

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 40, and 301

[REG-153340-09]

RIN 1545-BJ13

Electronic Funds Transfer of Depository Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to Federal tax deposits (FTDs) by Electronic Funds Transfer (EFT). The proposed regulations affect all taxpayers that currently use FTD coupons. In response to the decision of the Financial Management Service to discontinue the system that processes FTD coupons, the proposed regulations provide rules under which depositors must use EFT for all FTDs and eliminate the rules regarding FTD coupons. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 22, 2010. Outlines of topics to be discussed at

the public hearing scheduled for September 21, 2010, must be received by September 20, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-153340-09), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-153340-09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-153340-09). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael E. Hara, (202) 622-4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Regina Johnson, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1), the Employment Tax and Collection of Income Tax at the Source Regulations (26

CFR part 31), the Excise Tax Procedural Regulations (26 CFR part 40), and the Procedure and Administration Regulations (26 CFR part 301), to require that all FTDs be made by EFT.

These proposed regulations are expected to be finalized by the end of 2010. The final regulations are expected to apply to remittances made after the date that final regulations are published in the **Federal Register**, but in no event earlier than January 1, 2011.

Explanation of Provisions

1. Requirement to make deposits by electronic funds transfer

Section 6302(h) of the Internal Revenue Code (Code) authorizes the Secretary to prescribe regulations as may be necessary for the development and implementation of an EFT system that is required to be used for the collection of depository taxes. On July 14, 1997, final regulations under section 6302(h) relating to the collection of Federal tax deposits (FTDs) by EFT (TD 8723, 62 FR 37490) were issued. These final regulations phased in depositors to the EFT system through 1999. In the final stages of the phase-in under those regulations, depositors with more than \$50,000 in employment tax deposits during calendar year 1995, 1996, or 1997, and depositors that, in any of those years, had no employment tax deposits but made deposits of

other FTDs exceeding \$50,000, were required to begin to deposit by EFT.

On July 13, 1999, final regulations amending TD 8723 (TD 8828, 64 FR 37675) were issued. Under those regulations, which are currently in effect, depositors whose aggregate annual FTDs exceed \$200,000 generally must use EFT. Depositors that exceed the \$200,000 threshold have an initial one-year grace period after which they must use EFT in all later years even if their FTDs fall below the threshold.

The Electronic Federal Tax Payment System (EFTPS) is the EFT system currently used by the Treasury Department to collect FTDs. More than 97.5 percent of all FTDs are currently deposited electronically through EFTPS. Depositors not currently required to use EFTPS for deposits may instead use the paper-based FTD coupon system to make a deposit by presenting a check and an FTD coupon to a bank teller at one of approximately 8,000 financial institutions authorized as a government depository or to a financial agent, a process that dates back to World War I.

These proposed regulations are being issued to effectuate system changes made by the Financial Management Service (FMS), a Bureau of the Treasury Department. Beginning in 2011, FMS is eliminating the system that

enables the processing of FTD coupons. Accordingly, these proposed regulations require the use of EFT for all FTDs, effective January 1, 2011. The proposed regulations remove references to "banking" days and provide that, if the day an FTD would otherwise be due is a Saturday, Sunday, or legal holiday under section 7503, the taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday. The proposed regulations do not change existing rules for determining a depositor's status as either a monthly or semi-weekly depositor for employment taxes. The proposed regulations also do not change existing rules on whether a taxpayer can remit taxes with a return in lieu of making an FTD.

For example, under the proposed regulations, employers must deposit income taxes withheld from wages and taxes under the Federal Insurance Contributions Act (FICA) (collectively, "employment taxes") by EFT unless the existing de minimis rule under §31.6302-1T(f)(4) applies. Generally, the de minimis rule for employment taxes allows employers with a deposit liability of less than \$2,500 for a return period to remit employment taxes with their quarterly or annual return. Employers below the \$2,500 threshold may remit the employment taxes with their tax

return, may voluntarily make deposits by EFT, or may use other methods of payment as provided by the instructions relating to the return.

