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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8969]

RIN 1545-AW37

Payment by Credit Card and Debit Card

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations authorizing the Commissioner to accept payment of internal revenue taxes by credit card or debit card and limit the use and disclosure of information relating to payment of taxes by credit card and debit card. Additionally, the final regulations provide that payments of tax by check or money order should be made payable to the United States Treasury. The final regulations reflect changes to the law made by the Taxpayer Relief Act of 1997 and affect persons who pay their tax liabilities by credit card, debit card, check, or money order.

DATES: Effective Date: These final regulations are effective December 14, 2001.

Applicability Date: For dates of applicability, see §301.6311-2(h).

FOR FURTHER INFORMATION CONTACT: Brinton Warren (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under sections 6103 and 6311 of the Internal Revenue Code (Code). The final regulations reflect the amendment of sections 6103 and 6311 by section 1205 of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788) (TRA 1997); section 4003(k) of the Tax and Trade Relief Extension Act of 1998, Public Law 105-277 (112 Stat. 2681)(TREA 1998); and section 3703 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 685)(RRA 1998).

On December 15, 1998, the IRS and Treasury published temporary regulations (TD 8793) in the **Federal Register** (63 FR 68995). A notice of proposed rulemaking (REG-111435-98) cross-referencing the temporary regulations was published on the same day in the **Federal Register** (63 FR 69031). (References herein to the proposed regulations shall be to the temporary regulations.) No public hearing was requested or held. Two written comment letters were received. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed. The comments and revisions are discussed below.

Explanation of Provisions

Section 301.6311-1 currently provides that checks or money orders should be made payable to the Internal Revenue Service. Section 3703 of RRA 1998 states that the Secretary of the Treasury shall establish such rules, regulations, and procedures as are necessary to allow payment of taxes by check or money order payable to the United States Treasury. The amendment to § 301.6311-1 accordingly provides that checks and money orders should be made payable to the United States Treasury.

As amended by section 1205 of TRA 1997, section 6311(a) provides that it shall be lawful for the Secretary of the Treasury to receive payment for internal revenue taxes by any commercially acceptable means that the Secretary deems appropriate, to the extent and under the conditions provided in regulations prescribed by the Secretary. The legislative history accompanying TRA 1997 explains that commercially acceptable means include "electronic funds transfers, including those arising from credit cards, debit cards, and charge cards." H.R. Conf. Rep. No. 105-220, at 652 (1997). The current regulations under § 301.6311-1 permit payment of taxes by checks, drafts drawn on financial institutions, or money orders. The final regulations add payments by credit cards (which includes charge cards) and debit cards to the acceptable methods of payment under section 6311. Section 6302 and the regulations thereunder remain the

authority for forms of payment by electronic funds transfer other than payment by credit card or debit card.

Only credit cards or debit cards approved by the Commissioner may be used for payment of internal revenue taxes under section 6311, only the types of tax liabilities specified by the Commissioner may be paid by credit card or debit card, and all such payments must be made in the manner and in accordance with the forms, instructions, and procedures prescribed by the Commissioner. The Commissioner has entered into contracts with third party service providers who will process the credit and debit card transactions. The Commissioner may not impose any fee on persons making payment of taxes by credit card or debit card. However, other persons participating in the program, including third party service providers who process credit or debit card transactions, are not prohibited from charging fees.

The final regulations provide, as required by section 6311(d)(3), that the payment of taxes by credit card or debit card is subject to the error resolution procedures of section 161 of the Truth in Lending Act (TILA) (15 U.S.C. 1666), section 908 of the Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693f), or any similar provisions of state or local law. The payment, however, is subject to the error resolution procedures of these statutes only for the purpose of resolving errors relating to the credit card or debit card account, and not for the purpose of resolving any errors, disputes, or adjustments relating to the

underlying tax liability. These provisions ensure that any disputes concerning the merits of the tax liability will be resolved in the traditional administrative and judicial forums (e.g., by filing a petition in Tax Court or by paying the disputed tax and filing a claim for refund), and will not be raised in any dispute with the card issuer, financial institution, or other person participating in the credit card or debit card transaction.

