

entertainment or travel, is not subject to the limitations on allowability of deductions provided for in paragraphs (a) through (e) of this section to the extent that the expenditure is treated by the taxpayer—

(1) On the taxpayer's income tax return as originally filed, as compensation paid to the employee; and

(2) As wages to the employee for purposes of withholding under chapter 24 (relating to collection of income tax at source on wages).

(B) *Expenses includible in income of persons who are not employees.* Any expenditure by a taxpayer for entertainment (or for use of a facility in connection therewith), or for travel described in section 274(m)(3), is not subject to the limitations on allowability of deductions provided for in paragraphs (a) through (e) of this section to the extent the expenditure is includible in gross income as compensation for services rendered, or as a prize or award under section 74, by a recipient of the expenditure who is not an employee of the taxpayer. The preceding sentence shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included (or would be so required except that the amount is less than \$600) in any information return filed by such taxpayer under part III of subchapter A of chapter 61 and is not so included. See section 274(e)(9).

(C) *Example.* The following example illustrates the provisions this paragraph (f):

Example. If an employer rewards the employee (and the employee's spouse) with an expense paid vacation trip, the expense is deductible by the employer (if otherwise allowable under section 162 and the regulations thereunder) to the extent the employer treats the expenses as compensation and as wages. On the other hand, if a taxpayer owns a yacht which the taxpayer uses for the entertainment of business customers, the portion of salary paid to employee members of the crew which is allocable to use of the yacht for entertainment purposes (even though treated on the taxpayer's tax return as compensation and treated as wages for withholding tax purposes) would not come within this exception since the members of the crew were not recipients of the entertainment if an expenditure of a type described in this subdivision properly constitutes a dividend paid to a shareholder or if it constitutes unreasonable compensation paid to an employee, nothing in this exception prevents disallowance of the expenditure to the taxpayer under other provisions of the Internal Revenue Code.

(g) *Additional provisions of section 274—travel of spouse, dependent or others.* Section 274(m)(3) provides that

no deduction shall be allowed under this chapter (except section 217) for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless certain conditions are met. As provided in section 274(m)(3), the term *other individual* does not include a business associate (as defined in paragraph (b)(2)(iii) of this section) who otherwise meets the requirements of sections 274(m)(3)(B) and (C).

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: March 26, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury.

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26 CFR Parts 31 and 602

[TD 8672]

RIN 1545-AT86

Reporting of Nonpayroll Withheld Tax Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the reporting of nonpayroll withheld income taxes under section 6011 of the Internal Revenue Code. The final regulations require a person to file Form 945, Annual Return of Withheld Federal Income Tax, only for a calendar year in which the person is required to withhold Federal income tax from nonpayroll payments.

EFFECTIVE DATE: These regulations are effective May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, 202-622-6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1413. Responses to this collection of information are required by the IRS to monitor compliance with the Federal tax rules related to the reporting and deposit of nonpayroll withheld income taxes.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid control number.

Estimates of the reporting burden in these final regulations are reflected in the burden of Form 945.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On October 16, 1995, final and temporary regulations (TD 8624) relating to the reporting of nonpayroll withheld income taxes under section 6011 were published in the Federal Register (60 FR 53509). A notice of proposed rulemaking (IA-30-95) cross-referencing the temporary regulations was published in the Federal Register for the same day (60 FR 53561).

The IRS received no written comments responding to the notice. Accordingly, the regulations proposed by IA-30-95 are adopted as proposed with a minor editorial change.

Explanation of Provisions

These final regulations remove the requirement that, once a person files a Form 945 for a calendar year, the person must file a Form 945 every subsequent year until the person files a final return. Under these final regulations, a person must file a Form 945 only for a calendar year in which the person is required to withhold Federal income tax from nonpayroll payments.

