

readable form. The text of these temporary regulations also serves as the text of the proposed regulations set forth in REG-209803-95, page 14.

**EFFECTIVE DATE:** These regulations are effective on January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Donna Welch, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224; telephone (202) 622-4910 (not a toll-free call), if the inquiry relates to provisions of these regulations. For further information, see telephone numbers listed at the beginning of SUPPLEMENTARY INFORMATION.

**SUPPLEMENTARY INFORMATION:** For persons residing in the following locations, contact the following offices of the Social Security Administration (not a toll-free call), 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:

Alabama (404) 331-2587 (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) 331-2587 (Atlanta),  
Georgia (404) 331-2587 (Atlanta),  
Guam (415) 744-4559 (San Francisco),  
Hawaii (415) 744-4559 (San Francisco),  
Idaho (206) 615-2125 (Seattle),  
Illinois (312) 353-6717 (Chicago),  
Indiana (312) 353-6717 (Chicago),  
Iowa (816) 426-2095 (Kansas City),  
Kansas (816) 426-2095 (Kansas City),  
Kentucky (404) 331-2587 (Atlanta),  
Louisiana (504) 389-0426 (Baton Rouge),  
Maine (617) 565-2895 (Boston),  
Maryland (215) 597-4632 (Philadelphia),

Massachusetts (617) 565-2895 (Boston),  
Michigan (312) 353-6717 (Chicago),  
Minnesota (312) 353-6717 (Chicago),  
Mississippi (404) 331-2587 (Atlanta),  
Missouri (816) 426-2095 (Kansas City),  
Montana (303) 844-2364 (Denver),  
Nebraska (816) 426-2095 (Kansas City),  
Nevada (415) 744-4559 (San Francisco),  
New Hampshire (617) 565-2895 (Boston),  
New Jersey (212) 264-0258 (New York),  
New Mexico (505) 262-6048 (Albuquerque),  
New York (212) 264-0258 (New York),  
North Carolina (404) 331-2587 (Atlanta),  
North Dakota (303) 844-2364 (Denver),  
Ohio (312) 353-6717 (Chicago),  
Oklahoma (405) 951-3007 (Oklahoma City),  
Oregon (206) 615-2125 (Seattle),  
Pennsylvania (215) 597-4632 (Philadelphia),  
Puerto Rico (809) 766-5574 (San Juan),  
Rhode Island (617) 565-2895 (Boston),  
South Carolina (404) 331-2587 (Atlanta),  
South Dakota (303) 844-2364 (Denver),  
Tennessee (404) 331-2587 (Atlanta),  
Texas-Central/South (210) 229-6433 (San Antonio),  
Texas-Dallas County (214) 767-6777 (Dallas),  
Texas-North (817) 334-3123 (Forth Worth),  
Texas-Southeast (713) 653-4722 (Houston),  
Texas-West (505) 262-6048 (Albuquerque),  
Utah (303) 844-2364 (Denver),  
Vermont (617) 565-2895 (Boston),  
Virgin Islands (809) 766-5574 (San Juan),  
Virginia (215) 597-4632 (Philadelphia),  
Washington (206) 615-2125 (Seattle),  
West Virginia (215) 597-4632 (Philadelphia),  
Wisconsin (312) 353-6717 (Chicago),  
and  
Wyoming (303) 844-2364 (Denver).  
Magnetic Media Reporting, Internal Revenue Service, Martinsburg Computing Center, P.O. Box 1359, Martinsburg,

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## Section 6011.—General Requirement of Return, Statement, or List

26 CFR 301.6011-2T: Required use of magnetic media (temporary).

T.D. 8683

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 301

#### Magnetic Media Filing Requirements for Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains 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 new 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-

West Virginia 25401-1359; telephone (304) 263-8700 (not a toll-free call), if the inquiry relates to either the waiver procedure for all forms described in these regulations or to the magnetic media specifications for Forms 1042-S, 1098, 1099 series, 5498, 8027, or W-2G.

### *Background*

This document contains amendments to the Procedure and Administration Regulations (26 CFR Part 301) relating to the requirement under section 6011(e) to file information returns on magnetic media or in other machine-readable form. 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) of the Internal Revenue Code (Code) was added to the Code by section 319 of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248, 96 Stat. 610; and was amended by section 109 of the Interest and Dividend Tax Compliance Act of 1983, Public Law 98-67, 97 Stat. 383; and section 7713 of the Revenue Reconciliation Act of 1989 (1989 Act), Public Law 101-239, 103 Stat. 2394.

This document also contains conforming amendments to the Income Tax Regulations (26 CFR Part 1) relating to returns of information of brokers and barter exchanges required under section 6045.

### *Explanation of Provisions*

In order to reduce its administrative burden and increase accurate processing of information, the Social Security Administration (the SSA) requested that regulations be issued to require Forms 499R-2/W-2PR (Withholding Statement), 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 be filed on magnetic media. In Notice 95-64 (1995-2 C.B. 342), the IRS informed taxpayers of its intention to issue regulations requiring these forms to be filed on magnetic media with the SSA and invited public comment on the matter. The Notice stated that the requirement would be effective for wage and tax statements required to be filed after December 31, 1996. No comments were received in response to the Notice. These regulations expand the wage and

tax statements required to be filed on magnetic media with the SSA to include Form 499R-2/W-2PR, Form W-2VI, Form W-2GU, and Form W-2AS.

