

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 31, and 40

[TD 8828]

RIN 1545-AW41

Electronic Funds Transfers of Federal Deposits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the deposit of Federal taxes by electronic funds transfer (EFT). The final regulations affect certain taxpayers required to make deposits of Federal taxes. For calendar years beginning after 1999, the final regulations provide rules under which certain taxpayers must make deposits by EFT.

DATES: Effective Date: These regulations are effective July 13, 1999.

Applicability Date: For dates of applicability, see §31.6302-1(h)(2).

FOR FURTHER INFORMATION CONTACT: Vincent Surabian, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1), the Estate Tax Regulations (26 CFR part 20), the Gift Tax Regulations (26 CFR part 25), the Employment Taxes and Collection of Income Tax at Source

Regulations (26 CFR part 31), and the Excise Tax Procedural Regulations (26 CFR part 40). On March 23, 1999, a notice of proposed rulemaking was published in the **Federal Register** (64 FR 13940). A public hearing originally scheduled in the notice of proposed rulemaking for May 11, 1999, was canceled as there were no requests to speak. Three written comments were received. After consideration of all comments, the proposed regulations are adopted by this Treasury decision.

Explanation of Provisions

Section 6302(h) requires that, beginning in fiscal year 1999, 94 percent of employment taxes and 94 percent of other depository taxes be collected by EFT. The IRS and Treasury Department previously concluded that the deposit threshold had to be set at \$50,000 to satisfy this statutory requirement. More recent experience suggests, however, that the statutory requirement can be satisfied even if the threshold is set at a substantially higher level. Moreover, an increase in the threshold would allow small businesses to make the transition to the EFT system at their own pace as they adopt electronic funds transfer in their other business operations. Accordingly, the final regulations increase the deposit threshold to \$200,000 in aggregate Federal tax deposits during a calendar year.

The new \$200,000 aggregate deposits threshold will be applied initially to 1998 deposits, and taxpayers that exceed the threshold in 1998 will be required to deposit by EFT beginning in 2000. Taxpayers that first exceed the threshold in 1999 or a

subsequent year will similarly be required to deposit by EFT beginning in the second succeeding calendar year. A taxpayer that exceeds the threshold will not be permitted to resume making paper coupon deposits if its deposits fall below \$200,000 in a subsequent year. Although a similar rule applies under the current regulations, taxpayers that are currently required to deposit by EFT will be given a fresh start and will not be required to use EFT unless they exceed the \$200,000 threshold in 1998 or a subsequent calendar year.

The final regulations also expand the types of nondepository tax payments for which voluntary payment by EFT is allowed to include nondepository payments of Federal income, estate and gift, employment, and various specified excise taxes.

Public Comments

Two commentators on the proposed regulations opposed the increase in the threshold to \$200,000. They were concerned that financial institutions and the Federal government would have to continue to process large volumes of checks and paper coupons. In addition, they stated that the increase in threshold does not seem justified since the requirement to deposit by EFT does not require an investment by the taxpayer in new technology and greater use of EFT payment methods will contribute to the maintenance of a secure and efficient payment system. The two commentators conclude that the Federal government should continue to use penalty waivers until taxpayers become adept at using the system of depositing by EFT efficiently and accurately. The two

commentators did, however, agree with the use of an aggregate deposits test to determine whether a taxpayer is required to deposit by EFT.

As stated in the notice of proposed rulemaking, the IRS and Treasury Department are confident that most taxpayers currently required to deposit by EFT have come to appreciate the simplicity and convenience of the EFT system and will continue to deposit by EFT on a voluntary basis. Despite the increase in the threshold, the continued participation of these taxpayers, coupled with continuing efforts to encourage voluntary enrollment, should ensure the Congressionally-mandated 94 percent of collections by EFT. A lower threshold would, as the commentators suggest, result in even greater use of the EFT system. The IRS and Treasury Department have concluded, however, that the \$200,000 threshold appropriately balances concerns relating to small businesses against the benefit of reduced paper transactions.