Special Analyses

It has been determined that this Treasury decision 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 preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal author of these regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 31

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

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 602 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by removing the citation for "Section 31.6011(a)-4T" as follows:

Authority: 26 U.S.C. 7805 * * *

Par 2. Section 31.6011(a)-4 is amended by revising paragraph (b) to read as follows:

§ 31.6011(a)-4 Returns of income tax withheld.

* * * * *

(b) *Withheld from nonpayroll payments.* Every person required to withhold tax from nonpayroll payments for calendar year 1994 must make a return for calendar year 1994 and for any subsequent calendar year in which the person is required to withhold such tax until the person makes a final return in accordance with § 31.6011(a)-6. Every person not required to withhold tax from nonpayroll payments for calendar year 1994 must make a return for the first calendar year after 1994 in which the person is required to withhold such tax and for any subsequent calendar year in which the person is required to withhold such tax until the person makes a final return in accordance with § 31.6011(a)-6. Form 945, Annual Return of Withheld Federal Income Tax, is the form prescribed for making the return required under this

paragraph (b). Nonpayroll payments are—

- (1) Certain gambling winnings subject to withholding under section 3402(q);
- (2) Retirement pay for services in the Armed Forces of the United States subject to withholding under section 3402;
- (3) Certain annuities as described in section 3402(o)(1)(B);
- (4) Pensions, annuities, IRAs, and certain other deferred income subject to withholding under section 3405; and
- (5) Reportable payments subject to backup withholding under section 3406.

* * * * *

§ 31.6011(a)-4T [Removed]

Par. 3. Section 31.6011(a)-4T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

§ 602.101 [Amended]

Par. 5. Section 602.101, paragraph (c) is amended in the table by removing the entry "31.6011(a)-4T....1545-1413".

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: April 5, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024-AC05

Glacier Bay National Park, Alaska: Vessel Management Plan Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is revising the regulations, including vessel quotas, that were established to protect the endangered humpback whale and other resources within Glacier Bay National Park and Preserve. The regulations authorize a modest increase in cruise ship, charter boat and private boat use, to be offset by specific mitigation measures. The regulations do not authorize an increase in the maximum number of motor vessels permitted to use the bay on any given day.

Subject to the existing maximum daily limit of two cruise ships per day, the regulations authorize an immediate 30-percent increase in cruise ship traffic during the 1996 and 1997 summer seasons (June 1 through August 31). Additionally, but contingent upon the completion of studies demonstrating that a further increase in cruise ship traffic would be consistent with protection of the values and purposes of Glacier Bay National Park and Preserve, the regulations could allow up to an additional 42-percent increase (i.e., a total increase of 72% from existing 1995 levels) in cruise ship traffic beginning with the 1998 summer season. For each summer season thereafter, the regulations authorize the NPS to adjust the number of cruise ship entries, subject to the maximum daily limit of two vessels, based on available scientific and other information and applicable authorities. NPS has also revised current restrictions on seasonal entries and use-days for charter and private boats to authorize an 8-percent increase in charter boat traffic and a 15 percent increase in private boat traffic beginning with the 1996 summer season.

The regulations also extend and codify park compendium vessel regulations for the protection of park resource values. Several additional measures, such as the requirement for air, water and underwater noise pollution minimization plans from cruise ships, mitigate the potential resource impacts associated with the increase in vessel traffic. Finally, to protect park resource values and maintain opportunities for the safe use of kayaks, the regulations close six specified areas to motor vessels for varying periods.

EFFECTIVE DATE: This rule is effective on May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Russ Wilson, Alaska Desk Officer, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Telephone 202-208-4874.

SUPPLEMENTARY INFORMATION:

Public Participation on the Proposed Rule

The National Park Service published proposed rules as well as a Notice of Availability of the Vessel Management Plan/Environmental Assessment (VMP/EA) on June 5, 1995 (60 FR 29523). The 60 day period for public comment closed on August 4, 1995, but was subsequently reopened from August 10, 1995 (60 FR 40798), until August 25, 1995, to accommodate several commenters who had requested an