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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

REG-111837-13

RIN 1545-BL54

Employee Retirement Benefit Plan Returns Required on Magnetic Media

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the requirements for filing certain employee retirement benefit plan statements, returns, and reports on magnetic media. The term magnetic media includes electronic filing, as well as other magnetic media specifically permitted under applicable regulations, revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. These regulations would affect plan administrators and employers maintaining retirement plans that are subject to various employee benefit reporting requirements under the Internal Revenue Code (Code).

DATES: Comments and requests for a public hearing must be received by **INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**.

ADDRESSES: Send submissions relating to the proposed regulations to:

CC:PA:LPD:PR (REG-111837-13), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington DC, 20044. Submissions may be hand delivered Monday through Friday, between the hours of 8 a.m. and 4 p.m. to

CC:PA:LPD:PR (REG-111837-13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Alternately, taxpayers may submit comments relating to the proposed regulations electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-111837-13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William Gibbs or Pamela Kinard at (202) 622-6060; concerning the submission of comments or to request a public hearing, Oluwafunmilayo Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Electronic filing of tax returns benefits taxpayers and the IRS by reducing errors that are more likely to occur during the manual preparation and processing of paper returns. Electronic filing results in faster settling of accounts and better customer service. Requiring that employee retirement benefit plan statements, returns, and reports be filed electronically improves the timeliness and accuracy of the information for both the public and the employee retirement benefit plan community.

Section 6011(e)(1) authorizes the Secretary to prescribe regulations providing the standards for determining which returns must be filed on magnetic media or in other machine-readable form. Section 6011(e)(2)(A) provides that the Secretary may not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Section 6011(e)(2)(B) requires that the Secretary, prior to issuing regulations requiring these entities to file returns on magnetic

media, take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations.

A statement, return, or report filed electronically with an electronic return transmitter in the manner and time prescribed by the Commissioner is deemed to be filed on the date of the electronic postmark given by the return transmitter (that is, a record of the date and time that an authorized electronic return transmitter receives the transmission of a taxpayer's electronically filed document on its host system). Accordingly, if the electronic postmark is timely, the document is considered filed timely although it is received by the IRS after the last date prescribed for filing. See §301.7502-1(d).

Section 414(g) defines a plan administrator as a person specifically so designated by the terms of the plan or, in the event no one is designated: (a) an employer for a single employer plan; (b) an association, committee, joint board of trustees, or other similar group of representatives for a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations; or (c) such other person as the Secretary of Treasury may prescribe in regulations.

Section 6057(a) requires the plan administrator (within the meaning of section 414(g)) of each plan to which the vesting standards of section 203 of the Employee Retirement Income Security Act of 1974 (ERISA) applies for a plan year to file, within the time prescribed by regulations, a registration statement with the Secretary of the Treasury. The registration statement must set forth the following information relating to the plan: (1) the name of the plan; (2) the name and address of the plan administrator; (3) the name and identifying information of plan participants who separated from service

covered by the plan and are entitled to deferred vested retirement benefits; and (4) the nature, amount, and form of deferred vested retirement benefits to which the plan participants are entitled. The form used to file this registration statement is Form 8955-SSA, "Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits." Section 6057(b) requires that the plan administrator notify the Secretary of certain changes in the plan, including the name of the plan, the name and address of the plan administrator, the termination of the plan, or any merger or consolidation of the plan with another plan (or the plan's division into two or more plans).

Section 6058(a) generally requires that every employer maintaining a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation, or the plan administrator within the meaning of section 414(g) of the plan, file an annual return stating such information as the Secretary may by regulations prescribe with respect to the qualification, financial condition, and operations of the plan. The reporting requirement under section 6058(a) is satisfied by filing a return on the Form 5500 series. The Form 5500, "Annual Return/Report of Employee Benefit Plan," the Form 5500-SF, "Short Form Annual Return/Report of Small Employee Benefit Plan," and Form 5500-EZ, "Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan," make up the Form 5500 series.

