

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 301, and 602

[TD 8942]

RIN 1545-AY00

Electronic Payee Statements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under sections 6041 and 6051 relating to the voluntary electronic furnishing of payee statements on Forms W-2, "Wage and Tax Statement," and under section 6050S relating to the voluntary electronic furnishing of statements to individuals for whom Forms 1098-T, "Tuition Payments Statement," and Forms 1098-E, "Student Loan Interest Statement," are filed. The regulations will affect persons required by the foregoing Internal Revenue Code sections to furnish these statements (furnishers) who wish to furnish these statements electronically. The regulations will also affect individuals, principally employees, students, and borrowers (recipients), who consent to receive these statements electronically. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**. The temporary regulations do not affect the requirement to file copy

A of Forms W-2 with the Social Security Administration or the requirement to file Forms 1098-T or Forms 1098-E with the IRS.

DATES: Effective Date: These regulations are effective February 14, 2001.

Applicability Date: These regulations apply to statements to recipients required to be furnished under sections 6041(d), 6050S(d), and 6051 after December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Laura C. Nash at (202) 622-4910 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed, and pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1729. Responses to this collection of information are required if a person required by section 6050S(d) to furnish statements to recipients for whom Forms 1098-T or Forms 1098-E are filed, or a person required by sections 6041(d) and 6051 to furnish payee statements on Forms W-2, wishes to furnish the statements electronically using website technology.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the

collection of information displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to sections 6041(d) and 6050S(d), to the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) relating to section 6051, and to the Regulations on Procedure and Administration (26 CFR Part 301) relating to section 6724. Sections 6041(d) and 6050S(d) generally require certain persons to furnish a statement to a person with respect to whom an information return is required to be filed with the Federal government under sections 6041(a) and 6050S(a). Section 6051 requires certain persons to furnish a written statement to an employee regarding remuneration

paid by such person to the employee. The foregoing statements (specified statements) are generally required to be furnished to recipients on or before January 31 of the year following the calendar year for which the related information returns are required to be filed or in which the wages or other compensation was paid.

These temporary regulations state that furnishers may provide the written statements required by sections 6041(d), 6050S(d), and 6051 in an electronic format in lieu of a paper format. In addition, the temporary regulations provide furnishers with a method of furnishing these statements electronically using website technology. Furnishers who use this website technology and satisfy the requirements of the temporary regulations are treated as timely furnishing the statements under sections 6041(d), 6050S(d), and 6051.

The objective of the temporary regulations is to facilitate the voluntary electronic furnishing of these statements. This objective is consistent with the general goals of (i) section 2001 of the Internal Revenue Service Restructuring and Reform Act of 1998 to eliminate barriers, provide incentives, and use competitive forces to increase electronic filing over the next ten years and (ii) the Electronic Signatures in Global and National Commerce Act (E-SIGN Act) to facilitate voluntary use of certain electronic records. However, furnishers are not required to use the website technology described in the temporary regulations if they wish to continue to provide paper statements.

Thus, the temporary regulations do not require a furnisher to invest in new delivery systems or to meet any new legal requirements to furnish a statement.

A major impetus for publishing these temporary regulations was the large number of requests for published guidance from lenders, educational institutions, employers and other furnishers who want the option of delivering statements to recipients in an electronic format. In addition, the Information Reporting Program Advisory Committee of the Internal Revenue Service (IRPAC) and the Electronic Tax Administration Advisory Committee (ETAAC) also strongly support providing furnishers with the option of furnishing statements electronically.

At its May 11, 2000, public meeting, IRPAC advocated issuance of guidance permitting furnishers to use website technology to furnish statements electronically. The IRS consulted with IRPAC representatives to ensure that the temporary regulations provide furnishers with clear, practical, and administrable procedures for the voluntary electronic furnishing of the specified statements. The temporary regulations incorporate many of IRPAC's suggestions and those of other furnishers.

These temporary regulations also strike a balance between furnishers' desires to reduce costs and modernize business processes by furnishing statements electronically and the tax administration concern that employees, students, and borrowers must be able to access electronic statements so that they can

timely file accurate income tax returns. The consumer consent provisions of section 101(c)(1) of the E-SIGN Act strike a similar balance between businesses' desire to transmit records electronically and concerns about consumers' abilities to access and use those records. Therefore, these temporary regulations include disclosure provisions that are consistent with the Congressionally-approved consent provisions of the E-SIGN Act. These disclosure provisions will ensure that recipients will obtain the information they need to make an informed choice to receive the statements electronically and to access them timely.

