

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96-354), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104-121) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA believes that there is little or no interest in marketing these devices, and because this rule retains these devices as previously classified, the agency certifies that this final rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Paperwork Reduction Act of 1995

This rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

This final rule is issued under sections 513, 515(i), and 701(a) of the act (21 U.S.C. 360c, 360e(i), and 371(a)) and under authority of the Commissioner of Food and Drugs.

Dated: June 17, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8772]

RIN 1545-AU08

Magnetic Media Filing Requirements for Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) of the Internal Revenue Code (Code). These regulations affect persons filing information returns. These regulations prescribe magnetic media filing requirements for employers filing wage and tax statements for employees in Puerto Rico, U.S. Virgin Islands, Guam, and American Samoa. In addition, these regulations provide taxpayers with the guidance to comply with the changes made to the Code and to the administrative practices with respect to filing on magnetic media or in other machine-readable form.

DATES: *Effective date:* These regulations are effective June 30, 1998.

Applicability date: These regulations apply to information returns required to be filed on or after January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Donna Joy Welch, (202) 622-4910 (not a toll-free call), if the inquiry relates to provisions of these regulations. For further information, see the telephone numbers listed at the beginning of **SUPPLEMENTARY INFORMATION**.

SUPPLEMENTARY INFORMATION: If the inquiry relates to magnetic media filing and magnetic media specifications for Form W-2, Form 499R-2/W-2PR, Form W-2VI, Form W-2GU, and Form W-2AS, persons residing in the following locations should contact the corresponding Social Security Administration office (not a toll-free call):

Alabama (404) 562-1314 (Atlanta),
Alaska (206) 615-2125 (Seattle),
American Samoa (415) 744-4559 (San Francisco),
Arizona (415) 744-4559 (San Francisco),
Arkansas (501) 324-5466 (Little Rock),
California (415) 744-4559 (San Francisco),
Colorado (303) 844-2364 (Denver),
Connecticut (617) 565-2895 (Boston),
Delaware (215) 597-4632 (Philadelphia),

District of Columbia (215) 597-4632 (Philadelphia),
Florida (404) 562-1314 (Atlanta),
Georgia (404) 562-1314 (Atlanta),
Guam (415) 744-4559 (San Francisco),
Hawaii (415) 744-4559 (San Francisco),
Idaho (206) 615-2125 (Seattle),
Illinois (312) 575-4244 (Chicago),
Indiana (312) 575-4244 (Chicago),
Iowa (816) 936-5649 (Kansas City),
Kansas (816) 936-5649 (Kansas City),
Kentucky (404) 562-1314 (Atlanta),
Louisiana (504) 389-0426 (Baton Rouge),
Maine (617) 565-2895 (Boston),
Maryland (215) 597-4632 (Philadelphia),
Massachusetts (617) 565-2895 (Boston),
Michigan (312) 575-4244 (Chicago),
Minnesota (312) 575-4244 (Chicago),
Mississippi (404) 562-1314 (Atlanta),
Missouri (816) 936-5649 (Kansas City),
Montana (303) 844-2364 (Denver),
Nebraska (816) 936-5649 (Kansas City),
Nevada (415) 744-4559 (San Francisco),
New Hampshire (617) 565-2895 (Boston),
New Jersey (212) 264-5643 (New York),
New Mexico (505) 262-6048 (Albuquerque),
New York (212) 264-5643 (New York),
North Carolina (404) 562-1314 (Atlanta),
North Dakota (303) 844-2364 (Denver),
Ohio (312) 575-4244 (Chicago),
Oklahoma (405) 951-3007 (Oklahoma City),
Oregon (206) 615-2125 (Seattle),
Pennsylvania (215) 597-4632 (Philadelphia),
Puerto Rico (787) 766-5574 (San Juan),
Rhode Island (617) 565-2895 (Boston),
South Carolina (404) 562-1314 (Atlanta),
South Dakota (303) 844-2364 (Denver),
Tennessee (404) 562-1314 (Atlanta),
Texas-Central/South (210) 229-6433 (San Antonio),
Texas-Dallas County (214) 767-6777 (Dallas),
Texas-North (817) 978-3123 (Forth Worth),
Texas-Southeast (713) 718-3015 (Houston),
Texas-West (505) 262-6048 (Albuquerque),
Utah (303) 844-2364 (Denver),
Vermont (617) 565-2895 (Boston),
Virgin Islands (787) 766-5574 (San Juan),
Virginia (215) 597-4632 (Philadelphia),
Washington (206) 615-2125 (Seattle),
West Virginia (215) 597-4632 (Philadelphia),
Wisconsin (312) 575-4244 (Chicago),
and
Wyoming (303) 844-2364 (Denver).
If the inquiry relates to either the waiver procedure for all forms described

in these regulations or the magnetic media specifications for Forms 1042-S, 1098, 1099 series, 5498, 8027, or W-2G, persons should contact the Internal Revenue Service, Martinsburg Computing Center, P.O. Box 1359, Martinsburg, West Virginia 25402-1359; telephone (304) 263-8700 (not a toll-free call).

