

**§ 31.6053-1**

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(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.

(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]

**§ 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 provi-

sions relating to the treatment of tips as compensation for purposes of the Railroad Retirement Tax Act (RRTA) tax under sections 3201 and 3201, see section 3231(e) and § 31.3231(e)-1(a).

(b) *Statement for use in reporting tips—*  
(1) *In general.* The statement described in paragraph (a) of this section can be provided on paper or transmitted electronically. The statement must be signed by the employee and must disclose:

(i) The name, address, and social security number of the employee.

(ii) The name and address of the employer.

(iii) The period for which, and the date on which, the statement is furnished. If the statement is for a period of less than 1 calendar month, the beginning and ending dates of the period must be included (for example, January 1 through January 8, 1998).

(iv) The total amount of tips received by the employee during the period covered by the statement which are required to be reported to the employer (see paragraph (a) of this section).

(2) *Form of statement—*(i) *In general.* No particular form is prescribed for use in furnishing the statement required by this section. The statement may be furnished on paper or transmitted electronically. An electronic system and all tip statements generated by that system must meet the requirements of paragraph (d) of this section. If the employer does not provide any other means for the employee to report tips, the employee may use Form 4070, "Employee's Report of Tips to Employer."

(ii) *Single-purpose forms.* A statement may be furnished on an employer-provided form. The form may be on paper or in electronic form. An employer that provides a paper form must make blank copies of the form readily available to all tipped employees. Any form, whether paper or electronic, provided by an employer for use by its tipped employees solely to report tips must meet all the requirements of paragraph (b)(1) of this section.

(iii) *Regularly used forms.* Instead of requiring that tips be reported as described in paragraph (b)(2)(ii) of this section on a special form used solely

for tip reporting, an employer may prescribe regularly used forms for use by employees in reporting tips. A regularly used form may be on paper or in electronic form (such as a time card or report), must meet the requirements of paragraph (b)(1) (iii) and (iv) of this section, must contain identifying information that will ensure accurate identification of the employee by the employer, and is permitted to be used only if the employer furnishes the employee a statement suitable for retention showing the amount of tips reported by the employee for the period. The employer statement may be furnished when the employee reports the tips, when wages are first paid following the reporting of tips by the employee, or within a short time after the wages are paid. The employer may meet this requirement, for example, through the use of a payroll check stub or other payroll document regularly furnished (if not less frequent than monthly) by the employer to the employee showing gross pay and deductions.

(c) *Period covered by, and due date of, tip statement*—(1) *In general.* A tip statement furnished by an employee to an employer may not cover a period greater than 1 calendar month. An employer may, however, require the submission of a statement in respect of a specified period of time, for example, on a weekly or biweekly basis, regular payroll period, etc. An employer may specify, subject to the limitation in paragraph (a) of this section, the time within which, or the date on which, the statement for a specified period of time should be submitted by the employee. For example, a statement covering a payroll period may be required to be submitted on the first (or second) day following the close of the payroll period. A statement submitted by an employee after the date specified by the employer for its submission nevertheless is a statement furnished pursuant to section 6053(a) and this section if it is submitted to the employer on or before the 10th day following the month in which the tips were received.

(2) *Termination of employment.* If an employee's employment terminates, the employer must furnish a tip statement to the employer when the em-

ployee ceases to perform services for the employer. A statement submitted by an employee after the date on which the employee ceases to perform services for the employer is a statement furnished pursuant to section 6053(a) and this section if the statement is submitted to the employer on or before the earlier of the day on which the final wage payment is made by the employer to the employee or the 10th day following the month in which the tips were received.

(d) *Requirements for electronic systems*—(1) *In general.* The electronic system must ensure that the information received is the information transmitted by the employee and must document all occasions of access that result in the transmission of a tip statement. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and transmitting the statement is the employee identified in the statement transmitted.

(2) *Same information as on paper statement.* The electronic tip statement must provide the employer with all the information required by paragraph (b)(1) of this section.