As authorized by section 6311(d)(3)(E), the final regulations permit the Commissioner to return funds erroneously received due to errors relating to the credit card or debit card account by arranging for a credit to the taxpayer's account with the issuer of the credit card or debit card or other appropriate financial institution or person. Returns of funds through credit card or debit card account credits, however, are available only to correct errors relating to the credit card or debit card account, and not to refund overpayments of taxes.

The final regulations also provide the procedures required under sections 6103(k)(9) and 6311(e) with respect to the use and disclosure of information relating to payment of taxes by credit card and debit card. Section 1205(c)(1) of TRA 1997 (as amended by section 6012(b)(2) of RRA 1998) added section 6103(k)(9), which authorizes the IRS to disclose returns and return information to financial institutions and others to the extent necessary for the administration of section 6311. Section

6103(k)(9) further provides that disclosures of information for purposes other than to accept payments by check or money order (for example, to accept payment by credit card or debit card) shall be made only to the extent authorized by written procedures promulgated by the Secretary. Section 6311(e) provides that no person shall use or disclose any information relating to credit card or debit card transactions obtained pursuant to section 6103(k)(9), except to the extent authorized by written procedures promulgated by the Secretary.

Pursuant to section 6311(e), the final regulations provide that information received by any person in connection with the payment of tax by credit card or debit card shall be treated as confidential by all persons who receive such information, whether such information is received from the IRS or from any other person, including the taxpayer. IRS personnel are authorized to disclose to card issuers, financial institutions, and other persons information necessary to process the tax payment or to bill or collect the amount charged or debited (for example, to resolve billing errors).

The final regulations set forth the limited purposes and activities for which such information may be used or disclosed by card issuers, financial institutions, and other persons. The permitted purposes and activities principally involve credit card and debit card processing, billing, collection, account servicing, account transfers, internal business records, legal

compliance, and legal proceedings. The final regulations expressly prohibit the selling of information, the sharing of information with credit bureaus, or the use of information for any marketing purpose. Any person who uses or discloses information in violation of section 6311(e) is subject to civil liability for damages under section 7431(a)(2). See section 7431(h), added by section 1205(c)(2) of TRA 1997 (as amended by section 6012(b)(3) of RRA 1998).

Summary of Comments

Commentators recommended that the final regulations be amended to permit the IRS to compensate private sector companies for the services they provide in connection with the payment of taxes by credit and debit card. However, section 6311(d)(2) prohibits the payment of such compensation. Thus, the final regulations do not adopt this recommendation.

Commentators also recommended that the final regulations incorporate by reference the applicable regulations and staff commentaries adopted by the Federal Reserve Board under the provisions of TILA and EFTA referenced in the final regulations. The final regulations do not adopt this recommendation because the references in section 6311 and the final regulations to section 161 of TILA and section 908 of EFTA are sufficient to make the Federal Reserve Board regulations and other legal guidance under section 161 of TILA and section 908 of EFTA

applicable to the payment of taxes by credit card or debit card, except as explicitly excepted in sections 6311(d)(3)(A) and (C).

Commentators also recommended a clarification of § 301.6311-2T(c)(2) of the temporary regulations, which provides that the United States has a lien for the guaranteed amount of a transaction upon all the assets of the institution making the guarantee if the United States is not duly paid after the taxpayer tenders a payment of taxes by credit card or debit card. The commentators note that the mere tendering of payment by credit card or debit card is not sufficient for the United States to have a lien. Rather, the parties involved in the transaction must also follow the applicable procedures required to authorize the transaction and to obtain the guarantee. Thus, the commentators recommended that language be added to the final regulations to provide that the United States will not have a lien unless the parties involved follow the procedures required to authorize the transaction and obtain a guarantee.

