

[4830-01-p]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 49

TD 9221

RIN 1545-BB75

Collected Excise Taxes; Duties of Collector

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the reporting obligations of persons that receive payments for air transportation or communications services subject to excise tax when persons liable for tax refuse to pay the tax. The final regulations affect persons that receive payments subject to tax and persons liable for those taxes.

DATES: Effective Date: These regulations are effective August 26, 2005.

Applicability Date: For dates of applicability, see §§40.6302(c)-3(g) and 49.4291-1.

FOR FURTHER INFORMATION CONTACT: Taylor Cortright, (202) 622-3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and Services Excise Tax Regulations (26 CFR part 49). On August 10, 2004, a temporary regulation (TD 9149) was published in the **Federal Register** (69 FR 48393). A notice of proposed rulemaking (REG-163909-02) cross-referencing the temporary regulations was published in the **Federal Register** (69 FR 48432) on the same day. A written comment was received and no public hearing was requested or held. After considering the comment, the proposed regulations are adopted by this Treasury decision with clarifying changes. The corresponding temporary regulations are removed.

Special Analyses

It has been determined that these regulations are 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 these regulations do not impose a collection of information 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 preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Taylor Cortright of the 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.

Adoption of Amendments to the Regulations

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

PART 40--EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by removing the entry for §40.6302(c)-3T to read, in part, as follows:

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

Par. 2. Section 40.6302(c)-3 is amended as follows:

1. Paragraph (b)(2)(ii) is revised.
2. Paragraph (g) is amended by removing the language "October 1, 2001" and adding the language "October 1, 2001, except that paragraph (b)(2)(ii)(B) of this section is applicable October 1, 2004" in its place.

The revision reads as follows:

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

* * * * *

(b) * * *

(2) * * *

(ii) Separate account. The account required under paragraph (b)(2)(i)(A) of this section (the separate account)--

(A) Must reflect for each month all items of tax that are included in amounts billed or tickets sold to customers during the month;

(B) May not reflect an item of adjustment for any month during a quarter if the adjustment results from a refusal to pay or inability to collect the tax and the uncollected tax has not been reported under §49.4291-1 of this chapter on or before the due date of the return for that quarter; and

(C) Must reflect for each month items of adjustment (including bad debts and errors) relating to the tax for prior months within the period of limitations on credits or refunds.

* * * * *

§40.6302(c)-3T [Removed]

Par. 3. Section 40.6302(c)-3T is removed.

PART 49--FACILITIES AND SERVICES EXCISE TAXES

Par. 4. The authority citation for part 49 continues to read, in part, as follows:

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

Par. 5. Section 49.4291-1 is amended as follows:

1. The fourth sentence is revised.

2. The fifth sentence is amended by removing the language “this information” and adding the language “this report” in its place.

3. A new sentence is added at the end of the paragraph.

4. Paragraphs (a) and (b) are added.

The revisions and addition read as follows:

§49.4291-1 Persons receiving payment must collect tax.

* * * Applicable October 1, 2004, this report must be made on or before the report due date. * * * For purposes of this section, the report due date is--

(a) In the case of a person using the alternative method of making deposits described in §40.6302(c)-3 of this chapter, the due date of the return on which the item of adjustment relating to the uncollected tax would be reflected if items of adjustment were determined without regard to the limitation in §40.6302(c)-3 of this chapter; and

(b) In any other case, the due date of the return on which the tax would have been reported but for the refusal to pay or inability to collect.

§49.4291-1T [Removed]

Par. 6. Section 49.4291-1T is removed.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2005.

Eric Solomon,
Acting Deputy Secretary of the Treasury (Tax Policy) .