Section 6059(a) generally requires that a plan administrator of each defined benefit plan to which section 412 applies file the actuarial report described in section 6059(b) for the first plan year for which section 412 applies to the plan and for each third plan year thereafter (or more frequently if the Secretary determines that more frequent reports are necessary). The schedules used to file these actuarial reports are the

Schedule SB, "Single-Employer Defined Benefit Plan Actuarial Information," and the Schedule MB, "Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information," which are required to be filed as part of the Form 5500 or Form 5500-SF.

On July 21, 2006, the Department of Labor (DOL) published a final rule in the **Federal Register** (71 FR 41359) requiring electronic filing of the Form 5500 and Form 5500-SF for plans covered by Title I of ERISA for plan years beginning on or after January 1, 2008. On November 16, 2007, the DOL published a final rule in the **Federal Register** (72 FR 64710) postponing the effective date of the electronic filing mandate so that the mandate applies to plan years beginning on or after January 1, 2009. See 29 CFR §2520.104a-2. The electronic filing system mandated by DOL is the computerized ERISA Filing Acceptance System (EFAST2).

Filers of the Form 5500 and Form 5500-SF are required to file electronically through EFAST2. Currently, electronic filing is not available for the Form 5500-EZ. However, certain filers that would otherwise file the Form 5500-EZ on paper may instead file the Form 5500-SF electronically through EFAST2. Under the current requirements, plans that are eligible to use the Form 5500-SF to file electronically include plans that cover fewer than 100 participants at the beginning of the plan year and satisfy certain other requirements. See the Instructions to the Form 5500-EZ for information about filing the Form 5500-EZ.

In order to implement DOL's mandate for electronic filing of the Form 5500 and Form 5500-SF, certain items on these forms that relate solely to Code requirements were eliminated. Information on the forms, schedules, and attachments that were eliminated was used by the IRS for compliance purposes. By mandating electronic

filing of information, the IRS can obtain valuable plan information that is not currently required to be filed through EFAST2.¹ In coordination with DOL, the IRS anticipates adding items on the Form 5500 and Form 5500-SF relating solely to Code requirements. For those filers that are not subject to IRS electronic filing requirements, the IRS plans to provide a paper-only form containing those Code-related items and an alternative method of filing with the IRS.

Explanation of Provisions

I. In General

These regulations provide that a plan administrator (or, in certain situations, an employer maintaining a plan) required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year must use magnetic media to file certain statements, returns, and reports under sections 6057, 6058, and 6059. Magnetic media is defined as electronic filing or other media specifically permitted under applicable regulations, revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. (See §601.601(d)(2)(ii)(b) of this chapter.)

Filers of the Form 5500 and Form 5500-SF are already required to file the returns electronically through EFAST2. In addition, many filers of the Form 8955-SSA already voluntarily file electronically with the IRS and also are required to file the Form 5500 and Form 5500-SF electronically through EFAST2. The IRS and the Treasury Department

¹ In its published report on September 20, 2011, the Treasury Inspector General for Tax Administration (TIGTA) recommended that the IRS explore regulatory options for mandating electronic filings of annual employee benefit returns for employee benefit retirement plans. TIGTA believed that this would assist the IRS in satisfying its tax administration responsibilities. See “The Employee Plans Function Should Continue Its Efforts to Obtain Needed Retirement Plan Information,” Reference Number 3011-10-108 (September 20, 2011).

have determined that taxpayers should be able to comply at a reasonable cost with the requirement to file statements, returns, and reports on magnetic media.

The determination of whether a filer is required to file at least 250 returns is made by aggregating all returns, regardless of type, that the filer is required to file, including for example, income tax returns, returns required under section 6033, information returns, excise tax returns, and employment tax returns.