The IRS and the Treasury Department invite comments about whether the provisions of these temporary regulations should apply to statements required to be furnished to recipients under other sections of the Internal Revenue Code. In addition, comments are invited about whether furnishers will use other technologies (such as e-mail) to furnish statements electronically and whether they need guidance on the conditions under which those statements will be considered timely furnished. Finally, comments are invited on whether the final regulations should prescribe standards to ensure confidentiality of taxpayer information posted on a website. Until final regulations are issued, the Treasury Department and the IRS expect that furnishers will take reasonable precautions to ensure confidentiality of taxpayer information.

Explanation of Provisions

This temporary regulation provides guidance under §§1.6041-2T(a)(5) (by cross-reference to the regulations under section 6051), 1.6050S-1T(a), 1.6050S-2T(a), and 31.6051-1T(j) regarding the electronic furnishing of specified statements. The temporary regulations provide that the written statements required by sections 6041(d), 6050S(d), and 6051 may be furnished in an electronic format. In addition, the temporary regulations provide that a furnisher that complies with the consent, required disclosures, format, posting, notice, and retention provisions of the temporary regulations is treated as timely furnishing the specified statements under sections 6041(d), 6050S(d), and 6051.

Consent

The temporary regulations provide that a recipient must have affirmatively consented to receive the statement electronically and must not have withdrawn that consent before the statement is furnished. The consent or, alternatively, its confirmation must be made electronically in a manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. A furnisher must take certain actions, including obtaining from the recipient a new electronic consent or confirmation of consent to receive the statement electronically, if a change in the hardware or software needed to access a statement creates a material risk that the recipient will not be able to access the statement.

Required Disclosures

Prior to or at the time a recipient consents to receive a statement electronically, the furnisher must provide a clear and conspicuous statement to the recipient containing certain disclosures. These required disclosures are similar to the consumer consent provisions in the E-SIGN Act and, like those provisions, require a furnisher to inform a recipient about, for example, the scope and duration of a consent to receive an electronic statement, the ability to revoke that consent, the hardware and software required to access, print, and retain an electronic statement, and the ability to obtain a paper statement.

Format

The temporary regulations require that the electronic version of a statement furnished to a recipient contain all required information and comply with applicable revenue procedures relating to substitute statements.

Posting

The temporary regulations generally require that the furnisher post the statements on a website accessible to recipients on or before January 31 of the year following the calendar year to which the statements relate.

Notice

The temporary regulations generally require the furnisher to notify a recipient that the statement is posted on a website on or before January 31 of the year following the calendar year to which the statement relates. The notice may be delivered by

mail, electronic mail, or in person and must provide instructions to the recipient on how to access and print the statement. If a furnisher later posts corrected statements on the website, the furnisher must notify the recipients of that posting within 30 days after the posting.

Retention

The temporary regulations generally require the furnisher to maintain access to the statements on the website through October 15 of the year following the calendar year to which the statements relate. In addition, the furnisher generally must maintain access to corrected statements that are posted on the website through October 15 of the year following the calendar year to which the statements relate or for 90 days after that posting, whichever is later.

Special Analyses

It has been determined that this temporary regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations.

Because no preceding notice of proposed rulemaking is required for this temporary regulation, the provisions of the Regulatory Flexibility Act do not apply. However, an initial Regulatory Flexibility Analysis was prepared for the proposed regulations published elsewhere in this issue of the Federal

Register. Pursuant to section 7805(f) of the Internal Revenue Code, that notice of proposed rulemaking will be 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 temporary regulations is Eric Lucas, formerly of the Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

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

26 CFR Part 301

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

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.6041-2T also issued under 26 U.S.C. 6041(d). ***
Section 1.6050S-1T also issued under 26 U.S.C. 6050S(g).
Section 1.6050S-2T also issued under 26 U.S.C. 6050S(g).***

Par. 2. Section 1.6041-2T is added to read as follows:

§1.6041-2T Return of information as to payments to employees (temporary).

