

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:PA:04:EMStone
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to: Mary T. Rekus
Chief, Electronic Payment & FTD Section, Customer Account Services
Wage & Investment

from: Mitchel S. Hyman
Senior Technician Reviewer, Branch 3
(Procedure & Administration)

Subject: "Walk-up Cash Method" under I.R.C. §§ 6311 and 6302.

Question presented

Whether payment of taxes through a walk-up cash method is authorized under I.R.C. §§ 6311 and/or 6302, without the need for new regulations.

Facts

The specific method of payment you propose is a walk-up cash payment

[REDACTED]

One goal of the proposed method is to allow individuals without bank accounts or credit or debit cards to pay their income taxes through electronic transfers.

Conclusion

The walk-up cash method, which allows a taxpayer to [REDACTED] pay cash that will ultimately be electronically transferred through a [REDACTED] processor to the IRS is permissible under I.R.C. § 6302, and existing regulations, provided the payment process is set forth in published guidance, publications, forms, or instructions.

Discussion

There are two independent and partially overlapping sources of authority for payment of taxes by means other than official currency—I.R.C. § 6311 and I.R.C. § 6302. I.R.C. § 6302(a) provides broad general authority for the Secretary to establish through regulations, the mode and time of collecting any tax if not otherwise provided in the code. This authority has existed since the nineteenth century.¹ The remaining subsections of I.R.C. § 6302 discuss how certain excise taxes are collected. Congress amended I.R.C. § 6302 in 1993 to add subsection (h).² This subsection requires that depository taxes³ must be paid by electronic fund transfers and defines both depository taxes and electronic fund transfer for the purpose of that subsection. See I.R.C. § 6302(h)(3). The legislative history explains that the purpose of adding subsection (h) was to eliminate the paperwork burden inherent in the paper based federal tax deposit coupon system that employers used to withhold income taxes and FICA taxes from wages paid to employees.⁴

While I.R.C. § 6302 is generally viewed as addressing depository tax payments, it is used as the source of authority for authorizing electronic fund transfers for income taxes generally. Treas. Reg. § 1.6302-4, first promulgated in 1997, authorizes voluntary payments of income taxes by electronic transfers. This provision provides that “**any person** may voluntarily remit by electronic funds transfer any payment of tax imposed by Subtitle A (income taxes) of the Internal Revenue Code. Such payment must be made in the manner set forth in published guidance, publications, forms and instructions.”⁵

¹ The Revised Statutes of the United States, 1873-4, Title 35-Internal Revenue-Ch.11, Sec. 3447 provides, “Wherever the mode or time of assessing or collection any tax which is imposed is not provided for, the Commissioner of Internal Revenue may establish the same by regulation. . . .” This exact language was subsequently codified in Pub. L. 76-1 § 3652 (1939 Codification). The present version was codified in Pub. L. 83-591 § 6302(a) (1954 Codification).

² The North American Free Trade Agreement Implementation Act of 1993, Pub. L. 103-8 § 523.

³ Depository taxes include: Corporate income tax/certain taxes of tax exempt organizations (Treas. Reg. § 1.6302-1); non- resident aliens/foreign corporations (Treas. Reg. § 1.6302-2); estimated taxes of certain trusts (Treas. Reg. § 1.6302-3); FICA (Treas. Reg. § 31.6302-1); railroad retirement account (Treas. Reg. § 31.6302-2); back-up withholding (Treas. Reg. § 31.6302-3); withholding taxes on non-payroll payments (Treas. Reg. § 31.6302-4); federal unemployment taxes (Treas. Reg. § 6302(c)-3); and persons filing quarterly returns, i.e. employment taxes (Treas. Reg. § 40.6302(c)-1).

⁴ H.R. Rep. No. 103-361, pt., at 105 (1993).

⁵ Treas. Reg. § 1.6302-4(a). See *also* Treas. Reg. § 20.6302-1 (voluntary payments of estate taxes by

Until 1998, I.R.C. § 6311 only authorized payment by check or money order.⁶ The Taxpayer Relief Act of 1997 amended I.R.C. § 6311(a), which now provides, “it shall be lawful for the Secretary to receive for internal revenue taxes any commercially acceptable means that the Secretary deems appropriate to the extent and under the conditions provided in regulations prescribed by the Secretary.”⁷ The Legislative History accompanying the 1997 Act states that “commercially acceptable means,” include “electronic funds transfers, including those arising from credit cards, debit cards, and charge cards.”⁸ Thus, the purpose of the amendment was primarily to address credit and debit card payments, as evidenced by several new provisions addressing whether the Service can pay fees for the use of credit and debit cards, the applicability of the Truth in Lending and Electronic Fund Transfers Acts to credit and debit card payments, and the confidentiality of information relating to credit and debit card payments. I.R.C. §§ 6311(d), (e). In order to implement the amendment, the Secretary issued Treas. Reg. § 301.6311-2 governing payment by credit and debit cards. However, Treas. Reg. § 301.6311-2(2) provides that payments by electronic funds transfer **other than by credit card and debit card** are governed by I.R.C. § 6302 and its Treasury Regulations. Therefore, even though I.R.C. § 6311(a) could be used as the source of authority for regulations governing electronic payments other than credit and debit cards, I.R.C. § 6302 and its regulations are the applicable authority.⁹

