

Office of Chief Counsel
Internal Revenue Service
Memorandum

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subject: Using the Electronic Federal Tax Payment System to Make Section 6603 Deposits

This Chief Counsel Advice responds to your request for assistance dated November 28, 2006. This advice may not be used or cited as precedent.

ISSUE

May taxpayers voluntarily remit deposits to stop the running of potential underpayment interest under section 6603 by using the Electronic Federal Tax Payment System (EFTPS).

CONCLUSIONS

Taxpayers are not legally precluded from using EFTPS to electronically remit section 6603 deposits to the Internal Revenue Service (Service). We recommend, however, that taxpayers desiring to use EFTPS to remit a deposit provide a copy of the required written statement designating the remittance as a section 6603 deposit to the appropriate examining office prior to initiating the electronic funds transfer. This action will ensure that the service center personnel properly credit the taxpayer's account and that the taxpayer meets all of the statutory requirements of section 6603. We further recommend that taxpayers forward the EFPTPS tracking number and other identifying

information regarding the electronic funds transfer to the examining office after the EFTPS payment has been made for tracking purposes.

FACTS

We have been informed that a number of taxpayers under exam by the Service have expressed the desire to remit section 6603 deposits to the Service using EFTPS. The taxpayers have expressed concern, however, that section 4.01 of Rev. Proc. 2005-18, 2005-1 C.B. 798, precludes the use of EFTPS for remitting deposits. Moreover, the taxpayers are concerned that appropriate procedures may not be in place for the Service to properly treat or credit the deposits remitted through EFTPS to taxpayer accounts.

LAW AND ANALYSIS

Section 6603(a) of the Code provides that a taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B, or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such a manner as the Secretary shall prescribe.

Section 6603(b) provides that, to the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

Section 6603(c) provides that, except in the case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

Section 6603(d)(1) in general provides that for purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Section 6603(d)(2) provides the definition for the term "disputable tax". Section 6603(d)(4) provides that the rate of interest payable on a returned deposit will be the Federal short-term rate determined under section 6621(b), compounded daily.

At present, no regulations have been promulgated under section 6603. Rev. Proc. 2005-18 sets forth certain procedures to be used by taxpayers when remitting section 6603 deposits. Section 4.01(1) of Rev. Proc. 2005-18 provides that a taxpayer may make a deposit under section 6603 by remitting a check or money order to the Service Center at which the taxpayer is required to file its return, or to the appropriate office at which the taxpayer's return is under examination. Section 4.01(1) of Rev. Proc. 2005-18 further provides that the check or money order must be accompanied by a written statement designating the remittance as a deposit. The required written statement must

include (a) the type of tax; (b) the tax year(s); and (c) the statement described in section 7.02 of the revenue procedure identifying the amount of and basis for the disputable tax.

Section 7.02 of Rev. Proc. 2005-18 requires a taxpayer to provide a written statement to the Service identifying and describing the nature and amount of the disputable tax at the time the deposit is remitted. This written statement must include:

- (1) The taxpayer's calculation of the amount of disputable tax;
- (2) A description of any item of income, gain, loss, deduction or credit for which the taxpayer has a reasonable basis for the treatment of the item on its return, and for which the taxpayer reasonably believes that the Service also has a reasonable basis for disallowing the taxpayer's treatment of the item; and
- (3) The basis for the taxpayer's belief that it has a reasonable basis for the treatment of any item described in §7.02(2) on its return and that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

Section 7.03 of Rev. Proc. 2005-18 provides that if a taxpayer has received a 30-day letter, the taxpayer may use that letter in lieu of the written statement described in section 7.02. If the taxpayer fails to identify the amount and nature of the disputable tax in writing or provide a copy of a 30-day letter at the time of deposit, the payment of interest generally will not be allowed if the deposit is later returned at the request of the taxpayer. Under section 7.04 of Rev. Proc. 2005-18, even if a taxpayer fails to provide this written statement or a copy of the 30-day letter at the time of the deposit, the taxpayer may be entitled to payment of interest on a returned deposit if the taxpayer provides the Service with a written statement identifying and describing the amount of disputable tax after the remittance is made. Such interest will be calculated beginning from the date the required information is provided to the Service.

We conclude that taxpayers are not legally precluded under the Code or by Rev. Proc. 2005-18 from remitting section 6603 deposits electronically using EFTPS. There are currently no operating procedures in EFTPS specifically to handle section 6603 deposits remitted electronically. Nevertheless, prior to the enactment of section 6603, operating procedures were in place for taxpayers to electronically remit "deposits in the nature of a cash bond" (see Rev. Proc. 84-58, 1984-2 C.B. 501, superseded by Rev. Proc. 2005-18) using EFTPS. Such "deposits in the nature of a cash bond" were coded "B" under EFTPS programming, which alerted the Ogden Service Center to the proper designations of the remitted funds to be credited to the taxpayers' accounts. See IRM 3.8.45.7.8. Accordingly, we recommend that the Service use procedures for processing section 6603 deposits remitted electronically through EFTPS similar to those used for processing "deposits in the nature of a cash bond" that were remitted electronically through EFTPS.

Under Rev. Proc. 2005-18, taxpayers have the option to submit the written statement (along with the remittance) to the appropriate examining office, or to the Service Center

at which the taxpayer is required to file its return. When the remittances are in the form of a check or money order, Rev. Proc. 2005-18 contemplates that the written statement will physically accompany the remittance regardless of where the taxpayer chooses to mail or deliver the remittance. When a taxpayer remits a deposit electronically, however, a significant issue arises. It is not clear how the section 6603 deposits remitted electronically through EFTPS will be matched with the required written statement that will be contemporaneously submitted by the taxpayer. This written statement serves to properly designate the remittance as a section 6603 deposit on the taxpayer's account and to distinguish it from an advance payment or other type of payment or remittance. If the taxpayer mails the written statement to the Service Center at which the taxpayer is required to file its return, the written statement likely will not be timely received or processed by Service Center personnel in a manner for it to be properly matched with the electronically-remitted funds.

Accordingly, in cases where taxpayers desire to remit section 6603 deposits electronically using EFTPS, we recommend that the taxpayers be instructed to provide a copy of the written statement to the appropriate examining office prior to initiation of the electronic funds transfer. Having advance knowledge of the taxpayer's electronic funds transfer and its intended purpose, the examining office would then be in a position to communicate with the appropriate Service Center to ensure proper handling and crediting of the remittance by the Service Center. Moreover, this advance knowledge will allow the examining office to determine in a timely manner that the taxpayer has met all of the statutory requirements for making a section 6603 deposit. We further recommend that taxpayers forward the EFTPS tracking number and other identifying information regarding the electronic funds to the examining office after the EFTPS payment has been made for tracking purposes if any problems arise in the future.

Please call Julie Hanlon-Bolton at (202) 622-7028 if you have any further questions.