

Internal Revenue Service  
MEMORANDUM

CC:DOM:IT&A:4  
POwens ' FREV-251262-96

date: OCT 31 1996

to: Assistant Commissioner (Submission Processing) T:S  
Attn: Ken Davis

from: Assistant Chief Counsel  
(Income Tax & Accounting) CC:DOM:IT&A

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subject: EFTPS Bulk Filer Agreement

This is in reply to your request for our office to review a draft EFTPS Bulk Filer Agreement dated August 26, 1996. We hope the following general information will be helpful.

Section 6302(h) of the Internal Revenue Code directs the Secretary to develop and implement a system for electronic funds transfer (EFT) payment of certain taxes. The Electronic Federal Tax Payment System (EFTPS) is the electronic system replacing the Federal Tax Deposit (FTD) coupon system for payment of depository taxes.

Under § 6302(h), the Secretary issued temporary regulations on July 6, 1994 (T.D. 8553), and March 21, 1996 (T.D. 8661), relating to the deposit of taxes by EFT. Those temporary regulations describe the taxpayers that must make deposits by EFT, the types of taxes that must be so deposited, and when the deposits must commence.

In addition, the Secretary has selected NationsBank and First National Bank of Chicago to be the Treasury Financial Agents (TFAs) for EFTPS. A TFA is a financial institution that is designated as an agent of Treasury. A TFA processes bulk filer registrations, processes EFTPS enrollments, receives FTD and payment information, and originates ACH debit entries on behalf of Treasury.

The Implementation Guide for EFTPS Bulk Filers identifies a payroll processor, tax preparer, bank, fiduciary or company that makes 1000 or more tax payments on a peak date as a "bulk filer." The Implementation Guide provides procedures for bulk filers to use in making EFTPS payments for their customers.

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The Implementation Guide provides as follows:

All bulk filers must complete a "registration" process with their assigned Treasury Financial Agent prior to submitting electronic Federal tax payments on behalf of their customers.

Bulk filer registration will include providing certain identifying information to the TFA and signing a letter of agreement. The letter of agreement will contain, but not limited to the following text:

"Every taxpayer for whom the TFA will be submitting EFTPS payments has signed a Form 8655 or other approved form, authorizing [name of bulk filer] to send and receive certain tax information with the Internal Revenue Service. This authorization will be on file with the IRS prior to submitting the taxpayer's initial payment."

The specific process for bulk filer registration will be provided by the TFAs. [Emphasis added.]

The TFAs have submitted proposed EFTPS Bulk Filer Agreements to the Service. The draft EFTPS Bulk Filer Agreement, dated August 26, 1996, contains a provision concerning the bulk filer's obligation to obtain a signed Form 8655, Reporting Agent Authorization for Magnetic Tape/Electronic Filers, for each taxpayer. This agreement also contains provisions concerning limitations on liability, indemnification, and encryption.

Section 6302 and the applicable regulations neither authorize nor prohibit the TFA from requiring such agreements. However, the Implementation Guide clearly requires such agreements as part of the bulk filer registration process. With the exception of the provision concerning Form 8655, the Implementation Guide reserved the content of such agreements to the TFAs.

The TFA can not alter the requirements of § 6302 and the applicable regulations (i.e., requirements concerning the taxpayers that must make deposits by EFT, the types of taxes that must be so deposited, and when the deposits must commence) in a separate bulk filer agreement.

However, the issues presented in the EFTPS Bulk Filer Agreement concern limitations on liability, indemnification, and encryption which are outside the scope of § 6302. These issues are not within the jurisdiction of the Assistant Chief Counsel (Income Tax & Accounting), CC:DOM:IT&A, therefore, we have no comments.

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With regards to Form 8655, we have identified a deficiency which is outside the agreement. There are no instructions for the submission of Forms 8655 to the Service. The EFTPS Bulk Filer Agreement, dated August 26, 1996, directs bulk filers to submit a Form 8655 for each taxpayer to the Service "in accordance with the Implementation Guide." The Implementation Guide provides that "[t]his authorization will be on file with the IRS prior to submitting the taxpayer's initial payment." The Implementation Guide, however, is silent on the procedure a bulk filer uses to submit Forms 8655. In comparison, the Mag Tape Programs provide specific instructions on submission of Forms 8655. See Rev. Proc. 89-48, 1989-2 C.B. 599, and Rev. Proc. 96-18, 1996-4 I.R.B. 73.

Questions concerning this memorandum may be directed to Peg Owens at (202) 622-4940.

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