The broad language of Treas. Reg. § 1.6302-4 allows any person to pay any income tax by electronic funds transfer as long as the payment method is set forth in published guidance, forms, publications, or instructions. Thus, any electronic payment method (other than one involving payment by credit or debit card, which is governed by I.R.C. § 6311)

electronic funds transfer); Treas. Reg. § 25.6302-1 (voluntary payments of gift taxes by electronic fund transfer).

⁶ Until 1998, I.R.C. § 6311 stated: “It shall be lawful for the Secretary to receive for internal revenue taxes, or in payment for internal revenue stamps, checks or money orders, to the extent and under the conditions provided in regulations prescribed by the Secretary.”

⁷ The Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1205, 111 Stat. 788, 995 (1997). This change became effective in August, 1998.

⁸ Joint Committee on Taxation, 105th Congress, General Explanation of Tax Legislation Enacted in 1997, 340 (Comm. Print 1997).

⁹ Treas. Reg. § 301.6311-2(a)3(i) defines credit cards by reference to the Truth in Lending Act (15 U.S.C. § 1602(k)). Credit cards involve a contract whereby a creditor extends credit to a purchaser who must pay the creditor back in installments that may include a finance charge. *Id.* at § 1602(e) and (f). Treas. Reg. § 301.6311-2(a)3(ii) defines debit cards by reference to the Electronic Funds Transfer Act (15 U.S.C. § 1693a(1)). A debit card is a means to access a consumer’s existing demand deposit, savings deposit, or other assets account held by a financial institution to transfer money electronically. *Id.* The walk-up payment method would not qualify as a payment by either a credit card or a debit card. It is not a credit card because there is no contract based on the extension of credit that must be paid back periodically. It does not qualify as a debit card because the walk-up payor is not transferring money from his account at a financial institution.

would be permissible under Treas. Reg. § 1.6302-4 if it was so set forth. Thus, a walk-up cash payment method, which allows a taxpayer to pay cash so that a third party processor will electronically transfer funds to pay the tax to the IRS, is permissible under I.R.C. § 6302 and existing regulations, provided the Service sets forth the payment process in published guidance, publications, forms, or instructions. The only difference between this type of payment and a more common electronic payment of individual income taxes is that the payment is transmitted from a third party's account rather than a personal bank account of the taxpayer. The third-party payment is nonetheless a voluntary remittance by an electronic fund transfer, and so is authorized by the regulation.

We note that the Internal Revenue Code does define electronic transfer in the context of depository taxes. Electronic funds transfer is defined as, "any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution or other financial intermediary to debit or credit an account." I.R.C. § 6302(h)(3)(B). If we were to apply this definition, it would apply to the walk-up payment method, assuming the funds are being transferred through a financial institution or intermediary to debit an account belonging to the processor. However this definition, is limited to subsection (h), and so does not apply to Treas. Reg. § 1.6302-4.¹⁰ In light of the broad language of I.R.C. § 6302(a) and Treas. Reg. § 1.6302-4, there is no legal basis for interpreting the phrase "electronic funds transfer" restrictively. We conclude that section 1.6302-4 can apply to any transfer of electronic funds from the processing entity. Payments through a walk-up method as described herein are authorized by Treas. Reg. § 1.6302-4, and no new regulations would need to be issued under I.R.C. § 6311 to authorize this payment method.

[REDACTED] I.R.C. § 6311(e) and its regulations impose confidentiality restrictions on credit and debit card processors; [REDACTED]

If the taxpayer attempts to pay a tax by a check, money order or other method of payment, including a credit and debit card payment, but no funds are actually paid to the Service, the taxpayer is ultimately liable for the tax, penalties, and additions. I.R.C. § 6311(b). This reflects the general rule that payment is only deemed made when received by the Service.¹¹ With respect to credit and debit card payments, Treas. Reg. § 301.6311-2(b) modifies this general rule by providing that when a credit or debit card issuer authorizes the transaction, it is deemed made, so long as it is received by the Service in the ordinary

¹⁰ Additionally, we note that the Electronic Fund Transfer Act, which applies to debit cards, defines "account" as an account established primarily for personal, family or household purposes." 15 U.S.C § 1693a(2). This provision, however, is not cross referenced by section 6302(h).

¹¹ See I.R.M. § 3.8.45.2(9) (providing all remittances will be credited to the taxpayer accounts for the earliest IRS received date, which is the date the remittance is received by IRS or Department of Treasury).

course of business and is not returned by the Service pursuant to the error resolution procedures referenced in I.R.C. § 6311(d).



Please contact Evan M. Stone at 202-317-5416 for further questions.

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