A third comment suggested removal of the rule in 31 CFR part 203 prohibiting banks from charging fees for processing paper coupon deposits. The regulations in 31 CFR part 203 are issued by the Financial Management Service (FMS) of the Treasury Department, rather than by the Internal Revenue Service. FMS has received similar comments and announced, in the preamble of the 1998 regulations revising 31 CFR part 203 (63 FR 5643), that it intends to issue a notice of proposed rulemaking on removing this prohibition.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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 requirement 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, the notice of proposed rulemaking that preceded these regulations 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 regulations is Vincent Surabian, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions,

Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, 31, and 40 are amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for §1.6302-4 to read in part as follows:

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

Section 1.6302-4 also issued under 26 U.S.C. 6302(a), (c), and (h). * * *

Par. 2. Section 1.6302-4 is revised to read as follows:

§1.6302-4 Use of financial institutions in connection with income taxes; voluntary payments by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax imposed by subtitle A of the Internal Revenue Code, including any payment of estimated tax. Such payment must be made in accordance with procedures prescribed by the Commissioner.

PART 20--ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 is amended by adding an entry in numerical order to read in part as follows:

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

Section 20.6302-1 also issued under 26 U.S.C. 6302(a) and (h). * * *

Par. 4. Section 20.6302-1 is added to read as follows:
§20.6302-1 Voluntary payments of estate taxes by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax to which this part 20 applies. Such payment must be made in accordance with procedures prescribed by the Commissioner.

PART 25--GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 is amended by adding an entry in numerical order to read in part as follows:

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

Section 25.6302-1 also issued under 26 U.S.C. 6302(a) and (h). * * *

Par. 6. Section 25.6302-1 is added to read as follows:
§25.6302-1 Voluntary payments of gift taxes by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax to which this part 25 applies. Such payment must be made in accordance with procedures prescribed by the Commissioner.

PART 31--EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 7. The authority citation for part 31 continues to read in part as follows:

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

Par. 8. Section 31.6302-1 is amended as follows:

1. The heading for paragraph (h)(2) is revised.
2. A heading is added for paragraph (h)(2)(i).
3. New paragraph (h)(2)(i)(C) is added.
4. Paragraph (h)(2)(ii) is revised
5. Paragraph (h)(2)(iii) is added.
6. Paragraph (m) is redesignated as paragraph (n).
7. Paragraph (k) is redesignated as new paragraph (m).
8. Paragraph (j) is redesignated as new paragraph (k).
9. New paragraph (j) is added.

The additions and revisions read as follows:

§31.6302-1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(h) * * *

(2) Applicability of requirement--(i) Deposits for return periods beginning before January 1, 2000. (A) * * *

(C) This paragraph (h)(2)(i) applies only to deposits required to be made for return periods beginning before January 1, 2000. Thus, a taxpayer, including a taxpayer that is required under this paragraph (h)(2)(i) to make deposits by electronic funds transfer beginning in 1999 or an earlier year, is not required to use electronic funds transfer to make deposits for return periods beginning after December 31, 1999, unless deposits by electronic funds transfer are required under paragraph

(h)(2)(ii) of this section.

(ii) Deposits for return periods beginning after December 31, 1999. Unless exempted under paragraph (h)(5) of this section, a taxpayer that deposits more than \$200,000 of taxes described in paragraph (h)(3) of this section during a calendar year beginning after December 31, 1997, must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes that are required to be made for return periods beginning after December 31 of the following year and must continue to deposit by electronic funds transfer in all succeeding years. Thus, a taxpayer that exceeds the \$200,000 deposit threshold during calendar year 1998 is required to make deposits for return periods beginning in or after calendar year 2000 by electronic funds transfer.

(iii) Voluntary deposits. A taxpayer that is not required by this section to use electronic funds transfer to make a deposit of taxes described in paragraph (h)(3) of this section may voluntarily make the deposit by electronic funds transfer, but remains subject to the rules of paragraph (i) of this section, pertaining to deposits by Federal tax deposit (FTD) coupon, in making deposits other than by electronic funds transfer.

* * * * *

(j) Voluntary payments by electronic funds transfer. Any person may voluntarily remit by electronic funds transfer any payment of tax imposed by subtitle C of the Internal Revenue

Code. Such payment must be made in accordance with procedures prescribed by the Commissioner.

* * * * *

PART 40--EXCISE TAX PROCEDURAL REGULATIONS

Par. 9. The authority citation for part 40 is amended by adding an entry in numerical order to read in part as follows:

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

Section 40.6302(a)-1 also issued under 26 U.S.C. 6302(a) and (h). * * *

Par. 10. Section 40.6302(a)-1 is added to read as follows:

§40.6302(a)-1 Voluntary payments of excise taxes by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax to which this part 40 applies.

Such payment must be made in accordance with procedures prescribed by the Commissioner.

Commissioner of Internal Revenue

Approved:

Assistant Secretary of the Treasury