(3) *Signature.* The electronic tip statement must be signed by the employee. The electronic signature must identify the employee transmitting the electronic tip statement and must authenticate and verify the transmission. For this purpose, the terms *authenticate* and *verify* have the same meanings as they do when applied to a written signature on a paper tip statement. Any form of electronic signature that satisfies the foregoing requirements is permissible.

(4) *Copies of electronic tip statements.* Upon request by the Internal Revenue Service (IRS), the employer must supply the IRS with a hard copy of the electronic tip statement and a statement that, to the best of the employer's knowledge, the electronic tip statement was filed by the named employee. The hard copy of the electronic tip statement must provide the information required by paragraph (b)(1) of this section, but need not be a facsimile of Form 4070 or any employer-designed form.

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(5) *Record retention.* The record retention requirements applicable to automatic data processing systems also apply to electronic tip reporting systems.

(6) *Effective date.* The provisions pertaining to electronic systems and electronic tip reports are applicable as of December 13, 2000. However, employers may apply these provisions to earlier periods.

[T.D. 7001, 34 FR 1004, Jan. 23, 1969, as amended by T.D. 8910, 65 FR 77819, Dec. 13, 2000]

**§ 31.6053-2 Employer statement of uncollected employee tax.**

(a) *Requirement that statement be furnished.* If—

(1) The amount of the employee tax imposed by section 3101 in respect of tips reported by an employee to his employer pursuant to section 6053(a) (see § 31.6053-1) exceeds

(2) The amount of employee tax imposed by section 3101 in respect of such tips which can be collected by the employer from wages (exclusive of tips) of such employee or from funds furnished to the employer by the employee, the employer shall furnish to the employee a statement showing the amount of the excess. For provisions relating to the collection of, and liability for, employee tax on tips, see § 31.3102-3.

(b) *Form of statement.* Form W-2 is the form prescribed for use in furnishing the statement required by paragraph (a) of this section, except that if an employer files a composite return pursuant to § 31.6011(a)-8 he may furnish to the employee, in lieu of Form W-2, a statement containing the required information in a form suitable for retention by the employee. A statement is required under this section in respect of an excess referred to in paragraph (a) of this section, even though the employer may not be required to furnish a statement to the employee under § 31.6051. Provisions applicable to the furnishing of a statement under § 31.6051 shall be applicable to statements under this section.

(c) *Excess to be shown on statement.* If there is an excess in respect of the tips reported by an employee in two or more statements furnished pursuant to section 6053(a), only the total excess

for the period covered by the employer statement shall be shown on such statement.

[T.D. 7001, 34 FR 1005, Jan. 23, 1969, as amended by T.D. 7351, 40 FR 17145, Apr. 17, 1975]

**§ 31.6053-3 Reporting by certain large food or beverage establishments with respect to tips.**

(a) *Information return by an employer with respect to tips—(1) In general.* An employer shall file a separate information return for each calendar year (as defined in paragraph (j)(14) of this section) with respect to each large food or beverage establishment (as defined in paragraph (j)(7) of this section) in which such employer has employees. The information return shall contain the following:

(i) The employer's name, address, and employer identification number;

(ii) The establishment's name, address, and identification number (see paragraph (a)(5) of this section);

(iii) The aggregate gross receipts (other than nonallocable receipts) of the establishment from the provision of food or beverages;

(iv) The aggregate amount of charge receipts (other than nonallocable receipts) on which there were charged tips;

(v) The aggregate amount of charged tips shown on such charge receipts;

(vi) The aggregate amount of tips actually received by food or beverage employees of the establishment during the calendar year and reported to the employer under section 6053(a) (see paragraph (j)(15) of this section);

(vii) The aggregate amount the employer is required to report under section 6051 and the regulations thereunder with respect to service charges of less than 10 percent.

(viii) The name and social security number of each employee of the establishment during the calendar year to whom an allocation was made under section 6053(c)(3) and paragraph (d) of this section and the amount of such allocation.

(2) *Calendar year 1983 information return.* In the case of the 1983 calendar year information return, the information required by paragraphs (a)(1)(iii) through (viii) of this section shall be reported for the period beginning with