Under the temporary regulations, the financial institution must expressly guarantee the payment in order for the United States to have a lien on the assets of the institution making the guarantee. The financial institution's express guarantee will arise only if the applicable procedures necessary to authorize the transaction and obtain the guarantee are properly followed. Additional language in the final regulations is therefore unnecessary.

One commentator questioned the use of the term commercial transactions in § 301.6311-2T(d)(2)(D). The commentator recommended removing the word commercial because, in general, TILA does not apply to commercial transactions. The final regulations adopt this recommendation by replacing §301.6311-2T(d)(2)(D) in the final regulations with a provision covering other types of errors similar to the ones explicitly covered by error resolution procedures in the final regulations.

One commentator recommended clarification of §301.6311-2T(g)(3)(i), which prohibits use or disclosure of information relating to credit and debit card transactions for purposes related to the sale or exchange of such information separate from the underlying receivable or account. The commentator stated that this provision conflicts with other provisions in the temporary regulations that specifically permit an exchange of credit and debit card information to process credit and debit card transactions and resolve billing errors without a sale or exchange of the underlying receivable or account. The commentator's concern stems from an ambiguity created by the use of the term exchange. To avoid confusion, the final regulations replace exchange with transfer for consideration.

Explanation of Other Revisions

Other changes to the final regulations include the following. First, the final regulations clarify that sending

receipts or confirmation of a transaction to the taxpayer, including secured electronic transmissions and facsimiles, is a permissible disclosure. See §301.6311-2(g)(1)(i)(E). Second, the final regulations clarify that disclosure of information necessary to complete a transaction by the taxpayer with a state or local government agency (for example, to pay state or local tax by credit card or debit card) is a permissible disclosure when explicitly authorized by the taxpayer. This allows a taxpayer to make a state or local tax payment immediately after making a federal tax payment without requiring the taxpayer to reenter information (for example, name and Taxpayer Identification Number). See §301.6311-2(g)(1)(i)(F). Third, the final regulations provide that the term tax as used in these final regulations includes interest, penalties, additional amounts, and additions to tax. See §301.6311-2(a)(1). The temporary regulations did not refer to additional amounts.

Special Analyses

It has been determined that this Treasury decision 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 final regulations, and because these final regulations do not impose a collection of information on small entities, the

Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is R. Bradley Taylor of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

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

Section 301.6103(k)(9)-1 also issued under 26 U.S.C. 6103(k)(9) and 26 U.S.C. 6103(q). * * *

Section 301.6311-2 also issued under 26 U.S.C. 6311. * * *

Par. 2. Section 301.6103(k)(9)-1 is added to read as

follows:

§301.6103(k)(9)-1 Disclosure of returns and return information relating to payment of tax by credit card and debit card.

Officers and employees of the Internal Revenue Service may disclose to card issuers, financial institutions, or other persons such return information as the Commissioner deems necessary in connection with processing credit card and debit card transactions to effectuate payment of tax as authorized by § 301.6311-2. Officers and employees of the Internal Revenue Service may disclose such return information to such persons as the Commissioner deems necessary in connection with billing or collection of the amounts charged or debited, including resolution of errors relating to the credit card or debit card account as described in § 301.6311-2(d).

§301.6103(k)(9)-1T [Removed]

Par. 3. Section 301.6103(k)(9)-1T is removed.

§301.6311-1 [Amended]

Par. 4. In section 301.6311-1, paragraph(a)(1)(i) is revised by removing the language "Internal Revenue Service" from the third sentence and adding the language "United States Treasury" in its place.

Par. 5. Section 301.6311-2 is added to read as follows:

§301.6311-2 Payment by credit card and debit card.

(a) Authority to receive--(1) Payments by credit card and debit card. Internal revenue taxes may be paid by credit card or

debit card as authorized by this section. Payment of taxes by credit card or debit card is voluntary on the part of the taxpayer. Only credit cards or debit cards approved by the Commissioner may be used for this purpose, only the types of tax liabilities specified by the Commissioner may be paid by credit card or debit card, and all such payments must be made in the manner and in accordance with the forms, instructions and procedures prescribed by the Commissioner. All references in this section to tax also include interest, penalties, additional amounts, and additions to tax.

