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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 40

[TD 8963]

RIN 1545-AX11

Deposits of Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains the final regulations relating to the requirements for excise tax returns, payments, and deposits. These regulations affect persons required to report liability for excise taxes on Form 720, "Quarterly Federal Excise Tax Return."

DATES: Effective Date: These regulations are effective August 9, 2001.

Applicability Date: These regulations are applicable with respect to returns and deposits that relate to calendar quarters beginning on or after October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Susan Athy (202) 622-3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Excise Tax Procedural Regulations (26 CFR part 40) relating to the requirements for excise tax returns, payments, and deposits. On January 7, 2000, an advance notice of proposed

rulemaking that invited comments from the public on issues relating to the requirements for excise tax returns and deposits was published in the **Federal Register** (65 FR 1076). Several written comments were received and considered in drafting the proposed regulations. On February 16, 2001, a notice of proposed rulemaking (REG-106892-00) was published in the **Federal Register** (66 FR 10650). Written comments and requests for a public hearing were solicited.

Written comments responding to the notice were received from one commentator. The comments requested that the safe harbor rule based on look-back quarter liability be modified to be applicable: to each semimonthly period in a quarter if one-sixth of look-back quarter liability is deposited during that semimonthly period; when a taxpayer's liability includes new or reinstated taxes; and when a new legal entity includes a party that filed a Form 720 for the second preceding quarter. The final regulations do not adopt the requested modifications to the look-back safe harbor rule because doing so could significantly reduce the percentage of excise tax liability deposited without any corresponding reduction in the complexity of the deposit rules.

No public hearing was requested or held. After consideration of all of the comments, the proposed regulations are adopted without change by this Treasury decision.

Special Analyses

It has been determined that this Treasury decision 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 these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Susan Athy, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 40 is amended as follows:

PART 40--EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by removing the entries for Sections 40.6071(a)-1 and 40.6071(a)-2, and Sections 40.6302(c)-2, 40.6302(c)-3, and 40.6302(c)-4; and adding entries in numerical order to read in part as follows:

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

Section 40.6071(a)-1 also issued under 26 U.S.C. 6071(a). * * *

Section 40.6302(c)-2 also issued under 26 U.S.C. 6302(a).

Section 40.6302(c)-3 also issued under 26 U.S.C. 6302(a). * * *

§40.0-1 [Amended]

Par. 2. Section 40.0-1 is amended as follows:

1. Paragraphs (d) and (e) are removed.
2. Paragraph (f) is redesignated as new paragraph (d).

§40.6011(a)-1 [Amended]

Par. 3. Section 40.6011(a)-1 is amended by removing paragraph (c).

§40.6011(a)-2 [Amended]

Par. 4. Section 40.6011(a)-2 is amended as follows:

1. In paragraph (b)(2), the language “§40.6302(c)-1(f)(2)” is removed and “§40.6302(c)-1(e)(2)” is added in its place.
2. Paragraph (d) is removed.

Par. 5. Section 40.6071(a)-1 is amended by revising paragraphs (a), (b)(2), and (c) to read as follows:

§40.6071(a)-1 Time for filing returns.

(a) Quarterly returns. Each quarterly return required under §40.6011(a)-1(a)(2) must be filed by the last day of the first calendar month following the quarter for which it is made.

(b) * * *

(2) Semimonthly returns. Each semimonthly return required under §40.6011(a)-1(b) must be filed by the last day of the semimonthly period (as defined in

§40.0-1(c)) following the semimonthly period for which it is made.

(c) Effective date. This section is applicable with respect to returns that relate to calendar quarters beginning on or after October 1, 2001.

§40.6071(a)-2 [Removed]

Par. 6. Section 40.6071(a)-2 is removed.

§40.6091-1 [Amended]

Par. 7. Section 40.6091-1 is amended by removing paragraph (d).

Par. 8. Section 40.6101-1 is revised to read as follows:

§40.6101-1 Period covered by returns.

See §40.6011(a)-1(a)(2) for the rules relating to the period covered by the return.

Par. 9. Sections 40.6109(a)-1 and 40.6151(a)-1 are revised to read as follows:

§40.6109(a)-1 Identifying numbers.

Every person required under §40.6011(a)-1 to make a return must provide the identifying number required by the instructions applicable to the form on which the return is made.

§40.6151(a)-1 Time and place for paying tax shown on return.

Except as provided by statute, the tax must be paid at the time prescribed in §40.6071(a)-1 for filing the return, and at the place prescribed in §40.6091-1 for filing the return.

Par. 10. Section 40.6302(c)-1 is revised to read as follows:

§40.6302(c)-1 Use of Government depositaries.

(a) In general--(1) Semimonthly deposits required. Except as provided by statute or by paragraph (e) of this section, each person required under §40.6011(a)-1(a)(2) to file a quarterly return must make a deposit of tax for each semimonthly period (as defined in §40.0-1(c)) in which tax liability is incurred.