Background

Section 6011(e) authorizes the Secretary to prescribe regulations providing the standards for determining which returns must be filed on magnetic media or in other machine-readable form. Section 6011(e) was added to the Internal Revenue Code (Code) by section 319 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, 96 Stat. 610; and was amended by section 109 of the Interest and Dividend Tax Compliance Act of 1983, Pub. L. 98-67, 97 Stat. 383; and section 7713 of the Revenue Reconciliation Act of 1989 (1989 Act), Pub. L. 101-239, 103 Stat. 2394. As amended by the 1989 Act, section 6011(e)(2)(A) provides that the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year.

On October 10, 1996, final and temporary regulations (TD 8683) amending the existing regulations relating to the requirements for filing information returns on magnetic media or in other machine-readable form under section 6011(e) were published in the **Federal Register** (61 FR 53056). A notice of proposed rulemaking (REG-209803-95) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (61 FR 53161). These regulations were issued at the request of the Social Security Administration (the SSA) that regulations be issued to require employers required to file 250 or more Forms 499R-2/W-2PR (Withholding Statement (Puerto Rico)), Forms W-2VI (U.S. Virgin Islands Wage and Tax Statement), Forms W-2GU (Guam Wage and Tax Statement), and Forms W-2AS (American Samoa Wage and Tax Statement) to file these forms with the SSA on magnetic media. Filing these forms on magnetic media will reduce administrative burdens and will increase accurate processing of information. These regulations also reflect the changes made to the Code and to the administrative practices with respect to filing on magnetic media or in other machine-readable form.

One written comment responding to this notice was received. No public hearing was requested or held. After consideration of the comment, the

proposed regulations are adopted as modified and the corresponding temporary regulations are removed. The comment is discussed below.

Summary of Comment

The commentator suggests that the definition of *magnetic media* is too restrictive and that it does not encompass the use of additional technology that would facilitate the underlying reporting requirements. The commentator suggests that the definition is not broad enough to include the use of digital filing, specifically 2D barcode. Neither the IRS nor the SSA utilize digital filing technology at this time. However, the IRS and the SSA are committed to utilizing available technology that would facilitate the purpose of information reporting.

Therefore, the regulations make clear that the use of other media may be permitted in the future as provided in applicable regulations, revenue procedures, or publications.

Relationship to Treasury Decision 8734

Treasury Decision 8734 was published in the **Federal Register** on October 14, 1997 (62 FR 53387) and removed §§ 1.6045-1T and 1.6045-2T effective January 1, 1999. This document removes §§ 1.6045-1T and 1.6045-2T effective June 30, 1998. Because this document removes these sections at an earlier date, a document will be published later to amend TD 8734 to take this into account.

Special Analyses

It is hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on a determination that these regulations impose no additional reporting or recordkeeping requirement and prescribe only the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the requirements imposed by statute. Section 6011(e)(2)(A) provides that, in prescribing regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form, the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Consistent with the statutory provision, these regulations do not require information returns to be filed on magnetic media unless 250 or more returns are required to be filed. Further,

the economic impact caused by filing on magnetic media should be minimal. If a taxpayer's operations are computerized, reporting in accordance with the regulations should be less costly than filing on paper. If the taxpayer's operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the regulations provide that the IRS may waive the magnetic media filing requirements upon a showing of hardship. It is anticipated that the waiver authority will be exercised so as not to unduly burden taxpayers lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Donna Joy Welch, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are 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 * * *

§§ 1.6045-1T and 1.6045-2T [Removed]

Par. 2. Sections 1.6045-1T and 1.6045-2T, currently in effect, are removed.

Par. 3. Section 1.6045-1, currently in effect, is amended by:

1. Revising paragraph (l).
2. Removing the language “§ 1.6045-1T(l)” and adding “paragraph (l) of this section” in its place in paragraph (q).

The revision reads as follows:

§ 1.6045-1 Returns of information of brokers and barter exchanges.

* * * * *

(l) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011-2 of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (j) of this section.

* * * * *

Par. 4. Section 1.6045-2, currently in effect, is amended by:

1. Revising paragraph (g)(2).
2. Removing the language “§ 1.6045-2T(g)(2)” and adding “paragraph (g)(2) of this section” in its place in paragraph (i).

