

allocation method is consistent with the terms of the plan; and

(2) For a payment made on or after the effective date of this section, the employer must treat each payment as consisting of transition benefits in the same proportion as the transition benefits that have not been paid (as of the effective date of this section) bear to total benefits that have not been paid (as of the effective date of this section), unless such allocation is inconsistent with the terms of the plan.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

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26 CFR Part 31

[EE-55-95]

RIN 1545-AT99

FUTA Taxation of Amounts Under Employee Benefit Plans

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) 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 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) of the Internal Revenue Code. 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.

List of Subjects in 26 CFR Part 31

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

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)-1¹ contains rules relating to when amounts deferred under certain nonqualified deferred compensation plans are wages for purposes of sections 3121(v)(2), 3101, 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

¹ This section appears as a notice of proposed rulemaking published elsewhere in this issue of the Federal Register.

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)-2² 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.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 48

Training Policy Review

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The Mine Safety and Health Administration (MSHA) is considering

revising and clarifying, as needed, policy relating to the training and retraining of miners. The policy interprets the existing training regulations pertaining to coal and metal and nonmetal mines. The purpose of this review is to improve existing policy and reduce administrative procedures. MSHA is requesting public input before proceeding.

DATES: Submit all comments by March 25, 1996.

ADDRESSES: Send written comments to Frank R. Schwamberger, Acting Director, Educational Policy and Development, MSHA, 4015 Wilson Boulevard, Room 531, Arlington, VA 22203-1984. Commenters are encouraged to submit comments on a computer disk along with a hard copy.

FOR FURTHER INFORMATION CONTACT: Thomas W. MacLeod or Joseph M. Hoffman, Division of Policy and Program Coordination, Directorate of Educational Policy and Development, 703-235-1400.

SUPPLEMENTARY INFORMATION:

I. Background

MSHA's regulations addressing the training and retraining of miners are contained in Title 30 of the Code of Federal Regulations (30 CFR) part 48. Over the past 2 years, MSHA has held a series of meetings with various segments of the mining community (states, academia, management, labor, and associations) to discuss the impact of MSHA's training regulations on the mining community.

During these meetings, participants made numerous suggestions for improving miner training, expanding and improving communication between MSHA and the mining industry, and exchanging information about safety and health issues. In these open forums, participants also suggested ways MSHA and the mining community could work together to improve the quality of training. MSHA has already implemented, or begun working on, several non-regulatory, non-policy related projects. For example, the Agency has updated the database that contains MSHA-approved instructors so that the records will reflect the existing active instructors. This updated database will make it easier for MSHA to send information on training-related subjects to instructors who are actively conducting health and safety training.

During these meetings, the Agency also received suggestions about revising MSHA's current training policy. To respond further to these comments, MSHA is now soliciting comments from the public on training policy in the

following general areas: (a) administrative reporting requirements; (b) flexibility in course content and time for each subject; (c) crediting like work experience for training purposes; (d) independent contractor training; (e) completing and signing training certificates (Form 5000-23); and (f) other items of interest.

II. Discussion

A. Administrative Reporting Requirements

Under 30 CFR 48.3 and 48.23, the mine operator is required to submit to the district manager specific items of information as part of a training plan. This includes the list of MSHA-approved instructors with whom the operator proposes to make arrangements to teach the courses and the courses each instructor is qualified to teach. Whenever this list changes, the operator goes through the process of revising and submitting the revisions to MSHA.

Other items required in a training plan include: location where training will be given, description of the teaching methods, predicted time or periods of time when regularly scheduled refresher training will be given, list of task assignments, and titles of personnel conducting the training. While recognizing the importance of notification of plan revisions to miners and their representatives, the Agency is considering a policy interpretation in which operators may not have to notify MSHA of certain revisions in order to retain plan approval. Also, MSHA is considering the possibility of allowing operators to submit plan changes electronically.

B. Flexibility in Course Content and Time for Each Subject

MSHA is considering ways to increase flexibility within the present regulatory language. For example, a mine operator is required to submit to the district manager the titles of courses to be taught, the total number of instruction hours for each course, and the predicted time and length of each session of training. MSHA is considering revising the training policy to allow mine operators to specify a range of times for each course (such as 30 minutes to 1 hour for electrical hazards) which could vary based on the needs at a particular mine. Although there currently is flexibility in the regulations and policy, based on input received at recent meetings with the mining community, MSHA believes that this flexibility is not widely understood.

²This section appears as a notice of proposed rulemaking published elsewhere in this issue of the Federal Register.