(2) Treatment of taxes imposed by chapter 33. For purposes of this part 40, tax imposed by chapter 33 (relating to communications and air transportation) is treated as a tax liability incurred during the semimonthly period--

(i) In which that tax is collected; or

(ii) In the case of the alternative method, in which that tax is considered as collected.

(3) Definition of net tax liability. Net tax liability means the tax liability for the specified period plus or minus any adjustments allowable in accordance with the instructions applicable to the form on which the return is made.

(4) Computation of net tax liability for a semimonthly period. The net tax liability for a semimonthly period may be computed by--

(i) Determining the net tax liability incurred during the semimonthly period; or

(ii) Dividing by two the net tax liability incurred during the calendar month that includes that semimonthly period, provided that this method of computation is used for all semimonthly periods in the calendar quarter.

(b) Amount of deposit--(1) In general. The deposit of tax for each semimonthly period must be not less than 95 percent of the amount of net tax liability incurred during

the semimonthly period.

(2) Safe harbor rules--(i) Applicability. The safe harbor rules of this paragraph (b)(2) are applied separately to taxes deposited under the alternative method provided in §40.6302(c)-3 (alternative method taxes) and to the other taxes for which deposits are required under this section (regular method taxes).

(ii) Regular method taxes. Any person that made a return of tax reporting regular method taxes for the second preceding calendar quarter (the look-back quarter) is considered to have complied with the requirement of this part 40 for deposit of regular method taxes for the current calendar quarter if--

(A) The deposit of regular method taxes for each semimonthly period in the current calendar quarter is not less than $\frac{1}{6}$ of the net tax liability for regular method taxes reported for the look-back quarter;

(B) Each deposit is made on time;

(C) The amount of any underpayment of regular method taxes is paid by the due date of the return; and

(D) The person's liability does not include any regular method tax that was not imposed at all times during the look-back quarter or a tax on a chemical not subject to tax at all times during the look-back quarter.

(iii) Alternative method taxes. Any person that made a return of tax reporting alternative method taxes for the look-back quarter is considered to have complied with the requirement of this part 40 for deposit of alternative method taxes for the current calendar quarter if--

(A) The deposit of alternative method taxes for each semimonthly period in the current calendar quarter is not less than 1/6 of the net tax liability for alternative method taxes reported for the look-back quarter;

(B) Each deposit is made on time;

(C) The amount of any underpayment of alternative method taxes is paid by the due date of the return; and

(D) The person's liability does not include any alternative method tax that was not imposed at all times during the look-back quarter and the month preceding the look-back quarter.

(iv) Modification for tax rate increase. The safe harbor rules of this paragraph (b)(2) do not apply to regular method taxes or alternative method taxes for the first and second calendar quarters beginning on or after the effective date of an increase in the rate of any tax to which this part 40 applies unless the deposit of those taxes for each semimonthly period in the calendar quarter is not less than 1/6 of the tax liability the person would have had with respect to those taxes for the look-back quarter if the increased rate of tax had been in effect for the look-back quarter.

(v) Failure to comply with deposit requirements. If a person fails to make deposits as required under this part 40, that failure may be reported to the appropriate IRS office and the IRS may withdraw the person's right to use the safe harbor rules of this paragraph (b)(2).

(c) Time to deposit--(1) In general. The deposit of tax for any semimonthly period must be made by the 14th day of the following semimonthly period unless such

day is a Saturday, Sunday, or legal holiday in the District of Columbia in which case the immediately preceding day which is not a Saturday, Sunday, or legal holiday in the District of Columbia is treated as the 14th day. Thus, generally, the deposit of tax for the first semimonthly period in a month is due by the 29th day of that month and the deposit of tax for the second semimonthly period in a month is due by the 14th day of the following month.

(2) Exceptions. See §40.6302(c)-2 for the special rules for September. See §40.6302(c)-3 for the special rules for deposits under the alternative method.

(d) Remittance of deposits--(1) Deposits by federal tax deposit coupon. A completed Form 8109, "Federal Tax Deposit Coupon," must accompany each deposit. The deposit must be remitted, in accordance with the instructions applicable to the form, to a financial institution authorized as a depository for federal taxes (as provided in 31 CFR part 203).

(2) Deposits by electronic funds transfer. For the requirement to deposit excise taxes by electronic funds transfer, see §31.6302-1(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to §31.6302-1(h) of this chapter remains subject to the rules of this paragraph (d).

(e) Exceptions--(1) Taxes excluded. No deposit is required in the case of the taxes imposed by--

(i) Section 4042 (relating to fuel used on inland waterways);

(ii) Section 4161 (relating to sport fishing equipment and bows and arrow components);

(iii) Section 4682(h) (relating to floor stocks tax on ozone-depleting chemicals);
and

(iv) Section 48.4081-3(b)(1)(iii) of this chapter (relating to certain removals of gasohol from refineries).