(a)(1) through (4) [Reserved]

(5) Statement for employees. An employer that is required under §1.6041-2(a) to file Form W-2 with respect to an employee is also required under section 6041(d) and 6051 to furnish a written statement to the employee. This written statement must be furnished on Form W-2 in accordance with section 6051 and the regulations.

(b) and (c). For further guidance, see §1.6041-2(b) and (c).

Par. 3. Sections 1.6050S-1T and 1.6050-2T are added to read as follows:

§1.6050S-1T Information reporting for payments and reimbursements or refunds of qualified tuition and related expenses (temporary).

(a) Electronic furnishing of statements--(1) In general. A person required by section 6050S(d) to furnish a written statement (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the statement in an

electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (7) of this section is treated as furnishing the statement in a timely manner.

(2) Consent--(i) In general. The recipient must have affirmatively consented to receive the statement in an electronic format and must not have withdrawn that consent before the statement is furnished. The consent must be made electronically in a manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a different manner (for example, in an e-mail or in a paper document) if it is confirmed electronically in the manner described in the preceding sentence.

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

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

(iii) Example. The following example illustrates the rules of this paragraph (a)(2):

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

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

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

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

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

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

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

(B) The furnisher will confirm the withdrawal in writing (either electronically or on paper); and

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

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

(vii) Updating information. The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient.

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

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

(5) Posting. The furnisher must on or before January 31 of the year following the calendar year to which the statement relates (or such other date permitted or required for furnishing the statement) post it on a website accessible to the recipient.

(6) Notice--(i) In general. The furnisher must on or before January 31 of the year following the calendar year to which the statement relates (or such other date permitted or required for furnishing the statement) notify the recipient that the statement is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement should be on the subject line of the electronic mail and sent with high importance.

(ii) Undeliverable electronic address. If an electronic notice described in paragraph (a)(6)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) Corrected statements. A furnisher must notify a recipient that it has posted corrected statements on a website within 30 days of such posting in the manner described in paragraph (a)(6)(i) of this section. This notice must be furnished by mail or in person if--

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

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

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

(b) Effective date. This section applies to statements required to be furnished under section 6050S(d) after December 31, 2000.

§1.6050S-2T Information reporting for payments of interest on qualified education loans (temporary).

(a) Electronic furnishing of statements--(1) In general. A person required by section 6050S(d) to furnish a written statement (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (7) of this section is treated as furnishing the statement in a timely manner.

(2) Consent--(i) In general. The recipient must have affirmatively consented to receive the statement in an electronic format and must not have withdrawn that consent before the statement is furnished. The consent must be made electronically in a manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a different manner (for example, in an e-mail or in a paper document) if it is confirmed electronically in the manner described in the preceding sentence.

(ii) Change in hardware or software requirements. If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the

revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iii) Example. The following example illustrates the rules of this paragraph (a)(2):

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

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

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

(iii) Scope and duration of consent. The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A)

of this section or only to the statement required to be furnished on or before the January 31 immediately following the date on which the consent is given.

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

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

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

(B) The furnisher will confirm the withdrawal in writing (either electronically or on paper); and

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

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

(vii) Updating information. The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient.

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

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

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

(5) Posting. The furnisher must on or before January 31 of the year following the calendar year to which the statement relates (or such other date permitted or required for furnishing the statement) post it on a website accessible to the recipient.

(6) Notice--(i) In general. The furnisher must on or before January 31 of the year following the calendar year to which the statement relates (or such other date permitted or required for furnishing the statement) notify the recipient that the statement is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX DOCUMENT RETURN AVAILABLE." If the notice is provided by electronic mail, the foregoing statement should be on the subject line of the electronic mail and sent with high importance.

(ii) Undeliverable electronic address. If an electronic notice described in paragraph (a)(6)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the

recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) Corrected statements. A furnisher must notify a recipient that it has posted corrected statements on a website within 30 days of such posting in the manner described in paragraph (a)(6)(i) of this section. This notice must be furnished by mail or in person if--

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

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

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

(b) Effective date. This section applies to statements required to be furnished under section 6050S(d) after December 31, 2000.

