for § 31.6302–1(h) and (j).

■ 5. Revising the entry for newly designated § 31.6302–1(k)(1).

■ 6. Adding entries for § 31.6302–1T.

The revision and additions read as follows:

§ 31.6302–0 Table of contents.

* * * * *

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(b) * * *

(4) Lookback period.

(i) [Reserved].

(ii) [Reserved].

(c) * * *

(5) [Reserved].

(6) [Reserved].

(d) * * *

Example 6 [Reserved].

* * * * *

(f) * * *

(4) De minimis rule.

(i) De minimis deposit rule for quarterly and annual return periods beginning on or after January 1, 2001.

(ii) [Reserved].

(iii) [Reserved].

(5) * * *

Example 3. [Reserved].

* * * * *

(h) Time and manner of deposit—deposits required to be made by electronic funds transfer.

(1) In general.

(2) Applicability of requirement.

(i) Deposits for return periods beginning before January 1, 2000.

(ii) Deposits for return periods beginning after December 31, 1999.

(iii) Voluntary deposits.

(3) Taxes required to be deposited by electronic funds transfer.

(4) Definitions.

(i) Electronic funds transfer.

(ii) Taxpayer.

(5) Exemptions.

(6) Separation of deposits.

(7) Payment of balance due.

(8) Time deemed deposited.

(9) Time deemed paid.

* * * * *

(j) Voluntary payments by electronic funds transfer.

(k) * * *

(1) Notice exception.

* * * * *

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

(a) through (b)(4)(ii) [Reserved].

(b)(4)(i) In general.

(ii) Adjustments.

(c)(1) through (c)(4) [Reserved].

(c)(5) Exception to the monthly and semi-weekly deposit rules for employers in the Employers' Annual Federal Tax Program (Form 944).

(c)(6) Extension of time to deposit rule for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.

(d) *Examples 1 through 5* [Reserved].

Example 6. Extension of time to deposit rule for employers in the Employer's Annual Federal Tax Program (Form 944) during the preceding year satisfied.

(e) through (f)(4)(ii) [Reserved].

(f)(4)(iii) De minimis deposit rule for employers currently in the Employers' Annual Federal Tax Program (Form 944).

(f)(5) *Examples 1 and 2* [Reserved].

Example 3. De minimis deposit rule for employers currently in the Employer's Annual Federal Tax Program (Form 944) satisfied.

(g) through (n) [Reserved].

■ **Par. 11.** Section 31.6302–1 is amended by:

■ 1. Revising paragraph (b)(4).

■ 2. Adding paragraphs (c)(5) and (6),

(d) *Example 6*, and (f)(5) *Example 3*.

■ 3. Removing paragraph (b)(5).

■ 4. Revising paragraph (f)(4).

The revisions and additions read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(b) * * *

* * * * *

(4) *Lookback period*—(i) [Reserved]. For further guidance, see § 31.6302–1T(b)(4)(i).

(ii) [Reserved]. For further guidance, see § 31.6302–1T(b)(4)(ii).

(c) * * *

* * * * *

(5) [Reserved]. For further guidance, see § 31.6302–1T(c)(5).

(6) [Reserved]. For further guidance, see § 31.6302–1T(c)(6).

(d) * * *

* * * * *

Example 6. For further guidance, see § 31.6302–1T(d) *Example 6*.

* * * * *

(f) * * *

* * * * *

(4) *De minimis rule*—(i) *De minimis deposit rule for quarterly and annual return periods beginning on or after January 1, 2001.* If the total amount of accumulated employment taxes for the return period is less than \$2,500 and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited.

(ii) [Reserved].

(iii) [Reserved]. For further guidance, see § 31.6302–1T(f)(4)(iii).

(5) * * *

* * * * *

Example 3. For further guidance, see § 31.6302–1T(f)(5) *Example 3*.

Par. 12. Section 31.6302–1T is added to read as follows:

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

(a) through (b)(3) [Reserved]. For further guidance, see § 31.6302–1(a) through (b)(3).

(4) *Lookback period*—(i) *In general.*

For employers who file Form 941, the lookback period for each calendar year is the twelve month period ended the preceding June 30. For example, the lookback period for calendar year 2006 is the period July 1, 2004 to June 30, 2005. The lookback period for employers who are in the Employers' Annual Federal Tax Program (Form 944), or were in it during the previous calendar year, is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2006 is calendar year 2004. In determining status as either a monthly or semi-weekly depositor, an employer should determine the aggregate amount of employment tax liabilities reported on its return(s) (Form 941 or Form 944) for the lookback period. New employers shall be treated as having employment tax liabilities of zero for any part of the lookback period before the date the employer started or acquired its business.

(ii) *Adjustments.* The tax liability shown on an original return for the return period shall be the amount taken into account in determining whether more than \$50,000 has been reported during the lookback period. In determining the aggregate employment taxes for each return period in a lookback period, an employer does not take into account any adjustments for the return period made on a supplemental return filed after the due date of the return. However, adjustments made on a Form 941c, Statement to Correct Information, attached to a Form 941 or Form 944 filed for a subsequent return period are taken into account in determining the employment tax liability for the subsequent return period.

(c)(1) through (c)(4) [Reserved]. For further guidance, see § 31.6302–1(c)(1) through (c)(4).

(5) *Exception to the monthly and semi-weekly deposit rules for employers in the Employers' Annual Federal Tax Program (Form 944).* Generally, an employer in the Employers' Annual Federal Tax Program (Form 944) may remit its accumulated employment taxes with its timely filed return and is not required to deposit under either the monthly or semi-weekly rules set forth in paragraphs (c)(1) and (2) of this section. An employer in the Employers'

Annual Federal Tax Program (Form 944) whose actual employment tax liability exceeds the eligibility threshold, as set forth in § 31.6011(a)–1T(a)(5)(ii) and § 31.6011(a)–4T(a)(4)(ii) will not qualify for this exception and should follow the deposit rules set forth in this section.

