

governing the workplace and terms and conditions of employment, such as the Americans with Disabilities Act (42 U.S.C. 12112(a)). Compliance with these regulations does not guarantee that a system for filing Forms W-4 electronically is in compliance with those applicable laws.

3. *Electronic Forms W-4*

Several commentators recommended that electronic systems be allowed for all Forms W-4 without exception. The prior proposed and temporary regulations specifically exclude (1) Forms W-4 required upon commencement of employment (initial Form W-4), and (2) Forms W-4 required to be furnished to the IRS by employers because more than 10 withholding exemptions are claimed or, if the employee is expected to earn more than \$200 per week, exemption from withholding is claimed.

Initial Form W-4. Section 3402(f)(2)(A) of the Internal Revenue Code (Code) requires a new employee to furnish the employer with a signed withholding exemption certificate. Section 6061 requires all Forms W-4 to be signed. See discussion below under "5. Signature Under Penalties of Perjury" and § 301.6061-1(b), which states that the Secretary may prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations. The final regulations permit electronic systems to include Forms W-4 required upon commencement of employment.

Forms W-4 claiming more than 10 exemptions or exemption from withholding. Section 31.3402(f)(2)-1(g) requires employers to submit to the IRS copies of certain Forms W-4 furnished to them by their employees. The Forms W-4 required to be submitted are those on which the employee claims either (1) more than 10 withholding exemptions, or (2) exemption from withholding (and the employee is expected to earn more than \$200 per week).

Under § 31.3402(f)(2)-1(g)(5), if the IRS determines that a Form W-4, a copy of which was submitted to the IRS, is defective, the IRS will notify in writing both the employer and the employee. (The notice is referred to as a "lock-in letter.") A Form W-4 is defective if (1) the IRS determines that the Form W-4 contains a materially incorrect statement, or (2) following communication with the employee, the IRS lacks sufficient information to determine whether the certificate is correct. The lock-in letter issued by the

IRS advises the employer that the employee either is not entitled to claim exemption from withholding or is not entitled to claim more withholding exemptions than the number specified by the IRS in the notice, or both. If the employee subsequently files a new Form W-4, the employer may withhold on the basis of that new Form W-4 only if the new Form W-4 is consistent with the lock-in letter. The employer must continue to withhold on the basis of that advice until the IRS revokes in writing its lock-in letter.

The final regulations permit electronic systems to include Forms W-4 on which employees claim more than 10 withholding exemptions or exemption from withholding. However, the IRS and Treasury expect that electronic systems, alone or in conjunction with the rest of an employer's payroll system, will ensure compliance with the advice contained in a lock-in letter. For instance, an electronic system can ensure compliance with a lock-in letter by prohibiting an employee for whom a lock-in letter was issued from filing any electronic Form W-4 or prohibiting the employee from claiming more withholding exemptions than the number specified in the IRS notice. Additionally, an employer may choose to require any employee to file a paper Form W-4 if the employee wishes to claim more than 10 withholding exemptions or exemption from withholding.

4. *Submission of Certain Forms W-4 to IRS*

Section 31.3402(f)(2)-1(g) requires employers to submit to the IRS copies of Forms W-4 on which the employee claims either more than 10 withholding exemptions or exemption from withholding (and the employee is expected to earn more than \$200 per week). Generally, the copies are sent quarterly to the IRS along with the employer's Form 941, Employer's Quarterly Federal Tax Return. Copies can also be submitted earlier and more often to the employer's IRS service center.

Employers that establish electronic systems will satisfy the requirement of § 31.3402(f)(2)-1(g) if they furnish the Form W-4 information on magnetic media. Before using magnetic media, employers must submit Form 4419, Application for Filing Information Returns Magnetically/Electronically, to request authorization. Rev. Proc. 92-80 (1992-2 C.B. 465) contains specifications for filing Forms W-4 on magnetic tape and on 5¼- and 3½-inch magnetic diskettes. Electronic

transmission of Form W-4 information to the IRS is not yet available.

5. *Signature Under Penalties of Perjury*

Section 6061 of the Code requires that any return, statement, or other document required to be made under any provision of the Code or regulations be signed. Section 6065 requires that any such document contain or be verified by a written declaration that it is made under the penalties of perjury. These requirements apply to all Forms W-4, including those filed electronically, and are reflected in § 31.3402(f)(5)-1(c)(iii) of the final regulations.

Although sections 6061 and 6065 apply to all Forms W-4, the IRS and Treasury are concerned that some electronic systems established under the temporary regulations may not include a signature under penalties of perjury. The final regulations, therefore, include guidance on the perjury statement and the electronic signature.

For certain Forms W-4, the final regulations treat the signature-under-penalties-of-perjury-statement requirement as satisfied until January 1, 1999. This special rule applies only if the system precludes the electronic filing of Forms W-4 required upon commencement of employment and Forms W-4 claiming more than 10 withholding exemptions or exemption from withholding. Moreover, the special rule applies only to Forms W-4 filed electronically before the earlier of (1) January 1, 1999, or (2) the first date on which the employer's electronic system permits the filing of Forms W-4 required upon commencement of employment or Forms W-4 claiming more than 10 withholding exemptions or exemption from withholding.

The IRS and Treasury will consider written comments pertaining to the provisions relating to signatures under penalties of perjury. Submissions should be sent to: CC:DOM:CORP:R (TD 8706), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (TD 8706), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.