II. Registration Statements and Notifications Required Under Section 6057(a) and (b)

The proposed regulations under section 6057 provide that a registration statement under section 6057(a) or notification required under section 6057(b) must be filed on magnetic media if the filer is required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. For purposes of the regulations under section 6057, the term filer means the plan administrator within the meaning of section 414(g).

The proposed regulations under section 6057 provide that if a filer that is required to file electronically fails to do so, the filer is deemed to have failed to file the registration statement or other notification required under section 6057. Section 6652(d)(1) imposes a penalty on the plan administrator for the failure to file a registration statement required under section 6057(a). Section 6652(d)(2) imposes a penalty on the plan administrator for the failure to file a notification required under section 6057(b). The proposed regulations under section 6057 provide that rules under §301.6652-3(b) apply for purposes of determining whether there is reasonable cause for failure to file a registration statement required under section 6057(a) or notification required under section 6057(b). In addition, rules similar to the rules in §301.6724-

1(c)(3)(ii), regarding undue economic hardship relating to filing on magnetic media, will apply.

III. Form 5500 Series

The proposed regulations under section 6058 provide that a return required under section 6058 must be filed on magnetic media if the filer is required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. The term filer means the employer or employers maintaining the plan and the plan administrator within the meaning of section 414(g). Thus, in applying the 250-return requirement, the returns of the employer or employers maintaining the plan and of the plan administrator are aggregated.

The proposed regulations under section 6058 also provide that, in determining the 250-return requirement, the aggregation rules of section 414(b), (c), (m), and (o) apply to a filer that is, or includes, an employer. Thus, for example, a filer that is a member of a controlled group of corporations within the meaning of section 414(b) must file the Form 5500 series on magnetic media if the aggregate number of returns required to be filed by the controlled group of corporations is at least 250. These aggregation rules also apply to the regulations under sections 6057 and 6059 if the plan administrator is the employer.

The proposed regulations under section 6058 provide that if the filer is required to file electronically but fails to do so, the filer is deemed to have failed to file the Form 5500 series. For a failure to file the Form 5500 series, a penalty under section 6652(e) applies. The proposed regulations under section 6058 provide that rules under §301.6652-3(b) apply for purposes of determining whether there is reasonable cause for

failure to file a return. In addition, rules similar to the rules in §301.6724-1(c)(3)(ii), regarding undue economic hardship relating to filing on magnetic media, will apply.

IV. Actuarial Reports

The proposed regulations under section 6059 provide that an actuarial report required under section 6059 must be filed on magnetic media if the filer is required by the Code or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. For purposes of the regulations under section 6059, the term filer means the plan administrator within the meaning of section 414(g).

The proposed regulations under section 6059 provide that if a filer that is required to file electronically fails to do so, the filer is deemed to have failed to file the actuarial report required under section 6059. Section 6692 provides that a plan administrator that fails to file the report required under section 6059 shall pay a penalty for each such failure, unless it is shown that there is reasonable cause for the failure. The proposed regulations under section 6059 provide that rules under §301.6692-1(c) apply for purposes of determining whether there is reasonable cause for failure to file an actuarial report. In addition, rules similar to the rules in §301.6724-1(c)(3)(ii), regarding undue economic hardship relating to filing on magnetic media, will apply.

V. Economic Hardship Waiver

These proposed regulations also provide that the Commissioner may waive the requirement to file electronically in cases of undue economic hardship. Because the Treasury Department and the IRS believe that electronic filing will not impose significant burdens on the taxpayers covered by these regulations, the Commissioner anticipates granting waivers of the electronic filing requirement in only exceptional cases. Waivers are anticipated to be particularly rare for the filers of Form 5500 and Form 5500-SF (as

well as the schedules attached to those forms), because these filers are already required to file electronically under EFAST2.

