

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking

#### FUTA Taxation of Amounts Under Employee Benefit Plans

EE-55-95

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 3306(r)(2) of the Internal Revenue Code, relating to when amounts deferred under or paid from certain nonqualified deferred compensation plans are taken into account as "wages" for purposes of the employment taxes imposed by the Federal Unemployment Tax Act (FUTA). The regulations provide guidance to taxpayers who must comply with section 3306(r)(2), which was added to the Code by section 324 of the Social Security Amendments of 1983.

DATES: Written comments and requests for a public hearing must be received by April 24, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (EE-55-95), Room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (EE-55-95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David N. Pardys, (202) 622-4606 (not a toll-free number), concerning the regulations, and Michael Slaughter, (202) 622-7190 (not a toll-free number), concerning submissions.

#### SUPPLEMENTARY INFORMATION:

##### *Background*

This document contains proposed amendments to the Employment Tax

Regulations (26 CFR part 31) under section 3306(r)(2) of the Internal Revenue Code of 1986 (the "Code") relating to the employment tax treatment of amounts deferred under or paid from certain nonqualified compensation plans. These amendments are proposed to reflect the statutory changes made by section 324 of the Social Security Amendments of 1983 (the "1983 Amendments"), which added section 3306(r)(2) to the Code, and section 2662(f)(2) of the Deficit Reduction Act of 1984 (DEFRA), which amended section 324 of the 1983 Amendments.

##### *Explanation of Provisions*

These proposed regulations provide guidance under section 3306(r)(2), relating to when amounts deferred under or paid from certain nonqualified deferred compensation plans are taken into account as wages for FUTA purposes. These rules are substantially similar to the rules applicable to the FICA (Federal Insurance Contributions Act) tax treatment of such amounts deferred under section 3121(v)(2). Thus, these regulations cross-reference the proposed regulations under section 3121(v)(2).

##### *Special Analyses*

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 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) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

##### *Comments and Requests for a Public Hearing*

Before these proposed regulations are adopted as final regulations, consideration will be given to any written

comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

##### *Drafting Information*

The principal author of these regulations is David N. Pardys, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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##### *Proposed Amendments to the Regulations*

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

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

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. Section 31.3306(r)(2)-1 is added to read as follows:

##### *§ 31.3306(r)(2)-1 Treatment of amounts deferred under certain nonqualified deferred compensation plans.*

(a) *In general.* Section 3306(r)(2) provides a special timing rule for the tax imposed by section 3301 with respect to any amount deferred under a nonqualified deferred compensation plan. Section 31.3121(v)(2)-1<sup>1</sup> contains rules relating to when amounts deferred under certain nonqualified deferred compensation plans are wages for purposes of sections 3121(v)(2), 3101,

<sup>1</sup>This section appears as a notice of proposed rulemaking published elsewhere in this issue of the *Federal Register*.

and 3111. Those rules also apply to the special timing rule of section 3306(r)(2). For purposes of applying those rules to section 3306(r)(2) and this paragraph (a), references in those rules to the Federal Insurance Contributions Act are considered references to the Federal Unemployment Tax Act (26 U.S.C. 3301 et seq.), references to FICA are considered references to FUTA, references to section 3101 or 3111 are considered references to section 3301, references to section 3121(v)(2) are considered references to section 3306(r)(2), references to section 3121(a), 3121(a)(5), and 3121(a)(13) are considered references to sections 3306(b), 3306(b)(5), and 3306(b)(10), respectively, and references to §31.3121(a)-2(a) are considered references to §31.3301-4.

(b) *Effective dates and transition rules.* Except as otherwise provided, section 3306(r)(2) applies to remuneration paid after December 31, 1984. Section 31.3121(v)(2)-2<sup>2</sup> contains effective date rules for certain remuneration paid after December 31, 1983, for purposes of section 3121(v)(2). Those rules also apply to section 3306(r)(2). For purposes of applying those rules to section 3306(r)(2) and this paragraph (b), references to section 3121(v)(2) are considered references to section 3306(r)(2), and references to section 3121(a)(2), 3121(a)(3), or 3121(a)(13) are considered references to section 3306(b)(2), 3306(b)(3), or 3306(b)(10), respectively. In addition, references to section 324(d)(1) of the Social Security Amendments of 1983 are considered references to section 324(d)(2) of the Social Security Amendments of 1983, and references to §31.3121(v)(2)-1 are considered references to paragraph (a) of this section. In addition, the rules of §31.3121(v)(2)-2 shall apply to this paragraph by—

(1) References to “December 31, 1983” are considered references to “December 31, 1984”;

(2) References to “before 1984” are considered references to “before 1985”;

(3) References to “Federal Insurance Contributions Act” are considered

references to “Federal Unemployment Tax Act”; and

(4) References to “FICA” are considered references to “FUTA”.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

(Filed by the Office of the Federal Register on January 19, 1996, 12:52 p.m., and published in the issue of the Federal Register for January 25, 1996, 61 F.R. 2214)

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<sup>2</sup>This section appears as a notice of proposed rulemaking published elsewhere in this issue of the *Federal Register*.