

## **SUPPORTING STATEMENT**

### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

These regulations amend the Employment Tax Regulations (26 CFR part 31) under section 3121(v)(2). Section 3121(v)(2) was added to the Internal Revenue Code (Code) by section 324 of the Social Security Amendments of 1983 (1983 Amendments). Section 2662(f)(2) of the Deficit Reduction Act of 1984 (DEFRA) amended section 324 of the 1983 Amendments.

Notice 94-96 (1994-2 C.B. 564) provides that until final regulations are issued, the IRS will not challenge an employer's determination of FICA tax liability with respect to a nonqualified deferred compensation plan for periods before the effective date of any final regulations if the determination is based on a reasonable, good faith interpretation of section 3121(v)(2). On January 25, 1996, a notice of proposed rulemaking (EE-142-87) under section 3121(v)(2) was published in the Federal Register (61 FR 2194), providing guidance related to the Federal Insurance Contributions Act (FICA) tax treatment of amounts deferred under or paid from certain nonqualified deferred compensation plans. On December 24, 1997, a notice of proposed rulemaking (REG-209484-87 and REG-209807-95) under section 3121(v)(2) extending the proposed general effective date of the regulations to January 1, 1998, was published in the Federal Register (62 FR 67304).

Comments regarding the 1996 proposed regulations were received from the public, and on June 24, 1996, the IRS held a public hearing concerning the proposed amendments. After consideration of the public comments received and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

### **2. USE OF DATA**

The IRS will use this information to identify the material terms of a plan to determine the correct amount of FICA tax.

### **3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of

1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

A notice of proposed rulemaking was published in the Federal Register on January 25, 1996 (61 FR 2194), a public hearing was held on June 24, 1996. The final regulations were published in the Federal Register on January 29, 1999 (64 FR 4542).

We received no comments during the comment period in response to the **Federal Register** notice dated June 7, 2011(76 FR 33026).

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are

confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Under § 31.3121(v)(2)-1(b)(2), the material terms of the plan must be set forth in writing. The IRS estimates that the annual number of respondents will be 2,500; the burden per respondent varies from 2 hours to 10 hours, depending on the individual circumstances, with an estimated average of 5 hours; the estimated total reporting burden is 12,500 hours; and that the estimated frequency of responses is on time per respondent.

Under §31.3121(v)(2)-1(f), and employer withholding under the estimated method will make corrections for prior periods on Form 941, Employer's Quarterly Federal Tax Return, Form 941C, Supporting Statement To Correct Information, Form W-2, Wage and Tax Statement, and Form W-2C, Statement of Corrected Income and Tax Amounts. Similarly, under §31.3121(v)(2)-1(g), and employer making optional adjustments for prior periods must report the adjustments on Form 941, Form 941C, Form W-2 and Form W-2C. The burden for these requirements is reflected on these forms.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register** notice dated June 7, 2011, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously

approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

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 OMB control number. Books or records relating to a 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.