

employers that are permitted to satisfy their obligation to deposit employment taxes by remitting the taxes with the employment tax return (*de minimis* depositors). Thus, an employer will not be required to deposit FUTA taxes for a quarter if the amount of the employer's accumulated FICA taxes and withheld income taxes for the quarter is less than \$2,500 and those taxes are remitted with the employer's timely filed employment tax return for the quarter. The employer will remain subject to the FUTA deposit requirements and will be required to deposit accumulated FUTA taxes for any quarter in which the amount of accumulated FICA taxes and withheld income taxes is at least \$2,500 and the amount of accumulated FUTA taxes exceeds \$100. The proposed regulations would also permit an employer that is a *de minimis* depositor for the last calendar quarter of a year to remit the balance of its FUTA tax liability for the year with a timely filed return. These additional exemptions from the FUTA deposit requirements will lessen burdens on small business owners, especially those employing part-time or seasonal workers.

### 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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of

the date, time, and place for the public hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these regulations is Heather L. Dostaler of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

### List of Subjects in 26 CFR Part 31

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

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

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

1. The authority citation for part 31 continues to read in part as follows:

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

2. In § 31.6302(c)–3, paragraphs (a)(2) and (a)(3) are revised to read as follows:

#### § 31.6302(c)–3 Use of Government depositaries in connection with tax under the Federal Unemployment Tax Act.

(a) \* \* \*

(2) *Special rules*—(i) *De minimis rule for deposit of taxes attributable to payments made after December 31, 2003.* The provisions of paragraph (a)(1) of this section do not apply to a period described therein if the period ends after December 31, 2003, and the taxpayer is a *de minimis* depositor of employment taxes as defined in § 31.6302–1(e) (Federal Insurance Contributions Act (FICA) taxes and withheld income taxes) for such period. A taxpayer is a *de minimis* depositor of employment taxes for a period described in paragraph (a)(1) of this section if—

(A) The period is a single calendar quarter and, under the *de minimis* rule of § 31.6302–1(f)(4), the taxpayer is permitted to satisfy its obligation to deposit employment taxes accumulated during the quarter by remitting the taxes with a timely filed return; or

(B) The period includes two or more calendar quarters and, under the *de minimis* rule of § 31.6302–1(f)(4), the taxpayer is permitted to satisfy its obligation to deposit employment taxes accumulated during the last quarter in the period by remitting the taxes with a timely filed return.

(ii) *Special rule where accumulated amount does not exceed \$100.* The provisions of paragraph (a)(1) of this section do not apply with respect to a period described therein if the amount of the tax imposed by section 3301 for the period as computed under the provisions of section 6157 plus amounts not deposited for prior periods in the same calendar year does not exceed \$100. Thus, an employer is not required to make a deposit for a period unless the tax for the period plus tax not deposited for prior periods exceeds \$100.

(iii) The provisions of this paragraph (a)(2) are illustrated by the following examples. In the examples, A's FUTA tax rate, after the credit for contributions to state unemployment funds, is assumed to be 0.8 percent. The examples are as follows:

*Example 1.* In 2004, Employer A makes quarterly returns of employment taxes. In the first quarter, A's only employees are part-time workers B and C, who are each paid an annual salary of \$15,000 in semi-monthly installments. Both B and C claim single filing status with one exemption on Form W–4 and each is paid \$3,750 during the first quarter. The employees' share of FICA tax for the quarter is \$573.75 (.0765 × (\$3,750 + \$3,750)), A's matching FICA tax is also \$573.75, and Federal income tax withheld from B and C is \$518. Thus, the amount of accumulated employment taxes for the quarter (\$1,665.50) is less than \$2,500 and, under the *de minimis* rule of § 31.6302–1(f)(4), A is permitted to satisfy its obligation to deposit employment taxes by remitting the taxes with a timely filed return. A's FUTA tax liability for the first quarter is \$60 (.008 × (\$3,750 + \$3,750)). Because A is a *de minimis* depositor under paragraph (a)(2)(i) of this section and A's FUTA tax liability does not exceed \$100, both of the exceptions in this paragraph (a)(2) apply and A is not required to deposit FUTA taxes for the first calendar quarter.

*Example 2.* On April 16, 2004, A hires part-time worker D, who is also paid an annual salary of \$15,000 in semi-monthly installments and who also claims single filing status with one exemption on Form W–4. During the second quarter, B and C are each paid \$3,750 and D is paid \$3,125. The employees' share of FICA tax for the quarter is \$812.81 (.0765 × (\$3,750 + \$3,750 + \$3,125)), A's matching FICA tax is also \$812.81, and Federal income tax withheld from B, C, and D is \$734. Again, the amount of accumulated employment taxes for the quarter (\$2,359.62) is less than \$2,500 and, under the *de minimis* rule of § 31.6302–1(f)(4), A is permitted to satisfy its obligation to deposit employment taxes by remitting the taxes with a timely filed return. The FUTA tax applies only to the first \$7,000 that each employee is paid during the calendar year. Thus, for both B and C, amounts paid in the second quarter are subject to the FUTA tax only to the extent they do not exceed \$3,250 (the \$7,000 annual limit less first quarter wages of \$3,750). A's FUTA tax liability for the second quarter is \$77 (.008 × (\$3,250 +