(2) Payments by electronic funds transfer other than payments by credit card and debit card. Provisions relating to payments by electronic funds transfer other than payments by credit card and debit card are contained in section 6302 and the Treasury Regulations promulgated pursuant to section 6302.

(3) Definitions--(i) Credit card means any credit card as defined in section 103(k) of the Truth in Lending Act (15 U.S.C. 1602(k)), including any credit card, charge card, or other credit device issued for the purpose of obtaining money, property, labor, or services on credit.

(ii) Debit card means any accepted card or other means of access as defined in section 903(1) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(1)), including any debit card or similar device or means of access to an account issued for the purpose of initiating electronic fund transfers to obtain money,

property, labor, or services.

(b) When payment is deemed made. A payment of tax by credit card or debit card shall be deemed made when the issuer of the credit card or debit card properly authorizes the transaction, provided that the payment is actually received by the United States in the ordinary course of business and is not returned pursuant to paragraph (d)(3) of this section.

(c) Payment not made--(1) Continuing liability of taxpayer. A taxpayer who tenders payment of taxes by credit card or debit card is not relieved of liability for such taxes until the payment is actually received by the United States and is not required to be returned pursuant to paragraph (d)(3) of this section. This continuing liability of the taxpayer is in addition to, and not in lieu of, any liability of the issuer of the credit card or debit card or financial institution pursuant to paragraph (c)(2) of this section.

(2) Liability of financial institutions. If a taxpayer has tendered a payment of internal revenue taxes by credit card or debit card, the credit card or debit card transaction has been guaranteed expressly by a financial institution, and the United States is not duly paid, then the United States shall have a lien for the guaranteed amount of the transaction upon all the assets of the institution making such guarantee. The unpaid amount shall be paid out of such assets in preference to any other claims whatsoever against such guaranteeing institution, except

the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such institution.

(d) Resolution of errors relating to the credit card or debit card account--(1) In general. Payments of taxes by credit card or debit card shall be subject to the applicable error resolution procedures of section 161 of the Truth in Lending Act (15 U.S.C. 1666), section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or any similar provisions of state or local law, for the purpose of resolving errors relating to the credit card or debit card account, but not for the purpose of resolving any errors, disputes or adjustments relating to the underlying tax liability.

(2) Matters covered by error resolution procedures. (i) The error resolution procedures of paragraph (d)(1) of this section apply to the following types of errors- -

(A) An incorrect amount posted to the taxpayer's account as a result of a computational error, numerical transposition, or similar mistake;

(B) An amount posted to the wrong taxpayer's account;

(C) A transaction posted to the taxpayer's account without the taxpayer's authorization; and

(D) Other similar types of errors that would be subject to resolution under section 161 of the Truth in Lending Act (15 U.S.C. 1666), section 908 of the Electronic Fund Transfer Act (15

U.S.C. 1693f), or similar provisions of state or local law.

(ii) An error described in paragraph (d)(2)(i) of this section may be resolved only through the procedures referred to in paragraph (d)(1) of this section and cannot be a basis for any claim or defense in any administrative or court proceeding involving the Commissioner or the United States.

(3) Return of funds pursuant to error resolution procedures. Notwithstanding section 6402, if a taxpayer is entitled to a return of funds pursuant to the error resolution procedures of paragraph (d)(1) of this section, the Commissioner may, in the Commissioner's sole discretion, effect such return by arranging for a credit to the taxpayer's account with the issuer of the credit card or debit card or any other financial institution or person that participated in the transaction in which the error occurred.