Proposed Effective Date

These regulations are proposed to apply for employee retirement benefit plan statements, notifications, returns, and reports required to be filed under sections 6057, 6058, and 6059 for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2014.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, it is hereby certified that any collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities, and therefore no flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Office of Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

The certification is based on the fact that §§301.6057-1, 301.6058-1, and 301.6059-1 currently require filing with the IRS of information under sections 6057, 6058, and 6059 in accordance with applicable forms, schedules, and accompanying instructions. These proposed regulations merely require that this information be filed electronically by persons required to file at least 250 returns for the calendar year,

consistent with section 6011(e)(2)(A), which provides that, in prescribing regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form, the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Many small entities are unlikely to file 250 returns or more during the calendar year. Filers of the Form 5500 and Form 5500-SF are already required to file the returns electronically through EFAST2 pursuant to DOL regulations. In addition, many filers of the Form 8955-SSA already voluntarily file electronically with the IRS.

Further, if a taxpayer's operations are computerized, reporting in accordance with the regulations should be less costly than filing on paper. The IRS and the Treasury Department have determined that taxpayers should be able to comply at a reasonable cost with the requirement in these regulations to file employee retirement statements, returns, and reports on magnetic media. In addition, the proposed regulations provide that the IRS may waive the electronic filing requirements upon a showing of hardship.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The IRS and the Treasury Department request comments on all aspects of the rules. All comments are available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are William Gibbs and Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift Taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Seals and insignia, Statistics and Taxes

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

Part 301--PROCEDURE AND ADMINISTRATION

Par. 1. The authority for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7508***

Par. 2. Section 301.6057-3 is added to read as follows:

§301.6057-3 Required use of magnetic media for filing requirements relating to deferred vested retirement benefit.

(a) Magnetic media filing requirements under section 6057. A registration statement required under section 6057(a) or a notification required under section 6057(b) with respect to an employee benefit plan must be filed on magnetic media if the filer is required by the Internal Revenue Code or regulations to file at least 250 returns during the calendar year ending with or within the plan year. Returns filed on magnetic

media must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. In prescribing revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website, the Commissioner may direct the type of magnetic media filing. (See §601.601(d)(2)(ii)(b) of this chapter.)

(b) Economic hardship waiver. The Commissioner may waive the requirements of this section in cases of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the registration statements or notifications on magnetic media in accordance with this section exceeds the cost of filing the registration statements or notifications on paper or other media. A request for a waiver must be made in accordance with applicable published guidance, publications, forms, instructions, or other guidance on the IRS.gov Internet website. (See §601.601(d)(2)(ii)(b) of this chapter.) The waiver will specify the type of filing (that is, a registration statement or notification under section 6057), and the period to which it applies, and will be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) Failure to file. If a filer required to file a registration statement or other notification under section 6057 fails to file the statement or other notification on magnetic media when required to do so by this section, the filer is deemed to have failed to file the statement or other notification. See section 6652(d) for the amount imposed for the failure to file a registration statement or other notification under section 6057. In determining whether there is reasonable cause for the failure to file the registration statement or notification under section 6057, §301.6652-3(b) and rules

similar to the rules in §301.6724-1(c)(3)(ii) (regarding undue economic hardship related to filing information returns on magnetic media) will apply.

(d) Meaning of terms. The following definitions apply for purposes of this section.

(1) Magnetic media. The term magnetic media means electronic filing, as well as other media specifically permitted under applicable regulations, revenue procedures, or publications, forms, instructions, or other guidance on the IRS.gov Internet website.

(See §601.601(d)(2)(ii)(b) of this chapter.)

(2) Registration statement required under section 6057(a). The term registration statement required under section 6057(a) means a Form 8955-SSA (or its successor).

(3) Notification required under section 6057(b). The term notification required under section 6057(b) means either a Form 8955-SSA (or its successor) or a Form 5500 series (or its successor).

(4) Determination of 250 returns--(i) In general. For purposes of this section, a filer is required to file at least 250 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 250 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) Definition of filer. For purposes of this section, the term filer means the plan administrator within the meaning of section 414(g). If the plan administrator within the meaning of section 414(g) is the employer, the special rules in §1.6058-2(d)(3)(iii) will apply.