2. Taxes required to be deposited by EFT

Because the FTD coupon system will be eliminated by FMS, the proposed regulations require all FTDs of the following taxes to be made by EFT:

1. Corporate income and corporate estimated taxes pursuant to §1.6302-1;
2. Unrelated business income taxes of tax-exempt organizations under section 511 pursuant to §1.6302-1;
3. Private foundation excise taxes under section 4940 pursuant to §1.6302-1;
4. Taxes withheld on nonresident aliens and foreign corporations pursuant to §1.6302-2;
5. Estimated taxes on certain trusts pursuant to §1.6302-3;
6. FICA taxes and withheld income taxes pursuant to §31.6302-1;
7. Railroad retirement taxes pursuant to §31.6302-2;
8. Nonpayroll taxes, including backup withholding pursuant to §31.6302-4;

9. Federal Unemployment Tax Act (FUTA) taxes pursuant to §31.6302(c)-3; and
10. Excise taxes reported on Form 720, Quarterly Federal Excise Tax Return, pursuant to §40.6302(c)-1.

3. Benefits of EFTPS

The benefits to taxpayers using EFTPS are substantial. According to IRS data, depositors using EFTPS are 31 times less likely to make an error resulting in a penalty than depositors using an FTD coupon. Depositors can schedule an EFTPS transaction 120 days in advance of the desired payment date at their convenience, 24 hours a day, 365 days a year. EFTPS also provides a confirmation number, called an "EFT Number," which guarantees depositors that the tax deposit has been scheduled and allows the transaction to be traced if necessary. EFTPS processes over 100 million transactions per year, totaling nearly \$2 trillion dollars, with an error rate of 0.18 percent. In addition, many financial institutions are no longer accepting FTD coupons through their branch infrastructure. Eliminating FTD coupons will also result in projected cost savings for the Federal Government of at least \$65 million over the first five years, with an estimated savings of \$13 million each year thereafter.

These proposed regulations also align with the Treasury Department's broad initiative to significantly increase the number of electronic transactions between taxpayers and the Federal Government. In addition to greatly reducing costs, enhancing customer service, and minimizing Treasury's environmental impact, the move from paper to electronic transactions will increase reliability, safety, and security for taxpayers.

Special Analyses

It has been determined that this notice of proposed rulemaking is 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 this regulation does 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 Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on the clarity of the proposed regulations and how they can be made more understandable. Comments are also requested on the accuracy of the certification that the regulations in this document will not have a significant economic impact on a substantial number of small entities. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 21, 2010, at 10:00 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by September 22, 2010 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by September 20, 2010. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Michael E. Hara, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 31, 40, and 301 are proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for Section 1.1461-1 and 1.6302-1 through 1.6302-4 to read in part as follows:

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

Section 1.1461-1, 1.6302-1, 1.6302-2, 1.6302-3 and 1.6302-4 also issued under 26 U.S.C. 6302(h). * * *

Par. 2. Section 1.1461-1 is amended by revising paragraph (a)(1), first sentence, to read as follows:

§1.1461-1 Payment and returns of tax withheld.

(a) Payment of withheld tax--(1) Deposits of tax.
Every withholding agent who withholds tax pursuant to chapter 3 of the Internal Revenue Code (Code) and the

regulations under such chapter shall deposit such amount of tax as provided in § 1.6302-2(a). * * *

* * * * *

Par. 3. Section 1.6302-1 is amended by:

1. Revising the heading.
2. Revising paragraph (a).
3. Removing paragraph (b)(1) and redesignating paragraph (b)(2) as paragraph (b).
4. Removing paragraph (c).
5. Redesignating paragraph (d) as paragraph (c).
6. Adding paragraph (d).

The revisions and additions read as follows:

§1.6302-1 Deposit rules for corporation income and estimated income taxes and certain taxes of tax-exempt organizations.

(a) Requirement. A corporation, any organization subject to the tax imposed by section 511, and any private foundation subject to the tax imposed by section 4940 shall deposit all payments of tax imposed by chapter 1 of the Internal Revenue Code (or treated as so imposed by section 6154(h)), including any payments of estimated tax, on or before the date otherwise prescribed for paying such tax. This paragraph (a) does not apply to a foreign corporation

or entity that has no office or place of business in the United States.

(b) Deposits by electronic funds transfer. * * *

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(d) Effective/applicability date. This section applies to deposits and payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 4. Section 1.6302-2 is amended by:

1. Revising the heading.
2. Revising paragraphs (a)(1)(i), (ii), and (iv).
3. Revising the heading for paragraph (b).
4. Revising paragraph (b)(1).
5. Removing paragraph (b)(6).
6. Adding a sentence to the end of paragraph (g).

