

pay was paid. The employer shall file copy A of Form W-2 and Form W-3 with the Social Security Administration in accordance with section 6051(d) (relating to statements to constitute information returns) and the regulations thereunder.

(c) *Optional rule.* The payor and the employer may at their option enter into an agency agreement valid under local law whereby the employer designates the payor to be the employer's agent for purposes of fulfilling the requirements of this section. This agreement must specify what portion, if any, of the sick pay is excludable from gross income under section 104(a)(3). If they enter into such an agreement, the payor shall not provide the statement required by paragraph (a) but shall instead furnish statements that meet all of the requirements of paragraph (b), except that the agreement must provide that the payor will furnish the statements with the payor's, rather than the employer's name, address, and Employer Identification Number (EIN) if "Sick Pay Statement Furnished under an Agency Agreement with Your Employer" appears in the box labelled "Employer's Use" on Form W-2. Paragraph (a)(2) remains applicable to statements furnished under this paragraph. In the case of sick pay paid under a multiemployer plan pursuant to a collectively bargained agreement, an amendment to either the multiemployer plan or the collectively bargained agreement designating the payor to be the employers' agent for purposes of fulfilling the requirements of this section shall be deemed an agency agreement that fulfills the requirements of the first sentence of this paragraph.

(d) *Definitions.* For purposes of this section, the terms "payor", "payee", and "sick pay" shall have the same meaning as ascribed thereto in section 3402(o) and the regulations thereunder. For purposes of this section, the term "employer" shall have the same meaning as ascribed thereto in section 3401(d) and the regulations thereunder, except that the term "employer" shall not include the payor for purposes of this section.

(e) *Additional requirements.* (1) Statements furnished to payees under this

section must also comply with all requirements of section 6051 (c) and (d) and the regulations thereunder.

(2) The provisions of § 1.9101-1 (relating to permission to submit information required by certain returns and statements on magnetic tape) shall be applicable to the information required by this section to be furnished on Form W-2 if the employer properly complies with those provisions.

(3) The provisions of section 6109 (relating to identifying numbers) and the regulations thereunder shall be applicable to Form W-2 and to any payee of sick pay to whom a statement on Form W-2 is required by this section to be furnished. Thus the employer must include the social security account number of the payee on all Forms W-2.

(f) *Effective date.* The provisions of this section shall apply to payments of sick pay made on or after May 1, 1981.

(g) *Transitional rule.* Payors may report all sick pay paid to a payee after December 31, 1980, and before May 1, 1981, on the same statement required to be furnished under paragraph (a) as is used to report sick pay paid to a payee on or after May 1, 1981. If the payor reports on the statement required to be furnished under paragraph (a), he shall not report sick pay paid after December 31, 1980, and before May 1, 1981, on Form 1099, if otherwise required to do so. If no sick pay is paid on or after May 1, 1981, the payor may report all sick pay paid to a payee after December 31, 1980, and before May 1, 1981, on the statement required to be furnished under paragraph (a). If he reports on the statement required to be furnished under paragraph (a), he shall not report sick pay paid on Form 1099, if otherwise required to do so.

(Secs. 3402(o), 7805, Internal Revenue Code of 1954 (94 Stat. 3495, (26 U.S.C. 3402(o)); 68A Stat. 917 (26 U.S.C. 7805))

[T.D. 7814, 47 FR 11277, Mar. 16, 1982]

§ 31.6051-4 Statement required in case of backup withholding.

(a) *Statements required from payor.* Every payor of any reportable payment (as defined in section 3406(b)(1)) who is required to deduct and withhold tax under section 3406 must furnish to the payee a written statement containing

the information required by paragraph (c) of this section.

(b) *Prescribed form.* The prescribed form for the statement required by this section is Form 1099. In the case of any reportable interest or dividend payment as defined in section 3406(b)(2), the prescribed form is the Form 1099 required in § 1.6042-4 of this chapter (relating to payments of dividends), § 1.6044-5 of this chapter (relating to payments of patronage dividends), or § 1.6049-6(e) of this chapter (relating to payments of interest or original issue discount). Statements required to be furnished by this section will be treated as statements required by the respective sections with respect to any reportable payment, except that the statement required under this section must include the amount of tax withheld under section 3406. In no event will a statement be required under this section if a statement with the same information is required to be furnished to the recipient under another section.

(c) *Information required.* Each statement on Form 1099 must show the following:

(1) The name, address, and taxpayer identification number of the person receiving any reportable payment;

(2) Except as provided in the prescribed form or instructions, the amount subject to reporting under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, 6050N, or 6050W whether or not the amount of the reportable payment is less than the amount for which an information return is required or, if tax is withheld under section 3406, the amount of the payment withheld upon;

(3) The amount of tax deducted and withheld under section 3406;

(4) The name and address of the person filing the form;

(5) A legend stating that such amount is being reported to the Internal Revenue Service; and

(6) Such other information as is required by the form.

(d) *Time for furnishing statements.* The statement must be furnished to the payee no later than January 31 of the year following the calendar year in which the payment was made. However, for a statement required to be furnished after December 31, 2008, the February 15 due date under section 6045

applies to the statement if the statement reports tax withheld from a payment reportable under section 6045 or is furnished in a consolidated reporting statement under section 6045. See §§ 1.6045-1(k)(3), 1.6045-2(d)(2), 1.6045-3(e)(2), 1.6045-4(m)(3), and 1.6045-5(a)(3)(ii) of this chapter.

(e) *Aggregation.* The payor or broker may combine the information required to be shown under this section with information required to be shown under another section even if they do not relate to the same type of reportable payment.

[T.D. 8637, 60 FR 66133, Dec. 21, 1995, as amended by T.D. 9496, 75 FR 49835, Aug. 16, 2010; T.D. 9504, 75 FR 64103, Oct. 18, 2010]

§ 31.6053-1 Report of tips by employee to employer.

(a) *Requirement that tips be reported—*

(1) *In general.* An employee who receives, in the course of employment by an employer, tips that constitute wages as defined in section 3121(a) or section 3401, or compensation as defined in section 3231(e), must furnish to the employer a statement, or statements, disclosing the total amount of the tips received by the employee in the course of employment by the employer. Tips received by an employee in a calendar month in the course of employment by an employer that are required to be reported to the employer must be reported on or before the 10th day of the following month. For example, tips received by an employee in January 2000 are required to be reported by the employee to the employer on or before February 10, 2000.

(2) *Cross references.* For provisions relating to the treatment of tips as wages for purposes of the Federal Insurance Contributions Act (FICA) tax under sections 3101 and 3111, see sections 3102(c), 3121(a)(12), and 3121(q) and §§ 31.3102-3 and 31.3121(a)(12)-1. For provisions relating to the treatment of tips as wages for purposes of the tax under section 3402 (income tax withholding), see sections 3401(a)(16), 3401(f), and 3402(k) and §§ 31.3401(a)(16)-1, 31.3401(f)-1, and 31.3402(k)-1. For provisions relating to the treatment of tips as compensation for purposes of the Railroad Retirement Tax Act (RRTA)