(e) Example. The following example illustrates the provisions of paragraph (d)(4) of this section:

Example. In 2014, P, the plan administrator of Plan B, is required to file 252 returns (including Forms 1099-R, "Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.," Form 8955-SSA, "Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits," Form 5500, "Annual Return/Report of Employee Benefit Plan," and Form 945, "Annual Return of Withheld Federal Income Tax"). Plan B's plan year is the calendar year. Because P is required to file at least 250 returns during the 2014 calendar year, P must file the 2014 Form 8955-SSA for Plan B electronically.

(f) Effective/applicability date. This section is applicable for registration statements and other notifications required to be filed under section 6057 for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2014.

Par. 3. Section 301.6058-2 is added to read as follows:

§301.6058-2 Required use of magnetic media for filing requirements relating to information required in connection with certain plans of deferred compensation.

(a) Magnetic media filing requirements under section 6058. A return required under section 6058 with respect to an employee benefit plan must be filed on magnetic media if the filer is required by the Internal Revenue Code or regulations to file at least 250 returns during the calendar year ending with or within the plan year. Returns filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. In prescribing revenue procedures, publications, forms, and instructions, or other guidance on the IRS.gov Internet site, the Commissioner may direct the type of magnetic media filing. (See §601.601(d)(2)(ii)(b) of this chapter.)

(b) Economic hardship waiver. The Commissioner may waive the requirements of this section in cases of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return on magnetic media in accordance with this section exceeds the cost of filing the returns on paper or other media. A request for a waiver must be made in accordance with applicable published guidance, publications, forms, instructions, or other guidance on the IRS.gov Internet website. (See §601.601(d)(2)(ii)(b) of this chapter.) The waiver will specify the type of filing (that is, a return required under section 6058) and the period to which it applies, and will be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) Failure to file. If a filer required to file a return under section 6058 fails to file the return on magnetic media when required to do so by this section, the filer is deemed to have failed to file the return. See section 6652(e) for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6652-3(b) and rules similar to the rules in §301.6724-1(c)(3)(ii) (regarding undue economic hardship related to filing information returns on magnetic media) will apply.

(d) Meaning of terms. The following definitions apply for purposes of this section.

(1) Magnetic media. The term magnetic media means electronic filing, as well as other media specifically permitted under applicable regulations, revenue procedures, or publications, forms, instructions, or other guidance on the IRS.gov Internet website. (See §601.601(d)(2)(ii)(b) of this chapter.)

(2) Return required under section 6058. The term return required under section 6058 means the Form 5500 series (or its successor).

(3) Determination of 250 returns--(i) In general. For purposes of this section, a filer is required to file at least 250 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 250 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) Definition of filer. For purposes of this section, the term filer means the employer or employers maintaining the plan and the plan administrator within the meaning of section 414(g).

(iii) Special rules relating to determining 250 returns. For purposes of applying paragraph (d)(3)(ii) of this section, the aggregation rules of section 414(b), (c), (m), and (o) will apply to a filer that is or includes an employer. Thus, for example, a filer that is a member of a controlled group of corporations within the meaning of section 414(b) must file the Form 5500 series on magnetic media if the aggregate number of returns required to be filed by all members of the controlled group of corporations is at least 250.

(e) Example. The following example illustrates the provisions of paragraph (d)(3) of this section:

Example. In 2014, Employer X (the plan sponsor of Plan A) and P (the plan administrator of Plan A) are required to file 267 returns. Employer X is required to file the following: one Form 1120, "U.S. Corporation Income Tax Return," 195 Forms W-2, "Wage and Tax Statement," 25 Forms 1099-DIV, "Dividends and Distributions," one Form 940, "Employer's Annual Federal Unemployment (FUTA) Tax Return," and four Forms 941, "Employer's Quarterly Federal Tax Return." P is required to file 40 Forms 1099-R, "Distributions From Pensions, Annuities, Retirement, Profit-Sharing Plans, IRAs, Insurance Contracts, etc." P and Employer X are jointly required to file one Form 5500 series. Plan A's plan year is the calendar year. Because P and Employer X, in the aggregate, are required to file at least 250 returns during the calendar year, the 2014 Form 5500 for Plan A must be filed electronically.

