

§ 31.6051-1T Statements for employees (temporary).

(a) through (i) [Reserved]. For further guidance, see § 31.6051-1(a) through (i).

(j) *Electronic furnishing of statements—*
 (1) *In general.* A person required by section 6051 to furnish a written statement on Form W-2 (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the Form W-2 in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (j)(2) through (7) of this section is treated as furnishing the Form W-2 in a timely manner.

(2) *Consent—*(i) *In general.* The recipient must have affirmatively consented to receive the Form W-2 in an electronic format and must not have withdrawn that consent before the Form W-2 is furnished. The consent must be made electronically in a manner that reasonably demonstrates that the recipient can access the Form W-2 in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a different manner (for example, in an e-mail or in a paper document) if it is confirmed electronically in the manner described in the preceding sentence.

(ii) *Change in hardware or software requirements.* If a change in hardware or software required to access the Form W-2 creates a material risk that the recipient will not be able to access the Form W-2, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the Form W-2 and inform the recipient that a new consent to receive the Form W-2 in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (j)(2)(i) of this section, a new consent or confirmation of consent to receive the Form W-2 electronically.

(iii) *Example.* The following example illustrates the rules of this paragraph (j)(2):

Example. Furnisher F sends Recipient R an e-mail stating that R may consent to receive Forms W-2 electronically on a website instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive Forms W-2 electronically. The e-mail attachment uses the same electronic format that F will use for its electronically furnished Forms W-2. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive Forms W-2 electronically in the manner described in paragraph (j)(2)(i) of this section.

(3) *Required disclosures—*(i) *In general.* Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (j)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* The recipient must be informed that the Form W-2 will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to Forms W-2 furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (j)(3)(v)(A) of this section or only to the Form W-2 required to be furnished on or before the January 31 immediately following the date on which the consent is given.

(iv) *Post-consent request for a paper statement.* The recipient must be informed of any procedure for obtaining a paper copy of the recipient's Form W-2 after giving the consent described in paragraph (j)(2)(i) of this section.

(v) *Withdrawal of consent.* The recipient must be informed that—

(A) The recipient may withdraw a consent at any time by furnishing the withdrawal in writing (electronically or on paper) to the person whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) The furnisher will confirm the withdrawal in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a Form W-2 that was furnished electronically in the manner described in this paragraph (j) before the withdrawal of consent is furnished.

(vi) *Notice of termination.* The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient (for example, termination of the recipient's employment with furnisher-employer).

(vii) *Updating information.* The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient.

(viii) *Hardware and software requirements.* The recipient must be provided with a description of the hardware and software required to access, print, and retain the Form W-2, and the date when the Form W-2 will no longer be available on the website. The recipient must be informed that the Form W-2 may be required to be printed and attached to a Federal, State, or local income tax return.

(4) *Format.* The electronic version of the Form W-2 must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Posting.* The furnisher must on or before January 31 of the year following the calendar year to which the Form W-2 relates (or such other date permitted or required for furnishing the Forms W-2) post it on a website accessible to the recipient.

(6) *Notice—(i) In general.* The furnisher must on or before January 31 of the year following the calendar year to which the Form W-2 relates (or such other date permitted or required for furnishing the Form W-2) notify the recipient that the Form W-2 is posted on a website. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement should be on the subject line of the electronic mail and sent with high importance.

(ii) *Undeliverable electronic address.* If an electronic notice described in paragraph (j)(6)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected Forms W-2.* A furnisher must notify a recipient that it has posted corrected Forms W-2 on a website within 30 days of such posting in the manner described in paragraph (j)(6)(i) of this section. This notice must be furnished by mail or in person if—

(A) An electronic notice of the website posting of an original Form W-2 was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(7) *Retention.* The furnisher must maintain access to the Forms W-2 on the website through October 15 of the year following the calendar year to which the Forms W-2 relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected Forms W-2 that are posted on the website through October 15 of the year following the calendar year to which the Forms W-2 relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(k) *Effective date.* Paragraph (j) of this section applies to Forms W-2 required to be furnished under section 6051 after December 31, 2000.

[T. D. 8942, 66 FR 10195, Feb. 14, 2001]

§ 31.6051-2 Information returns on Form W-3 and Internal Revenue Service copies of Forms W-2.

(a) *In general.* Every employer who is required to make a return of tax under § 31.6011(a)-1 (relating to returns under the Federal Insurance Contributions Act), § 31.6011(a)-4 (relating to returns of income tax withheld from wages), or § 31.6011(a)-5 (relating to monthly returns) for a calendar year or any period therein shall file the Social Security