The revision reads as follows:

§ 1.6045-2 Furnishing statement required with respect to certain substitute payments.

* * * * *

(g) * * *

(2) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011-2 of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (g)(4) of this section.

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PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 continues to read in part as follows:

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

Par. 6. Section 301.6011-2 is amended by:

1. Revising paragraphs (a)(1), (b)(1), (b)(2), (c)(1) heading, (c)(1)(i), (c)(1)(iii), (c)(2), (d), (f), (g) heading, and (g)(2).
2. Adding paragraph (c)(1)(iv).
3. Removing paragraphs (c)(3) and (c)(4) and the last sentence of paragraph (e).

The revisions and addition read as follows:

§ 301.6011-2 Required use of magnetic media.

(a) * * *

(1) *Magnetic media.* The term *magnetic media* means any media permitted under applicable regulations, revenue procedures or publications, or, in the case of returns filed with the Social Security Administration, Social Security Administration publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media (such as electronic filing) specifically permitted under the applicable regulations, procedures, or publications.

* * * * *

(b) *Returns required on magnetic media.* (1) If the use of Form 1042-S, 1098, 1099 series, 5498, 8027, W-2G, or other form treated as a form specified in this paragraph (b)(1) is required by the applicable regulations or revenue procedures for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. Returns on magnetic media must be made in accordance with applicable revenue procedures or publications (see § 601.601(d)(2)(ii)(b) of this chapter). Pursuant to these procedures, the consent of the Commissioner of Internal Revenue (or other authorized officer or employee of the Internal Revenue Service) to a magnetic medium must be obtained by submitting Form 4419 (Application for Filing Information Returns Magnetically/Electronically) prior to submitting a return described in this paragraph (b)(1) on the magnetic medium.

(2) If the use of Form W-2 (Wage and Tax Statement), Form 499R-2/W-2PR (Withholding Statement (Puerto Rico)), Form W-2VI (U.S. Virgin Islands Wage and Tax Statement), Form W-2GU (Guam Wage and Tax Statement), Form W-2AS (American Samoa Wage and Tax Statement), or other form treated as a form specified in this paragraph (b)(2) is required for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. Returns described in this paragraph (b)(2) must be made in accordance with applicable Social Security Administration procedures or publications (which may be obtained from the local office of the Social Security Administration).

* * * * *

(c) *Exceptions—(1) Low-volume filers/250-threshold—(i) In general.* No person is required to file information returns on magnetic media unless the person is required to file 250 or more returns during the calendar year. Persons filing fewer than 250 returns during the calendar year may make the returns on the prescribed paper form, or, alternatively, such persons may make returns on magnetic media in accordance with paragraph (b) of this section.

* * * * *

(iii) *No aggregation.* Each type of information return described in paragraphs (b)(1) and (2) of this section is considered a separate return for purposes of this paragraph (c)(1). Therefore, the 250-threshold applies separately to each type of form required to be filed.

(iv) *Examples.* The provisions of paragraph (c)(1)(iii) of this section are illustrated by the following examples:

Example 1. For the calendar year ending December 31, 1998, Company X is required to file 200 returns on Form 1099-INT and 350 returns on Form 1099-MISC. Company X is not required to file Forms 1099-INT on magnetic media but is required to file Forms 1099-MISC on magnetic media.

Example 2. During the calendar year ending December 31, 1998, Company Y has 275 employees in Puerto Rico and 50 employees in American Samoa. Company Y is required to file Forms 499R-2/W-2PR on magnetic media but is not required to file Forms W-2AS on magnetic media.

Example 3. For the calendar year ending December 31, 1998, Company Z files 300 original returns on Form 1099-DIV and later files 70 corrected returns on Form 1099-DIV. Company Z is required to file the original returns on magnetic media. However, Company Z is not required to file the corrected returns on magnetic media because the corrected returns fall under the 250-threshold. See § 301.6721-1(a)(2)(ii).

(2) *Waiver.* (i) The Commissioner may waive the requirements of this section if hardship is shown in a request for waiver filed in accordance with this paragraph (c)(2)(i). The principal factor in determining hardship will be the amount, if any, by which the cost of filing the information returns in accordance with this section exceeds the cost of filing the returns on other media. Notwithstanding the foregoing, if an employer is required to make a final return on Form 941, or a variation thereof, and expedited filing of Forms W-2, Forms 499R-2/W-2PR, Forms W-2VI, Forms W-2GU, or Form W-2AS is required, the unavailability of the specifications for magnetic media filing will be treated as creating a hardship (see § 31.6071(a)-1(a)(3)(ii) of this chapter). A request for waiver must be

made in accordance with applicable revenue procedures or publications (see § 601.601(d)(2)(ii)(b) of this chapter). Pursuant to these procedures, a request for waiver should be filed at least 45 days before the due date of the information return in order for the Service to have adequate time to respond to the request for waiver. The waiver will specify the type of information return and the period to which it applies and will be subject to such terms and conditions regarding the method of reporting as may be prescribed by the Commissioner.