The revisions and additions read as follows:

§1.6302-2 Deposit rules for tax withheld on nonresident aliens and foreign corporations.

(a) Time for making deposits--(1) Deposits--(i) Monthly deposits. Except as provided in paragraphs (a)(1)(ii) and (iv) of this section, every withholding agent that, pursuant to chapter 3 of the Internal Revenue Code, has accumulated at the close of any calendar month an aggregate amount of undeposited taxes of \$200 or more shall

deposit such aggregate amount within 15 days after the close of such calendar month. However, the preceding sentence shall not apply if the withholding agent has made a deposit of taxes pursuant to paragraph (a)(1)(ii) of this section to a quarter monthly period that occurred during such month. With respect to section 1446, this section applies only to a publicly traded partnership described in §1.1446-4.

(ii) Quarter-monthly deposits. If at the close of any quarter-monthly period within a calendar month, the aggregate amount of undeposited taxes required to be withheld pursuant to chapter 3 of the Internal Revenue Code is \$2,000 or more, the withholding agent shall deposit such aggregate amount within 3 business days after the close of such quarter-monthly period. Business days include every calendar day other than Saturdays, Sundays, or legal holidays under section 7503. If any of the three weekdays following the close of a quarter-monthly period is a legal holiday under section 7503, the withholding agent has an additional day for each day that is a legal holiday by which to make the required deposit. For example, if the Monday following the close of a quarter-monthly period is New Year's Day, a legal holiday, the required deposit for

the quarter-monthly period is not due until the following Thursday rather than the following Wednesday.

* * * * *

(iv) Annual deposits. If at the close of December of each calendar year, the aggregate amount of undeposited taxes required to be withheld pursuant to chapter 3 of the Internal Revenue Code is less than \$200, the withholding agent may deposit such aggregate amount by March 15 of the following calendar year. If such aggregate amount is not so deposited, it shall be remitted in accordance with paragraph (a)(1) of §1.1461-1.

* * * * *

(b) Manner of payment--(1) Payments not required by electronic funds transfer. A payment that is not required to be deposited by this section shall be made separately from a payment required by any other section. The payment may be submitted with the filed return. The timeliness of the payment will be determined by the date payment is received by the Internal Revenue Service at the place prescribed for filing by regulations or forms and instructions, or if section 7502(a) applies, by the date the payment is treated as received under section 7502(a). Each withholding agent making payments under this section shall report on the return, for the period to which such

payments are made, information regarding such payments according to the instructions that apply to such return.

* * * * *

(g) * * * Paragraph (b)(1) of this section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 5. Section 1.6302-3 is amended by:

1. Revising the heading.
2. Revising paragraph (a).
3. Revising paragraph (c).
4. Adding paragraph (d).

The revisions and additions read as follows:

§ 1.6302-3 Deposit rules for estimated taxes of certain trusts.

(a) Requirement. A bank or other financial institution described in paragraph (b) of this section shall deposit all payments of estimated tax under section 6654(l) with respect to trusts for which such institution acts as a fiduciary by the date otherwise prescribed for paying such tax in the manner set forth in published guidance, forms and instructions.

* * * * *

(c) Cross-references. For the requirement to deposit estimated tax payments of taxable trusts by electronic funds transfer, see § 31.6302-1(h) of this chapter.

(d) Effective/applicability date. This section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 6. Section 1.6302-4 is revised to read as follows:

§ 1.6302-4 Voluntary payments by electronic funds transfer.

(a) Electronic funds transfer. Any person may voluntarily remit by electronic funds transfer any payment of tax imposed by subtitle A of the Internal Revenue Code, including any payment of estimated tax. Such payment must be made in accordance with procedures prescribed by the Commissioner.

(b) Effective/applicability date. This section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

PART 31--EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Par. 7. The authority citation for part 31 is amended by removing the entries for sections 31.6302-1 through

31.6302-3, 31.6302-4, and 31.6302(c)-2A and adding entries in numerical order to read in part as follows:

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

Section 31.6302-1 also issued under 26 U.S.C. 6302(a) and (h).

Section 31.6302-1T also issued under 26 U.S.C. 6302(a).

Section 31.6302-2, 31.6302-3, and 31.6302-4 also issued under 26 U.S.C. 6302(a) and (h).

Section 31.6302(c)-2A also issued under 26 U.S.C. 6157(d) and 6302(a) and (h).