(6) *Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.* An employer who was in the Employers' Annual Federal Tax Program (Form 944) in the preceding year, but who is no longer qualified because its annual employment tax liability exceeded the eligibility threshold set forth in § 31.6011(a)–1T(a)(5)(ii) and § 31.6011(a)–4T(a)(4)(ii) in that preceding year, is required to deposit pursuant to § 31.6302–1. The employer will be deemed to have timely deposited its January deposit obligation(s) under § 31.6302–1(c)(1) through (4) for the first quarter of the year in which it must file quarterly using Form 941 if the employer deposits the amount of such deposit obligation(s) by March 15 of that year.

(d) *Examples 1 through 5* [Reserved]. For further guidance, see § 31.6302–1(d) *Examples 1 through 5*.

Example 6. Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year satisfied. F (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. F filed Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of \$3,000. Because F's annual employment tax liability for the 2006 taxable year exceeded \$1,000 (the eligibility requirement threshold), F may not file Form 944 for calendar year 2007. Based on F's liability during the lookback period (calendar year 2005, pursuant to § 31.6302–1T(b)(4)(i)), F is a monthly depositor for 2007. F accumulates \$1,000 in employment taxes during January 2007. Because F is a monthly depositor, F's January deposit obligation is due February 15, 2007. F does not deposit these accumulated employment taxes on February 15, 2007. F accumulates \$1,500 in employment taxes during February 2007. F's February deposit is due March 15, 2007. F deposits the \$2,500 of employment taxes accumulated during January and February on March 15, 2007. Pursuant to § 31.6302–1T(c)(6), F will be deemed to have timely deposited the employment taxes due for January 2007, and, thus, the IRS will not impose a failure-to-deposit penalty under section 6656 for that month.

(e) through (f)(4)(ii) [Reserved]. For further guidance, see § 31.6302–1(e) through (f)(4)(ii).

(iii) *De minimis deposit rule for employers currently in the Employers' Annual Federal Tax Program (Form 944).* An employer in the Employers'

Annual Federal Tax Program (Form 944) whose employment tax liability for the year equals or exceeds \$2,500 but whose employment tax liability for a quarter of the year is *de minimis* pursuant to § 31.6302–1(f)(4)(i) will be deemed to have timely deposited the employment taxes due for that quarter if the employer fully deposits the employment taxes accumulated during the quarter by the last day of the month following the close of that quarter. Employment taxes accumulated during the fourth quarter can be either deposited by January 31 or remitted with a timely filed return for the return period.

(5) *Examples 1 and 2* [Reserved]. For further guidance, see § 31.6302–1(f)(5) *Examples 1 and 2*.

Example 3. De minimis deposit rule for employers currently in the Employers' Annual Federal Tax Program (Form 944) satisfied. K (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. In the first quarter of 2006, K accumulates employment taxes in the amount of \$1,000. On April 28, 2006, K deposits the \$1,000 of employment taxes accumulated in the 1st quarter. K accumulates another \$1,000 of employment taxes during the second quarter of 2006. On July 31, 2006, K deposits the \$1,000 of employment taxes accumulated in the 2nd quarter. K's business grows and accumulates \$1,500 in employment taxes during the third quarter of 2006. On October 31, 2006, K deposits the \$1,500 of employment taxes accumulated in the 3rd quarter. K accumulates another \$2,000 in employment taxes during the fourth quarter. K files Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of \$5,500 and submits a check for the remaining \$2,000 of employment taxes with the return. K will be deemed to have timely deposited the employment taxes due for all of 2006, because K complied with the *de minimis* deposit rule provided in § 31.6302–1T(f)(4)(iii). Therefore, the IRS will not impose a failure-to-deposit penalty under section 6656 for any month of the year. Under this *de minimis* deposit rule, as K was required to file Form 944 for calendar year 2006, if K's employment tax liability for a quarter is *de minimis*, then K may deposit that quarter's liability by the last day of the month following the close of the quarter. This new *de minimis* rule allows K to have the benefit of the same quarterly *de minimis* amount K would have received if K filed Form 941 each quarter instead of Form 944 annually. Thus, as K's employment tax liability for each quarter was *de minimis*, K could deposit quarterly.

(g) through (n) [Reserved]. For further guidance, see § 31.6302–1(g) through (n).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 8, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary for Tax Policy.

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DEPARTMENT OF JUSTICE

Justice Management Division

28 CFR Part 16

[AAG/A Order No. 019–2005]

Privacy Act of 1974; Implementation

AGENCY: Justice Management Division, Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (DOJ), Justice Management Division (JMD), is exempting from certain subsections of the Privacy Act, a new Privacy Act system of records entitled “Federal Bureau of Investigation Whistleblower Case Files, JMD–023.” The system maintains all documents and evidence filed with the Director of the Office of Attorney Recruitment and Management (OARM), JMD, pertaining to requests for corrective action by employees of, or applicants for employment with, the Federal Bureau of Investigation (FBI) (or recommendations for corrective action by the Office of the Inspector General or Office of Professional Responsibility) brought under the FBI's whistleblower regulations.

Effective Date: This final rule is effective January 3, 2006.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The FBI's whistleblower regulations are at 28 CFR part 27; the specific role of the OARM is at 28 CFR part 27.4. This is the basis for the new system of records, “Federal Bureau of Investigation Whistleblower Case Files, JMD–023.” The DOJ/JMD is exempting this system of records from 5 U.S.C. 552a (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k).

On September 7, 2005 (70 FR 53133) a proposed rule was published in the