Par. 4. The authority citation for part 31 is amended to read in part as follows:

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

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

Par. 5. Section 31.6051-1T is added to read as follows:

§31.6051-1T Statements for employees (temporary).

(a) through (i) [Reserved]. For further guidance, see §31.6051-1(a) through (i).

(j) Electronic furnishing of statements--(1) In general. A person required by section 6051 to furnish a written statement on Form W-2 (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the Form W-2 in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (j)(2) through (7) of this section is treated as furnishing the Form W-2 in a timely manner.

(2) Consent--(i) In general. The recipient must have affirmatively consented to receive the Form W-2 in an electronic format and must not have withdrawn that consent before the Form W-2 is furnished. The consent must be made electronically in a manner that reasonably demonstrates that the recipient can access the Form W-2 in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a different manner (for example, in an e-mail or in a paper document) if it is confirmed electronically in the manner described in the preceding sentence.

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

(iii) Example. The following example illustrates the rules of this paragraph (j)(2):

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

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

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

(iii) Scope and duration of consent. The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to Forms W-2 furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (j)(3)(v)(A) of this section or only to the Form W-2 required to be furnished on or before the January 31 immediately following the date on which the consent is given.

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

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

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

(B) The furnisher will confirm the withdrawal in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a Form W-2 that was furnished electronically in the manner described in this paragraph (j) before the withdrawal of consent is furnished.

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

(vii) Updating information. The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient.

(viii) Hardware and software requirements. The recipient must be provided with a description of the hardware and software required to access, print, and retain the Form W-2, and the date when the Form W-2 will no longer be available on the website. The recipient must be informed that the Form W-2 may be required to be printed and attached to a Federal, State, or local income tax return.

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

(5) Posting. The furnisher must on or before January 31 of the year following the calendar year to which the Form W-2 relates (or such other date permitted or required for furnishing the Forms W-2) post it on a website accessible to the recipient.

(6) Notice--(i) In general. The furnisher must on or before January 31 of the year following the calendar year to which the Form W-2 relates (or such other date permitted or required for

furnishing the Form W-2) notify the recipient that the Form W-2 is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement should be on the subject line of the electronic mail and sent with high importance.

(ii) Undeliverable electronic address. If an electronic notice described in paragraph (j)(6)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) Corrected Forms W-2. A furnisher must notify a recipient that it has posted corrected Forms W-2 on a website within 30 days of such posting in the manner described in paragraph (j)(6)(i) of this section. This notice must be furnished by mail or in person if--

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

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

(7) Retention. The furnisher must maintain access to the Forms W-2 on the website through October 15 of the year following the calendar year to which the Forms W-2 relate (or the first

business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected Forms W-2 that are posted on the website through October 15 of the year following the calendar year to which the Forms W-2 relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(b) Effective date. Paragraph (j) of this section applies to Forms W-2 required to be furnished under section 6051 after December 31, 2000.

PART 301--PROCEDURE AND ADMINISTRATION

Par. 6. The authority citation for part 301 continues to read in part as follows:

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

Par. 7. Section 301.6724-1T is added to read as follows:

§301.6724-1T Reasonable cause (temporary).

(a) through (d)(2) [Reserved]. For further information, see §301.6724-1 (a) through (d)(2).

(d)(3) Special rule for furnishers of electronic statements.

A filer may seek a waiver for reasonable cause pursuant to §301.6724-1(c)(6), for failing to timely furnish a statement in the following situation. If the recipient of the statement withdraws a consent to receive the statement in an electronic format, the filer will be deemed to have acted in a responsible manner under §301.6724-1(d) if the filer furnishes a paper

statement on or before the date 30 days after the date the withdrawal of consent is received.

(e) through (n) [Reserved]. For further guidance, see §301.6724-1(e) through (n).

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

Par. 8. The authority citation for part 602 continues to read as follows:

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

Par. 9. In §602.101, paragraph (b) is amended by adding entries to the table in numerical order to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6041-2T	1545-1729
* * * * *	
1.6050S-1T	1545-1729
1.6050S-2T	1545-1729
* * * * *	
31.6051-1T	1545-1729
* * * * *	

Robert E. Wenzel

Deputy Commissioner of Internal Revenue

Approved: January 10, 2001

Jonathan Talisman
Assistant Secretary of the Treasury