In addition, these regulations reflect the current provisions of section 6011(e). 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 (250-threshold). Consistent with the provisions of section 6011(e)(2)(A), these regulations provide that no person is required to file on magnetic media unless the person is required to file 250 or more returns during the calendar year. Further, these regulations clarify that each type of information return is considered a separate return, and the 250-threshold applies separately to each type of form required to be filed.

In addition, these regulations reflect the current administrative practices with respect to filing information returns on magnetic media or in other machine-readable form. The IRS and the SSA now permit filing on tape cartridge but no longer permit filing on cassette. Further, the IRS currently permits electronic filing as an alternative method of filing, and the SSA is considering permitting electronic filing in the future. Thus, under these regulations, magnetic media generally include magnetic tape, tape cartridge, diskette, and other media (such as electronic filing) specifically permitted under the applicable regulations, procedures, or publications.

Further, these regulations reflect the current procedures for obtaining consent and authorization from the IRS before filing on magnetic media. These regulations refer to Form 4419 (Application for Filing Information Returns Magnetically/Electronically), which must be filed by a transmitter with the IRS before filing Forms 1042-S, 1098, 1099 series, 5498, 8027, and W-2G on magnetic media or electronically. These regulations also remove any reference to obtaining consent from the SSA because it no longer requires consent or authorization before filing on magnetic media.

Under the existing regulations, a taxpayer may request a hardship waiver from the magnetic media filing requirements. The principal factor for demonstrating hardship is the amount, if any, by which the cost of filing on magnetic media exceeds the cost of filing on paper. The existing regulations provide that, if an employer is required to make

a final return on Form 941, or a variation thereof, and expedited filing of Form W-2 is required, the unavailability of the specifications for magnetic media filing will be treated as creating a hardship, and a waiver of the magnetic media filing requirements for the expedited Forms W-2 may be granted. This document extends this waiver provision to expedited filing of Forms 499R-2/W-2PR, Forms W-2VI, Forms W-2GU, and Forms W-2AS.

### *Special Analyses*

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.

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 only prescribe 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 existing 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.

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 author of these regulations is Donna 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.

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#### 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 \* \* \*

Par. 2. Section 1.6045-1 is amended by adding a sentence at the end of paragraph (q) to read as follows:

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

\* \* \* \* \*

(q) \* \* \* With regard to paragraph (l) of this section, see section 6011(e) of the Internal Revenue Code for information returns required to be filed after December 31, 1989, and before January 1, 1997; and see § 1.6045-1T(l) for information returns required to be filed after December 31, 1996.

Par. 3. Section 1.6045-1T is added to read as follows:

§ 1.6045-1T *Returns of information of brokers and barter exchanges (temporary).*

(a) through (k) [Reserved] For further guidance, see § 1.6045-1(a) through (k).

(l) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011-2T of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue

hardship. For information returns filed prior to January 1, 1997, see § 1.6045-1(l).

Par. 4. Section 1.6045-2 is amended by adding a sentence at the end of paragraph (i) to read as follows:

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

\* \* \* \* \*

(i) \* \* \* With regard to paragraph (g)(2) of this section, see section 6011(e) of the Internal Revenue Code for information returns required to be filed after December 31, 1989, and before January 1, 1997; and see § 1.6045-2T(g)(2) for information returns required to be filed after December 31, 1996.

Par. 5. Section 1.6045-2T is added to read as follows:

§ 1.6045-2T *Furnishing statement required with respect to certain substitute payments (temporary).*

(a) through (g)(1) [Reserved] For further guidance, see § 1.6045-2(a) through (g)(1).

(g)(2) *Use of magnetic media.* For information returns filed after December 31, 1996, see § 301.6011-2T of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. For information returns filed prior to January 1, 1997, see § 1.6045-2(g)(2).

#### PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.6011-2T is added to read as follows:

§ 301.6011-2T *Required use of magnetic media (temporary).*

This section applies to 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) of the Internal Revenue Code and § 301.6011-2.

(a) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media.* The term *magnetic media* means any magnetic media permitted under applicable regulations,

revenue procedures, 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.

(2) and (3) [Reserved] For further guidance, see § 301.6011-2(a)(2) and (3).

(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), 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).

(3) [Reserved] For further guidance, see § 301.6011-2(b)(3).

(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.

(ii) [Reserved] For further guidance, see § 301.6011-2(c)(1)(ii).

(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, 1996, 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, 1996, 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, 1996, 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). 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.

(c)(3) and (4) [Reserved]. For further guidance, see § 301.6011-2(c)(3) and (4).

(d) and (e) [Reserved] For further guidance, see § 301.6011-2(d) and (e).

(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 date.* (1) [Reserved] For further guidance, see § 301.6011-2(g)(1).

(2) Paragraphs (a)(1), (b)(1) and (2), (c)(1)(i), (iii), and (iv), (c)(2), 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) of the Internal Revenue Code and § 301.6011-2.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Approved September 10, 1996.

Donald C. Lubick,  
*Acting Assistant Secretary  
of the Treasury.*

(Filed by the Office of the Federal Register on October 9, 1996, 8:45 a.m., and published in the issue of the Federal Register for October 10, 1996, 61 F.R. 53058)