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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MEMORANDUM FOR SHERRILL FIELDS, NATIONAL DIRECTOR, DIVERSIFIED
ELECTRONIC FILING DIVISION, ELECTRONIC TAX
ADMINISTRATION (OP:ETA:D)

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

SUBJECT: EFTPS--Adjustment Feature for Bulk Filers

This is in response to a January 28, 2000, e-mail request for our views on three proposed options for providing EFTPS bulk filers with an adjustment feature that will allow these bulk filers to adjust their federal tax deposits in a manner similar to the five-day rule that existed under magnetic tape reporting prior to its elimination.

We have not considered Option One because Carolynn Adams of your staff subsequently informed us that this option was no longer under consideration.

The following are the remaining two options, as described in the e-mail:

Option Two (Delayed Adjustment Deposit)

A regular deposit is made on tax due date for those clients whose payroll data is available. The file is processed as usual. When the bulk filer has perfected data for their "problem" clients a deposit is made and a file is submitted for those accounts. The file is processed so that the taxpayer receives credit for payment on tax due date. The bulk filer pays the Financial Management Service for the "cost of funds" calculated on the amount delayed from tax due date to receive date.

Option Three (Cushion)

A bulk filer would include a separate ACH debit transaction in their regular file that would create a "cushion" in a clearing account. The file would be processed as usual. At the time tax data is available for "problem" accounts, the bulk filer submits the file, their bank

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initiates an ACH return for the cushion amount and the bulk filer initiates a wire transaction for the correct amount.

CONCLUSION

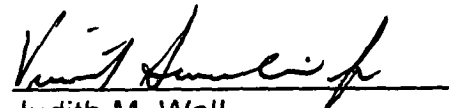
Option Two: It is our conclusion that Option Two is not permissible. Section 6656 of the Internal Revenue Code imposes a penalty for failures to make deposits of taxes, which, in effect, is the result of Option Two. Option Two subverts the operation of § 6656 by substituting the failure to deposit penalty with an interest charge. Section 6656 requires that late deposits be subject to penalties, not interest. Accordingly, we conclude that this option cannot be utilized.

Option Three: With one reservation, it is our conclusion that Option Three is permissible. We would note that your summary of issues provided to us in January indicates that, under Option Three, Treasury would pay interest to bulk filers on excess funds from ACH funds transfer date to data deliver date. This aspect of Option Three is not permissible because Treasury is not authorized to pay interest on these excess funds. With this reservation, we conclude that Option Three is a permissible course of action.

If you have questions regarding this memorandum, please contact Brinton T. Warren at (202) 622-7994.

HEATHER C. MALOY

By:



Judith M. Wall
Chief, Branch 4