



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED

June 9, 2015

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Affected IRM: 20.1.4

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MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED,
COMMISSIONER, WAGE & INVESTMENT, and CHIEF APPEALS

FROM: Maria S. Hwang /s/ *Maria S. Hwang*
Director, Servicewide Operations

SUBJECT: Interim Guidance on the Failure to Deposit Penalty under
Section 6656 for Taxpayers Unable to get a Bank Account

The purpose of this memorandum is to issue interim guidance related to the abatement of the failure to deposit penalty under Internal Revenue Code section 6656 for taxpayers who are unable to get a bank account (unbanked taxpayers) or make other arrangements for depositing their tax deposit obligations (as described in Treas. Reg. section 31.6302-1(h)(3)), which are required to be made by electronic funds transfer (EFT). Under section 31.6302-1(h)(3), this includes corporate income taxes, excise taxes, and employment taxes. Please ensure that this information is distributed to all affected employees within your organization. This interim guidance is effective immediately.

BACKGROUND

The Electronic Federal Tax Payment System (EFTPS) was designed by the Department of the Treasury to allow taxpayers to deposit or pay their taxes by EFT. Since January 1, 2011, almost all businesses have been required to make their deposits by electronic funds transfer using the EFTPS. It has come to the Service's attention that there are unbanked taxpayers who, after undertaking reasonable efforts to obtain a bank account, are unable to do so and are unable to make other arrangements for depositing their taxes through the EFTPS. The penalty for not depositing electronically through the EFTPS is 10% of the amount deposited (the "failure to deposit penalty"). This failure to deposit penalty is not applicable if the taxpayer demonstrates that the failure to deposit electronically was due to reasonable cause and not due to willful neglect.

IRM 20.1.4.2 provides that a taxpayer is required to deposit taxes by EFT deposit systems and failure to do so could result in a failure to deposit penalty.

IRM 20.1.4.26 provides that penalty relief determinations for the failure to deposit penalty must be made on a case-by-case basis and that the Service will not impose, or will abate the failure to deposit penalty when the taxpayer establishes that due to specific penalty relief provisions, the assessed penalty should not be imposed or should be abated after taking into account documentation supporting the taxpayer's position. This IRM also references the general reasonable cause provisions in IRM 20.1.1, which provide (in part) as follows.

IRM 20.1.1.3.2 states that "Reasonable cause is based on all the facts and circumstances in each situation and allows the IRS to provide relief from a penalty that would otherwise be assessed. Reasonable cause relief is generally granted when the taxpayer exercised ordinary business care and prudence in determining his or her tax obligations but nevertheless failed to comply with those obligations."

IRM 20.1.1.3.2.2 states that "Ordinary business care and prudence includes making provisions for business obligations to be met when reasonably foreseeable events occur. A taxpayer may establish reasonable cause by providing facts and circumstances showing that he or she exercised ordinary business care and prudence (taking that degree of care that a reasonably prudent person would exercise), but nevertheless were unable to comply with the law."

PROCEDURAL CHANGE

For unbanked taxpayers who are timely in meeting their tax deposit obligations, the Service will not impose or will abate the failure to deposit penalty if a taxpayer can show they made reasonable efforts but were unable to get a bank account during the period at issue. To request penalty relief under this guidance, the unbanked taxpayer must include a signed statement that explains the taxpayer's attempt to get a bank account and must include any corroborating documentation (denied account applications, correspondence from banks, etc.). The signed statement does not have to be in a particular format.

This guidance does not apply to situations in which the taxpayer can obtain a bank account, but chooses not to maintain a bank account. Such cases will continue to be handled on a case by case basis.

EFFECT ON OTHER DOCUMENTS

IRM 20.1.4.2(3), IRM 20.1.4.15.3 and IRM 20.1.4.26 will be amended to take into account the information above.

EFFECTIVE DATE

This interim guidance is effective June 9, 2015.

DISTRIBUTION

If you have questions, please contact Robert Malone, Program Manager, Office of Servicewide Penalties.

cc: www.irs.gov