Section 31.6302(c)-3 also issued under 26 U.S.C. 6302(a) and (h). * * *

§31.6302-0 [Amended]

Par. 8. Section 31.6302-0 is amended by removing the entries for §31.6302-1T.

Par. 9. Section 31.6302-1 is amended by:

1. Revising the heading.
2. Revising paragraphs (c)(1), (c)(2), (c)(3), and (c)(4).
3. Revising paragraph (d) Example 1, Example 2, Example 3, Example 4, and Example 5.
4. Revising paragraph (h)(2)(ii).
5. Redesignating paragraph (h)(2)(iii) as paragraph (h)(2)(iv) and revising newly-designated paragraph (h)(2)(iv).
6. Adding new paragraph (h)(2)(iii).
7. Revising paragraph (i)(1) and (i)(3).

- 8. Removing paragraphs (i)(4), (i)(5) and (i)(6).
- 9. Adding paragraph (o).

The revisions and additions read as follows:

§31.6302-1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.

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(c) Deposit rules--(1) Monthly rule. An employer that is a monthly depositor must deposit employment taxes accumulated with respect to payments made during a calendar month by electronic funds transfer by the 15th day of the following month. If the 15th day of the following month is a Saturday, Sunday, or legal holiday, taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday under section 7503.

(2) Semi-Weekly rule--(i) In general. An employer that is a semi-weekly depositor for a calendar year must deposit employment taxes by electronic funds transfer by the dates set forth below:

Payment dates/semi-weekly periods	Deposit date
(A) Wednesday, Thursday and/or Friday	On or before the following Wednesday.
(B) Saturday, Sunday, Monday and/or Tuesday	On or before the following Friday.

(ii) Semi-weekly period spanning two return periods.

If the return period ends during a semi-weekly period in which an employer has two or more payment dates, two deposit obligations may exist. For example, if one quarterly return period ends on Thursday and a new quarterly return period begins on Friday, employment taxes from payments on Wednesday and Thursday are subject to one deposit obligation, and taxes from payments on Friday are subject to a separate deposit obligation. Two separate federal tax deposits are required.

(iii) Special rule for computing days. Semi-weekly

depositors have at least three business days following the close of the semi-weekly period by which to deposit employment taxes accumulated during the semi-weekly period. Business days include every calendar day other than Saturdays, Sundays, or legal holidays under section 7503. If any of the three weekdays following the close of a semi-weekly period is a legal holiday under section 7503, the employer has an additional day for each day that is a legal holiday by which to make the required deposit. For example, if the Monday following the close of a Wednesday to Friday semi-weekly period is Memorial Day, a legal holiday, the required deposit for the semi-weekly period is

not due until the following Thursday rather than the following Wednesday.

(3) Exception--One-Day rule. Notwithstanding paragraphs (c)(1) and (c)(2) of this section, if on any day within a deposit period (monthly or semi-weekly) an employer has accumulated \$100,000 or more of employment taxes, those taxes must be deposited by electronic funds transfer in time to satisfy the tax obligation by the close of the next day. If the next day is a Saturday, Sunday, or legal holiday under section 7503, the taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of determining whether the \$100,000 threshold is met--

(i) A monthly depositor takes into account only those employment taxes accumulated in the calendar month in which the day occurs; and

(ii) A semi-weekly depositor takes into account only those employment taxes accumulated in the Wednesday-Friday or Saturday-Tuesday semi-weekly period in which the day occurs.

(4) Deposits required only on business days. No taxes are required to be deposited under this section on any day that is a Saturday, Sunday, or legal holiday. Deposits are

required only on business days. Business days include every calendar day other than Saturday, Sundays, or legal holidays. For purposes of this paragraph (c), legal holidays shall have the same meaning provided in section 7503.

* * * * *

(d) * * *

Example 1. Monthly depositor. (i) Determination of status. For calendar year 2011, Employer A determines its depositor status using the lookback period July 1, 2009 to June 30, 2010. For the four calendar quarters within this period, A reported aggregate employment tax liabilities of \$42,000 on its quarterly Forms 941. Because the aggregate amount did not exceed \$50,000, A is a monthly depositor for the entire calendar year 2011.

(ii) Monthly rule. During December 2011, A (a monthly depositor) accumulates \$3,500 in employment taxes. A has a \$3,500 deposit obligation that must be satisfied by the 15th day of the following month. Since January 15, 2012, is a Sunday, and January 16, 2012, Dr. Martin Luther King, Jr.'s Birthday, is a legal holiday, A's deposit obligation will be satisfied if the deposit is made by electronic funds transfer by the next business day, January 17, 2012.