(ii) The Commissioner may prescribe rules that supplement the provisions of paragraph (c)(2)(i) of this section.

(d) *Paper form returns.* Returns submitted on paper forms (whether or not machine-readable) permitted under paragraph (c) of this section shall be in accordance with applicable Internal Revenue Service or Social Security Administration procedures.

* * * * *

(f) *Failure to file.* If a person fails to file an information return on magnetic media when required to do so by this section, the person is deemed to have failed to file the return. In addition, if a person making returns on a paper form under paragraph (c) of this section fails to file a return on machine-readable paper form when required to do so by this section, the person is deemed to have failed to file the return. See sections 6652, 6693, and 6721 for penalties for failure to file certain returns. See also section 6724 and the regulations under section 6721 for the specific rules and limitations regarding the penalty imposed under section 6721 for failure to file on magnetic media.

(g) *Effective dates.* * * *

(2) Paragraphs (a)(1), (b)(1), (b)(2), (c)(1)(i), (c)(1)(iii), (c)(1)(iv), (c)(2), (d), (e), and (f) of this section are effective for information returns required to be filed after December 31, 1996. For information returns required to be filed after December 31, 1989, and before January 1, 1997, see section 6011(e).

§ 301.6011-2T [Removed].

Par. 7. Section 301.6011-2T is removed.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: May 22, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98-16411 Filed 6-29-98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

(T.D. ATF-401; Ref: Notice No. 862)

RIN: 1512-AB64

Implementation of Public Law 104208, Omnibus Consolidated Appropriations Act of 1997 (96R-034P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary Rule (Treasury decision).

SUMMARY: This temporary rule implements the provisions of Public Law 104-208, the Omnibus Consolidated Appropriations Act of 1997, which amended the Gun Control Act of 1968. Specifically, the new law makes it unlawful for individuals who have been convicted of a "misdemeanor crime of domestic violence" to ship, transport, receive or possess firearms and ammunition, and prohibits sales or other dispositions of firearms and ammunition to such individuals. Further, the law requires individuals acquiring handguns from Federal firearms licensees under the Brady law to certify that they have not been convicted of such a crime. Additionally, it allows all Federal firearms licensees to engage in the business of dealing in curio or relic firearms with another licensee away from their licensed premises. This temporary rule will remain in effect until superseded by final regulations.

In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period following the publication date of this temporary rule.

EFFECTIVE DATE: The temporary regulations are effective June 30, 1998.

ADDRESS: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221.

FOR FURTHER INFORMATION CONTACT: Barry Fields, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW, Washington, DC 20226; (202-927-8210).

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1996, The Omnibus Consolidated Appropriations Act of 1997 (hereinafter, "the Act"), Pub. L.

104-208 (110 Stat. 3009), was enacted. The Act amended the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44. The amendments became effective upon the date of enactment. The new statutory provisions and the regulation changes necessitated by the Act are as follows:

(1) *Misdemeanor crime of domestic violence.* The Act amended 18 U.S.C. 922(g) to make it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive in or affecting commerce firearms or ammunition. It also amended 18 U.S.C. 922(d) to make it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a misdemeanor.

As defined in the GCA, a "misdemeanor crime of domestic violence" means an offense that: (1) Is a misdemeanor under Federal or State law; (2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; and (3) was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

This definition includes any offense that is classified as a misdemeanor under Federal or State law. (An example of a Federal misdemeanor is a conviction in an Indian Court established pursuant to 25 CFR part 11. Misdemeanor convictions in other Indian courts are not Federal misdemeanors because these courts are not considered Federal or State courts.) In addition, in States that do not classify offenses as misdemeanors, the definition includes any State or local offense punishable by imprisonment for a term of one year or less.

Accordingly, if State A has an offense classified as a State "domestic violence misdemeanor" that is punishable by up to five years imprisonment, it would be a misdemeanor crime of domestic violence as defined in the GCA.

If State B does not characterize offenses as misdemeanors, but has a domestic violence offense that is punishable by no more than one year imprisonment, this offense would be a misdemeanor crime of domestic violence as defined in the GCA. Therefore, a person convicted of such an offense would be subject to firearms disabilities under 18 U.S.C. 922(g)(9).