(f) Effective/applicability date. This section is applicable for returns required to be filed under section 6058 for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2014.

Par. 4. Section 301.6059-2 is added to read as follows:

§301.6059-2 Required use of magnetic media for filing requirements relating to periodic report of actuary

(a) Magnetic media filing requirements under section 6059. An actuarial report required under section 6059 with respect to an employee benefit plan must be filed on magnetic media if the filer is required by the Internal Revenue Code or regulations to file at least 250 returns during the calendar year ending with or within the plan year.

Actuarial reports filed on magnetic media must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website. In prescribing revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet website, the Commissioner may direct the type of magnetic media filing. (See §601.601(d)(2)(ii)(b) of this chapter.)

(b) Economic hardship waiver. The Commissioner may waive the requirements of this section in cases of undue economic hardship. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the reports on magnetic media in accordance with this section exceeds the cost of filing the reports on paper or other media. A request for a waiver must be made in accordance with applicable published guidance, publications, forms, instructions, or other guidance on the IRS.gov Internet website. (See §601.601(d)(2)(ii)(b) of this chapter.) The waiver will specify the type of filing (that is, an actuarial report required under section 6059) and the period to which it applies, and will be subject to such terms and conditions regarding the method of filing as may be prescribed by the Commissioner.

(c) Failure to File. If a filer required to file an actuarial report under section 6059 fails to file the report on magnetic media when required to do so by this section, the filer is deemed to have failed to file the report. See section 6692 for the penalty for the failure to file an actuarial report. In determining whether there is reasonable cause for failure to file the report, §301.6692-1(c) and rules similar to the rules in §301.6724-1(c)(3)(ii) (regarding undue economic hardship related to filing information returns on magnetic media) will apply.

(d) Meaning of terms. The following definitions apply for purposes of this section.

(1) Magnetic media. The term magnetic media means electronic filing, as well as other media specifically permitted under applicable regulations, revenue procedures, or publications, forms, instructions, or other guidance on the IRS.gov Internet website. (See §601.601(d)(2)(ii)(b) of this chapter.)

(2) Actuarial report required under section 6059--(i) Single employer plans. For a single employer plan, the term actuarial report required under section 6059 means the

Schedule SB, "Single-Employer Defined Benefit Plan Actuarial Information," of the Form 5500 series (or its successor).

(ii) Multiemployer and certain money purchase plans. For multiemployer and certain money purchase plans, the term actuarial report required under section 6059 means the Schedule MB, "Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information," of the Form 5500 series (or its successor).

(3) Determination of 250 returns--(i) In general. For purposes of this section, a filer is required to file at least 250 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 250 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) Definition of filer. For purposes of this section, the term filer means the plan administrator within the meaning of section 414(g). If the plan administrator within the meaning of section 414(g) is the employer, the special rules in §1.6058-2(d)(3)(iii) will apply.

(e) Example. The following example illustrates the provisions of paragraph (d)(3) of this section:

Example. In 2014, P, the plan administrator of Plan B (a single employer defined benefit plan), is required to file 266 returns (including Forms 1099-R "Distributions From Pensions, Annuities, Retirement, Profit-Sharing Plans, IRAs, Insurance Contracts, etc." and one Form 5500 series). Plan B's plan year is the calendar year. Because P is required to file at least 250 returns during the calendar year, P must file the 2014 Schedule SB of the Form 5500 series for Plan B electronically.

(f) Effective/ applicability date. This section is applicable for actuarial reports required to be filed under section 6059 for plan years that begin on or after January 1,

2014, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2014.

Beth Tucker

Deputy Commissioner for Operations Support.

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