Example 2. Semi-weekly depositor. (i) Determination of status. For the calendar year 2011, Employer B determines its depositor status using the lookback period July 1, 2009 to June 30, 2010. For the four calendar quarters within this period, B reported aggregate employment tax liabilities of \$88,000 on its quarterly Forms 941. Because that amount exceeds \$50,000, B is a semi-weekly depositor for the entire calendar year 2011.

(ii) Semi-weekly rule. On Friday, January 7, 2011, B (a semi-weekly depositor) has a pay day on which it accumulates \$4,000 in employment taxes. B has a \$4,000 deposit obligation that must be satisfied on or before the following Wednesday, January 12, 2011.

(iii) Deposit made within three business days. On Friday, January 14, 2011, B (a semi-weekly depositor) has a pay day on which it accumulates \$4,200 in employment taxes. Generally, B would have a required deposit obligation of employment taxes that must be satisfied by the following Wednesday, January 19, 2011. Because Monday, January 17, 2011, is Dr. Martin Luther King, Jr.'s Birthday, a legal holiday, B has an additional day to make the required deposit. B has a \$4,200 deposit obligation that must be satisfied on or before the following Thursday, January 20, 2011.

Example 3. One-Day rule. On Monday, January 10, 2011, Employer C accumulates \$110,000 in employment taxes with respect to wages paid on that date. C has a deposit obligation of \$110,000 that must be satisfied by the next business day. If C was not subject to the semi-weekly rule on January 10, 2011, C becomes subject to that rule as of January 11, 2011. See paragraph (b)(2)(ii) of this section.

Example 4. One-Day rule in combination with subsequent deposit obligation. Employer D is subject to the semi-weekly rule for calendar year 2011. On Monday, January 10, 2011, D accumulates \$115,000 in employment taxes. D has a deposit obligation that must be satisfied by the next business day. On Tuesday, January 11, D accumulates an additional \$30,000 in employment taxes. Although D has a \$115,000 deposit obligation incurred earlier in the semi-weekly period, D has an additional and separate deposit obligation of \$30,000 on Tuesday that must be satisfied by the following Friday.

Example 5. [Reserved].

* * * * *

(h) * * *

(2) * * *

(ii) Deposits for return periods beginning after December 31, 1999, and made before January 1, 2011. Unless exempted under paragraph (h)(5) of this section, for

deposits for return periods beginning after December 31, 1999, and made before January 1, 2011, a taxpayer that deposits more than \$200,000 of taxes described in paragraph (h)(3) of this section during a calendar year beginning after December 31, 1997, must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes that are required to be made for return periods beginning after December 31 of the following year and must continue to deposit by electronic funds transfer in all succeeding years. As an example, a taxpayer that exceeds the \$200,000 deposit threshold during calendar year 1998 is required to make deposits for return periods beginning in or after calendar year 2000 by electronic funds transfer.

(iii) Deposits made after December 31, 2010. Unless exempted under paragraph (h)(5) of this section, a taxpayer that has a required tax deposit obligation described in paragraph (h)(3) of this section must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes made after December 31, 2010.

(iv) Voluntary deposits. A taxpayer that is authorized to make payment of taxes with a return under

regulations may voluntarily make a deposit by electronic funds transfer.

* * * * *

(i) Time and manner of remittance with a return--(1) General rules. A remittance required to be made by this section that is authorized to be made with a return under regulations and is made with a return must be made separately from a remittance required by any other section. Further, a remittance for a deposit period in one return period must be made separately from a remittance for a deposit period in another return period.

* * * * *

(3) Time deemed paid. In general, amounts remitted with a return under this section will be considered as paid on the date payment is received by the Internal Revenue Service at the place prescribed for filing by regulations or forms and instructions (or if section 7502(a) applies, by the date the payment is treated as received under section 7502(a)), or on the last day prescribed for filing the return (determined without regard to any extension of time for filing the return), whichever is later. In the case of the taxes imposed by chapter 21 and 24 of the Internal Revenue Code, solely for purposes of section 6511 and the regulations thereunder (relating to the period of

limitation on credit or refund), if an amount is remitted with a return under this section prior to April 15th of the calendar year immediately succeeding the calendar year that contains the period for which the amount was remitted, the amount will be considered paid on April 15th of the succeeding calendar year.

