

[4830-01-p]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 49

REG-163909-02

RIN 1545-BB75

Collected Excise Taxes; Duties of Collector

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the obligations of persons that receive payments for air transportation or communications services subject to excise tax when persons liable for the tax refuse to pay the tax. The text of those temporary regulations also serves as the text of these proposed regulations. These proposed regulations affect persons liable for those taxes and persons that receive payments subject to tax.

DATES: Written and electronic comments and requests for a public hearing must be received by November 8, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-163909-02), room 5203, Internal Revenue Service, POB 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-163909-02),

Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at www.irs.gov/regs, or via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-163909-02).

FOR FURTHER INFORMATION CONTACT: Concerning submissions, the Publication and Regulations Unit, (202) 622-7180; concerning the regulations, Taylor Cortright, (202) 622-3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

These proposed regulations relate to the obligations of persons that receive payments for air transportation or communications services subject to excise tax when persons liable for the tax refuse to pay the tax. These proposed regulations would amend the Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and Services Excise Tax Regulations (26 CFR part 49).

The text of temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

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 the notice of proposed rulemaking does not

impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may 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 written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Patrick S. Kirwan, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 49

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 40 and 49 are proposed to be amended as follows:

PART 40--EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read, in part, as follows:

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

Par. 2. Section 40.6302(c)-3 is amended by revising paragraph (b)(2)(ii)(B) to read as follows:

'40.6302(c)-3 Special rules for use of Government depositaries under chapter 33.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) [The text of this proposed paragraph is the same as the text of '40.6302(c)-3T(b)(2)(ii)(B) published elsewhere in this issue of the **Federal Register**].

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PART 49--FACILITIES AND SERVICES EXCISE TAXES

Par. 3. The authority citation for part 49 continues to read in part as follows:

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

Par. 4. Section 49.4291-1 is amended by revising the fourth sentence to read as follows:

'49.4291-1 Persons receiving payment must collect tax.

* * * [The text of this proposed sentence is the same as the text of
'49.4291-1T published elsewhere in this issue of the **Federal Register**]. * * *

/s/ Mark E. Matthews

Deputy Commissioner for Services and Enforcement.