(4) Matters not subject to error resolution procedures. The error resolution procedures of paragraph (d)(1) of this section do not apply to any error, question, or dispute concerning the amount of tax owed by any person for any year. For example, these error resolution procedures do not apply to determine a taxpayer's entitlement to a refund of tax for any year for any reason, nor may they be used to pay a refund. All such matters shall be resolved through administrative and judicial procedures established pursuant to the Internal Revenue Code and the rules and regulations thereunder.

(5) Section 170 of the Truth in Lending Act not applicable.

Payments of taxes by credit card or debit card are not subject to section 170 of the Truth in Lending Act (15 U.S.C. 1666i) or to any similar provision of state or local law.

(e) Fees or charges. The Internal Revenue Service may not impose any fee or charge on persons making payment of taxes by credit card or debit card. This section does not prohibit the imposition of fees or charges by issuers of credit cards or debit cards or by any other financial institution or person participating in the credit card or debit card transaction. The Internal Revenue Service may not receive any part of any fees that may be charged.

(f) Authority to enter into contracts. The Commissioner may enter into contracts related to receiving payments of tax by credit card or debit card if such contracts are cost beneficial to the Government. The determination of whether the contract is cost beneficial shall be based on an analysis appropriate for the contract at issue and at a level of detail appropriate to the size of the Government's investment or interest. The Commissioner may not pay any fee or charge or provide any other monetary consideration under such contracts for such payments.

(g) Use and disclosure of information relating to payment of taxes by credit card and debit card. Any information or data obtained directly or indirectly by any person other than the taxpayer in connection with payment of taxes by a credit card or

debit card shall be treated as confidential, whether such information is received from the Internal Revenue Service or from any other person (including the taxpayer).

(1) No person other than the taxpayer shall use or disclose such information except as follows-

(i) Card issuers, financial institutions, or other persons participating in the credit card or debit card transaction may use or disclose such information for the purpose and in direct furtherance of servicing cardholder accounts, including the resolution of errors in accordance with paragraph (d) of this section. This authority includes the following- -

(A) Processing the credit card or debit card transaction, in all of its stages through and including the crediting of the amount charged on account of tax to the United States Treasury;

(B) Billing the taxpayer for the amount charged or debited with respect to payment of the tax liability;

(C) Collecting the amount charged or debited with respect to payment of the tax liability;

(D) Returning funds to the taxpayer in accordance with paragraph (d)(3) of this section;

(E) Sending receipts or confirmation of a transaction to the taxpayer, including secured electronic transmissions and facsimiles; and

(F) Providing information necessary to make a payment to state or local government agencies, as explicitly authorized by

the taxpayer (e.g., name, address, taxpayer identification number).

(ii) Card issuers, financial institutions or other persons participating in the credit card or debit card transaction may use and disclose such information for the purpose and in direct furtherance of any of the following activities--

(A) Assessment of statistical risk and profitability;

(B) Transfer of receivables or accounts or any interest therein;

(C) Audit of account information;

(D) Compliance with federal, state, or local law; and

(E) Cooperation in properly authorized civil, criminal, or regulatory investigations by federal, state, or local authorities.

(2) Notwithstanding the provisions of paragraph (g)(1), use or disclosure of information relating to credit card and debit card transactions for purposes related to any of the following is not authorized--

(i) Sale of such information (or transfer of such information for consideration) separate from a sale of the underlying account or receivable (or transfer of the underlying account or receivable for consideration);

(ii) Marketing for any purpose, such as, marketing tax-related products or services, or marketing any product or service that targets those who have used a credit card or debit card to

pay taxes; and

(iii) Furnishing such information to any credit reporting agency or credit bureau, except with respect to the aggregate amount of a cardholder's account, with the amount attributable to payment of taxes not separately identified.

(3) Use and disclosure of information other than as authorized by this paragraph (g) may result in civil liability under sections 7431(a)(2) and (h).

(h) Effective date. This section applies to payments of taxes made on and after December 14, 2001.

§301.6311-2T [Removed]

Par. 6. Section 301.6311-2T is removed.

Deputy Commissioner of Internal Revenue.

Approved:

Acting Assistant Secretary of the Treasury.