

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: May 10, 2006

to: Kyle Ballew
Program Manager, Filing and Payment Compliance Modernization Office
Small Business/Self-Employed

from: Susan B. Watson
Acting Assistant Division Counsel General Litigation
(Small Business/Self-Employed)

subject: Electronic Funds Transfer Payment System and Private Collection Agencies

You have asked whether private collection agencies (PCAs) could legally make electronic funds transfer payment system (EFTPS) payments for taxpayers as part of the private collection agency initiative. As you envision the process, taxpayers would voluntarily provide to the PCAs banking information necessary for the PCA to effect the EFTPS payment through the taxpayer's financial institution to the Internal Revenue Service (Service). This office coordinated your request with the Collection, Bankruptcy, and Summonses Division, the Disclosure and Privacy Law Division, and the General Legal Services Division of Chief Counsel. We conclude that there is no authority under which PCAs could initiate the EFTPS payment process for taxpayers.

I.R.C. § 6302(h) grants authority to the IRS to draft regulations to develop and implement an electronic funds transfer system which "is required to be used for depository taxes." That section defines electronic fund transfer as "any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution or other financial intermediary to debit or credit an account."

The Service drafted extensive Treasury Regulations outlining the EFTPS program for depository taxes. The regulations also permit any person, which includes individual taxpayers, to remit taxes by use of the EFTPS, but provide no procedures. See Treas. Reg. § 1.6302-4. Rev. Proc. 97-33, 1997-2 C.B. 371 provides taxpayers with information about the EFTPS. In addition, the Treasury Financial Management System (FMS) sets forth the mechanics of the EFTPS system for payment of federal taxes in 31 C.F.R. § 203.1 et. seq.

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Section 203.10 requires the taxpayer to be responsible for and to complete an enrollment process with a Treasury Financial Agent (TFA) using an enrollment form provided by the TFA. Taxpayers may enroll in the program by completing Form 9783. In order to participate, either by telephone, via the internet or both, a taxpayer must sign and mail the form to the specially designated IRS mail box in Colorado serviced by the TFA. The form provides for the taxpayer's signature. The taxpayer may also authorize another person to sign the form by executing an IRS Power of Attorney (Form 2848) as noted in the enrollment form. Thus, for current IRS EFTPS purposes only the taxpayer or his POA can enroll in the EFTPS for tax payments.

Rev.Proc. 97-33 defines ACH debit entry as a transaction that occurs when one of the Treasury Financial Agents, upon instructions from the taxpayer, instructs taxpayer's financial institution to withdraw funds from the taxpayer's account for a federal tax payment to be routed to the proper Treasury account. This is the type of transaction that individual taxpayers would initiate for EFTPS. Section 7 of the revenue procedure provides that the taxpayer must initiate an ACH debit entry by furnishing the TFA with a TIN and a PIN number. The revenue procedure states that "[t]he Service does not have access to the taxpayer's PIN and, therefore, cannot initiate an ACH debit entry from the taxpayer's account." Currently, IRS employees do not have the authority to access a taxpayer's account to initiate the EFTPS process because taxpayers typically do not grant IRS employees a power of attorney. Furthermore, 18 U.S.C. § 205 generally prohibits federal employees from representing another person before the federal government due to conflict of interest issues.

18 U.S.C. § 205 does not apply to PCA employees; therefore, they would not be subject to the same conflict of interest and ethics standards as federal employees. Circular 230, however, which sets forth regulations governing practice before the IRS, would effectively prevent PCA employees from acting for taxpayers. A taxpayer who was willing to authorize a PCA to act as power of attorney would execute a Form 2848, the form the Service requires for taxpayers who wish to authorize someone else to enroll them to pay their taxes by EFTPS. Circular 230 requires that a person be an attorney, certified public accountant, enrolled agent, or enrolled actuary to be eligible to represent a person as their power of attorney before the Service.¹ Only PCA employees who would be eligible under one of those four categories could act as a power of attorney. The PCA company is not eligible because Circular 230 § 10.2(e) defines practitioner as an individual described in section 10.3, the aforementioned four categories.

The disclosure statutes also do not provide any avenue by which PCA employees could initiate EFTPS transactions for taxpayers. I.R.C. § 6103(n) is the section that authorizes contractors, including PCAs, to receive return information for purposes of tax administration. Banking information that the IRS would disclose to PCAs in the course of working on the PCA contract would be return information as would banking information that PCAs might receive from taxpayers. I.R.C. § 6103 (p)(2)(B) simply

¹ A fifth category limited to representation of family members, partners for partnerships etc. defined in section 10.7 is not pertinent here.

provides that return information lawfully disclosed under another section of 6103 may be received in any form available e.g., documents, disks, or electronically produced.

We conclude that neither the Code and Treasury Regulations, nor the FMS regulations would permit PCA employees to initiate an EFTPS transaction for taxpayers to make federal tax payments. Even if PCAs were able to initiate the process, it would be cumbersome and time consuming for them because of the required enrollment step. Since EFTPS is a safe and secure method of tax payment, we suggest that you consider authorizing PCAs to encourage taxpayers to enroll in EFTPS and provide them with the information for doing so. There is a dedicated EFTPS website, www.eftps.gov, as well as Publication 966 in brochure form available to explain the procedures. Perhaps the Service could create a method to credit PCAs for accounts paid through EFTPS within a certain time frame after a PCA contacts a taxpayer and provides them with information to enroll and make an EFTPS payment.

Please contact me at 202-283-7669 if you have any questions.