* * * * *

(o) Effective/applicability date. Paragraphs (c), (d) Examples 1 through 5, (h)(2)(ii), (h)(2)(iii), (h)(2)(iv), (i)(1) and (i)(3) of this section apply to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 10. Section 31.6302-1T is amended by:

1. Revising paragraph (g)(1).
2. Revising paragraph (n)(1).

The revisions read as follows.

§ 31.6302-1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

* * * * *

(g) Agricultural employers--Special rules--(1) In general. An agricultural employer reports wages paid to

farm workers annually on Form 943 (Employer's Annual Tax Return for Agricultural Employees) and reports wages paid to nonfarm workers quarterly on Form 941 or annually on Form 944. Accordingly, an agricultural employer must treat employment taxes reportable on Form 943 ("Form 943 taxes") separately from employment taxes reportable on Form 941 or Form 944 ("Form 941 or Form 944 taxes"). Form 943 taxes and Form 941 or Form 944 taxes are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of §31.6302-1(c)(3) applies, or whether any safe harbor is applicable. In addition, Form 943 taxes and Form 941 or Form 944 taxes must be deposited separately. (See §31.6302-1(b) for rules for determining an agricultural employer's deposit status for Form 941 taxes.) Whether an agricultural employer is a monthly or semi-weekly depositor of Form 943 taxes is determined according to the rules of this paragraph (g).

* * * * *

(n) Effective/applicability dates--(1) In general.

Sections 31.6302-1 through 31.6302-3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. To the extent that the provisions of §§31.6302-1 through 31.6302-3 are inconsistent with the provisions of §§31.6302(c)-1 and

31.6302(c)-2, a taxpayer will be considered to be in compliance with §§31.6301-1 through 31.6302-3 if the taxpayer makes timely deposits during 1993 in accordance with §§31.6302(c)-1 and 31.6302(c)-2. Paragraphs (b)(4), (c)(5), (c)(6), (d) Example 6, (e)(2), (f)(4)(i), (f)(4)(iii), (f)(5) Example 3, and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in §31.6302-1 in effect prior to December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) Example 6, (f)(4)(i), (f)(4)(iii), and (f)(5) Example 3 of this section that apply to taxable years beginning on or after January 1, 2006, and before December 30, 2008, are contained in §31.6302-1T in effect prior to December 30, 2008. The rules of paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in §31.6302-1 in effect prior to January 1, 2006. The rules of paragraph (g) eliminating use of Federal tax deposit coupons apply to deposits and payments made after the date that final

regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

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Par. 11. Section 31.6302-2 is amended by:

1. Revising the heading.
2. Revising paragraph (d).

The revisions read as follows.

§ 31.6302-2 Deposit rules for taxes under the Railroad Retirement Tax Act (RRTA).

* * * * *

(d) Effective/applicability date. This section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 12. Section 31.6302-4 is amended by:

1. Revising the heading.
2. Revising paragraph (d).
3. Adding paragraph (e).

The revisions and additions read as follows:

§ 31.6302-4 Deposit rules for withheld income taxes attributable to nonpayroll payments.

* * * * *

(d) Special rules. A taxpayer must treat nonpayroll withheld taxes, which are reported on Form 945, "Annual

Return of Withheld Federal Income Tax," separately from taxes reportable on Form 941, "Employer's QUARTERLY Federal Tax Return" (or any other return, for example, Form 943, "Employer's Annual Federal Tax Return for Agricultural Employees"). Taxes reported on Form 945 and taxes reported on Form 941 are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of §31.6302-1(c)(3) applies, or whether any safe harbor is applicable. In addition, taxes reported on Form 945 and taxes reported on Form 941 must be deposited separately. (See paragraph (b) of §31.6302-1 for rules for determining an employer's deposit status for taxes reported on Form 941.) Taxes reported on Form 945 for one calendar year must be deposited separately from taxes reported on Form 945 for another calendar year.

(e) Effective/applicability date. Section 31.6302-4(d) applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

§31.6302(c)-2A [REMOVED]

Par. 13. Section 31.6302(c)-2A is removed.