(2) One-time filings. No deposit is required in the case of any taxes reportable on a one-time filing (as defined in §40.6011(a)-2(b)).

(3) De minimis exception. For any calendar quarter, no deposit is required if the net tax liability for the quarter does not exceed \$2,500.

(f) Effective date. This section is applicable with respect to deposits that relate to calendar quarters beginning on or after October 1, 2001.

Par. 11. Section 40.6302(c)-2 is revised to read as follows:

§40.6302(c)-2 Special rules for September.

(a) In general--(1) Separate deposits required for the second semimonthly period. In the case of deposits of taxes not deposited under the alternative method (regular method taxes) for the second semimonthly period in September, separate deposits are required for the period September 16th through 26th and for the period September 27th through 30th.

(2) Amount of deposit--(i) In general. The deposits of regular method taxes for the period September 16th through 26th and the period September 27th through 30th must be not less than 95 percent of the net tax liability for regular method taxes incurred during the respective periods. The net tax liability for regular method taxes incurred during these periods may be computed by--

(A) Determining the amount of net tax liability for regular method taxes reasonably expected to be incurred during the second semimonthly period in September;

(B) Treating 11/15 of the amount determined under paragraph (a)(2)(i)(A) of this section as the net tax liability for regular method taxes incurred during the period September 16th through 26th; and

(C) Treating the remainder of the amount determined under paragraph (a)(2)(i)(A) of this section (adjusted to reflect the amount of net tax liability for regular method taxes actually incurred through the end of September) as the net tax liability for regular method taxes incurred during the period September 27th through 30th.

(ii) Safe harbor rules. The safe harbor rules in §40.6302(c)-1(b)(2) do not apply for the third calendar quarter unless--

(A) The deposit of taxes for the period September 16th through 26th is not less than 11/90 of the net tax liability for regular method taxes reported for the look-back quarter; and

(B) The total deposit of taxes for the second semimonthly period in September is not less than 1/6 of the net tax liability for regular method taxes reported for the look-back quarter.

(3) Time to deposit. (i) The deposit required for the period beginning September 16th must be made by September 29th unless--

(A) September 29th is a Saturday, in which case the deposit must be made by September 28th; or

(B) September 29th is a Sunday, in which case the deposit must be made by September 30th.

(ii) The deposit required for the period ending September 30th must be made at the time prescribed in §40.6302(c)-1(c).

(b) Persons not required to use electronic funds transfer. The rules of this section are applied with the following modifications in the case of a person not required to deposit taxes by electronic funds transfer.

(1) Periods. The deposit periods for the separate deposits required under paragraph (a) of this section are September 16th through 25th and September 26th through 30th.

(2) Amount of deposit. In computing the amount of deposit required under paragraph (a)(2)(i)(B) of this section, the applicable fraction is 10/15. In computing the amount of deposit required under paragraph (a)(2)(ii)(A) of this section, the applicable fraction is 10/90.

(3) Time to deposit. In the case of the deposit required under paragraph (a) of this section for the period beginning September 16th, the deposit must be made by September 28th unless--

(i) September 28th is a Saturday, in which case the deposit must be made by September 27th; or

(ii) September 28th is a Sunday, in which case the deposit must be made by September 29th.

(c) Effective date. This section is applicable with respect to deposits that relate to calendar quarters beginning on or after October 1, 2001.

Par. 12. Section 40.6302(c)-3 is amended as follows:

1. In paragraph (b)(1)(ii), the language “9-day rule of §40.6302(c)-1(b)(6)” is removed and “rule of §40.6302(c)-1(c)(1)” is added in its place.

2. In paragraph (b)(3), last sentence, the language “6th” is removed and “16th” is added in its place.

3. In paragraph (d), first sentence, the language “not less than” is removed and “not less than 95 percent of” is added in its place.

4. In paragraph (f)(4) introductory text, the language “§40.6302(c)-1(c)(2)(i)” is removed and “§40.6302(c)-1(b)(2)” is added in its place.

5. Paragraphs (f)(5) and (f)(7) are removed.

6. Paragraph (f)(6) is redesignated as paragraph (f)(5).

7. Paragraph (g) is revised.

8. Paragraph (h) is removed.

The revision reads as follows:

§40.6302(c)-3 Special rules for use of Government depositaries under chapter 33.

* * * * *

(g) Effective date. This section is applicable with respect to deposits and returns that relate to taxes that are considered as collected in calendar quarters beginning on

or after October 1, 2001.

§40.6302(c)-4 [Removed]

Par. 13. Section 40.6302(c)-4 is removed.

§40.9999-1 [Removed]

Par. 14. Section 40.9999-1 is removed.

Robert E. Wenzel

Deputy Commissioner of Internal Revenue

Approved: July 31, 2001

Mark A. Weinberger

Assistant Secretary of the Treasury