

Notice of Proposed Rulemaking

FICA and FUTA Taxation of Amounts Under Employee Benefit Plans

REG-209484-87;

REG-209807-95

AGENCY: Internal Revenue Service
(IRS), Treasury.

ACTION: Notice of proposed rulemak-
ing.

SUMMARY: This document contains a revision to the proposed regulations under section 3121(v)(2) of the Internal Revenue Code of 1986, relating to when amounts deferred under or paid from certain nonqualified deferred compensation plans are taken into account as “wages” for purposes of the taxes imposed by the Federal Insurance Contributions Act (FICA). This document extends the proposed general effective date of the regulations to January 1, 1998. The extension also applies to the proposed regulations 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 purposes of the taxes imposed by the Federal Unemployment Tax Act (FUTA), due to the cross-reference therein to the provisions of the proposed regulations under section 3121(v)(2).

DATES: Written comments and requests for a public hearing must be received by March 24, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (EE-142-87), 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 (REG-209484-87), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the “Tax Regs” option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_reg/comments.html.

FOR FURTHER INFORMATION CONTACT: Janine Cook, (202) 622-6040 (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 a revision to the proposed amendments to the Employment Tax Regulations (26 CFR part 31) under section 3121(v)(2) of the Internal

Revenue Code of 1986 (Code), relating to the Federal Insurance Contributions Act (FICA) tax treatment of amounts deferred under or paid from certain nonqualified deferred compensation plans. The proposed regulations were published in the Federal Register on January 25, 1996 (61 F.R. 2194), with a proposed general effective date of January 1, 1997. This document extends the proposed general effective date to January 1, 1998. The same issue of the Federal Register contained proposed amendments to the Employment Tax Regulations under section 3306(r)(2) of the Code, relating to the Federal Unemployment Tax Act (FUTA) tax treatment of amounts deferred under or paid from certain nonqualified deferred compensation plans (61 F.R. 2214). The proposed regulations under section 3306(r)(2) cross-reference the provisions of the proposed regulations under section 3121(v)(2), including the proposed general effective date. Consequently, the extension of the effective date under the proposed regulations under section 3121(v)(2) automatically applies to the proposed regulations under section 3306(r)(2).

The project numbers assigned to the notices of proposed rulemaking setting forth the proposed regulations under section 3121(v)(2) and section 3306(r)(2) were EE-142-87 and EE-55-95, respectively. Due to changes in the Internal Revenue Service’s regulations numbering system, the project numbers for this notice of proposed rulemaking have been changed to REG-209484-87 and REG-209807-95, respectively, as reflected at the beginning of this document.

Explanation of Provisions

Section 31.3121(v)(2)-1(g)(1)(i) of the proposed regulations provides that the proposed general effective date of the regulations is January 1, 1997. Because the final regulations have not been issued, this document contains an amendment to the proposed regulations to extend the proposed general effective date to January 1, 1998. This extension of the proposed general effective date also applies to § 31.3306(r)(2)-1 of the proposed regulations due to the cross-reference therein to the provisions in 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) does not apply to these regulations, and because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this 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.

Comments and Requests for a Public Hearing

Before this revision to the proposed regulations is adopted as part of the final regulations, consideration will be given to any written comments (preferably 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 a 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 this revision to the proposed regulations is Janine Cook, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in its 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 31.3121(v)(2)-1 as proposed to be added at 61 FR 2199, January 25, 1996, is amended by revising paragraph (g)(1)(i) to read as follows:

§ 31.3121(v)(2)-1 Treatment of amounts deferred under certain nonqualified deferred compensation plans.

* * * * *

(g) Effective date and transition rules—
(1) General effective date—(i) Effective date. Except as otherwise provided in this paragraph (g) or in §31.3121(v)-2, this section is effective for amounts deferred and benefits paid on or after January 1, 1998.

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Michael P. Dolan,
*Deputy Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on December 23, 1997, 8:45 a.m., and published in the issue of the Federal Register for December 24, 1997, 62 F.R. 67304)