Par. 14. Section 31.6302(c)-3 is amended by:

1. Revising the heading.
2. Revising paragraph (a)(1), introductory text.

3. Revising paragraph (a)(1)(i).
4. Revising paragraph (a)(1)(ii), introductory text.
5. Removing paragraph (a)(3).
6. Revising paragraph (b).
7. Revising paragraph (c).
8. Removing paragraph (d).

The revisions read as follows:

§ 31.6302(c)-3 Deposit rules for taxes under the Federal Unemployment Tax Act.

(a) Requirement--(1) In general. Except as provided in paragraph (a)(2) of this section, every person that, by reason of the provisions of section 6157, computes the tax imposed by section 3301 on a quarterly or other time period basis shall--

(i) If the person is described in section (a)(1) of section 6157, deposit the amount of such tax by the last day of the first calendar month following the close of each of the first three calendar quarters in the calendar year; or

(ii) If the person is other than a person described in section (a)(1) of section 6157, deposit the amount of such tax by the last day of the first calendar month following the close of--

* * * * *

(b) Manner of deposit--(1) In general. A deposit required to be made by an employer under this section shall be made separately from a deposit required by any other section. An employer may make one, or more than one, remittance of the amount required to be deposited. An employer that is not required to deposit an amount of tax by this section may nevertheless voluntarily make that deposit. For the requirement to deposit tax under the Federal Unemployment Tax Act by electronic funds transfer, see §31.6302-1(h).

(2) Time deemed paid. For the time an amount deposited by electronic funds transfer is deemed paid, see §31.6302-1(h)(9). For the time an amount remitted with a return is deemed paid, see §31.6302-1(i)(3).

(c) Effective/applicability date. This section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

PART 40--EXCISE TAX PROCEDURAL REGULATIONS

Par. 15. The authority citation for part 40 continues to read in part as follows:

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

Par. 16. Section 40.6302(c)-1 is amended by:

1. Revising the heading.

2. In paragraph (b)(2)(v), removing the language "that failure may be reported to the appropriate IRS office and".

3. Revising paragraphs (d) and (f).

The revisions read as follows:

§40.6302(c)-1 Deposits.

* * * * *

(d) Deposits required by electronic funds transfer.

All deposits required by this part must be made by electronic funds transfer, as that term is defined in §31.6302-1(h)(4) of this chapter.

* * * * *

(f) Effective/applicability date. This section applies to deposits made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

* * * * *

§40.6302(c)-2 [Amended]

Par. 17. Section 40.6302(c)-2, paragraph (c), is amended by removing the language "2001" and adding "2001, except that paragraph (b) of this section does not apply on and after the date described in §40.6302(c)-1(f)" in its place.

Par. 18. Section 40.6302(c)-3 is amended as follows:

1. The heading is revised to read as set forth below.
2. In paragraph (c), the language "banking" is removed in both places it appears and "business" is added in its place.
3. In paragraph (g), the language "2004" is removed and "2004, except that paragraph (f)(5) of this section does not apply on and after the date described in §40.6302(c)-1(f)" is added in its place.

§40.6302(c)-3 Special rules for deposits under chapter 33.

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PART 301--PROCEDURE AND ADMINISTRATION

Par. 19. The authority citation for part 301 is amended to read in part as follows:

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

Par. 20. Section 301.6302-1 is revised to read as follows:

§301.6302-1 Manner or time of collection of taxes.

(a) Employment and excise taxes. For provisions relating to the manner or time of collection of certain employment and excise taxes and deposits in connection with the payment thereof, see the regulations relating to the particular tax.

(b) Income taxes. (1) For provisions relating to the deposits of income and estimated income taxes of certain corporations, see §1.6302-1 of this chapter (Income Tax Regulations).

(2) For provisions relating to the deposits of tax required to be withheld under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see §1.6302-2 of this chapter.

(c) Effective/applicability date. This section applies to payments made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

Par. 21. Section 301.6656-1 is amended by:

1. Revising paragraph (b).
2. Revising paragraph (c).

The revisions read as follows:

§301.6656-1 Abatement of penalty.

* * * * *

(b) Deposit sent to Secretary. The Secretary may abate the penalty imposed by section 6656(a) if the first time a depositor is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary rather than deposited by electronic funds transfer.

(c) Effective/applicability date. This section applies to deposits made after the date that final regulations are published in the **Federal Register**, but no earlier than January 1, 2011.

§301.7502-2 [REMOVED]

Par. 22. Section 301.7502-2 is removed.

Steven T. Miller

Deputy Commissioner for Services and Enforcement.