

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1, 31, 40, and 301

TD 9507

RIN 1545-BJ13

Electronic Funds Transfer of Depository Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary and final regulations relating to Federal tax deposits (FTDs) by Electronic Funds Transfer (EFT). In response to the decision of the Financial Management Service to discontinue the system that processes FTD coupons, the temporary and final regulations provide rules under which depositors must use EFT for all FTDs and eliminate the rules regarding FTD coupons. The temporary and final regulations affect all taxpayers that are required to make FTDs, in particular those taxpayers that currently use FTD coupons.

DATES: Effective Date: These regulations are effective on January 1, 2011.

Applicability Date: For dates of applicability, see §§1.6302-1(d), 1.6302-2(g), 1.6302-3(d), 1.6302-4(b), 31.6071(a)-1(g), 31.6302-1(o), 31.6302-1T(n), 31.6302-2(d), 31.6302-4(e), 31.6302(c)-3(c), 40.6302(c)-1(f), 40.6302(c)-2(c), 40.6302(c)-3(g), 301.6302-1(c), and 301.6656-1(c).

FOR FURTHER INFORMATION CONTACT: Michael E. Hara, (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) and the Regulations on Procedure and Administration (26 CFR part 301), and temporary and final regulations amending the Employment Tax and Collection of Income Tax at Source Regulations (26 CFR part 31), and the Excise Tax Procedural Regulations (26 CFR part 40), to require the use of EFT for all FTDs and to eliminate the rules regarding FTD coupons.

On August 23, 2010, the Treasury Department and IRS published in the **Federal Register** (75 FR 51707) proposed amendments to the regulations (REG-153340-09) to require EFT for all FTDs and to eliminate the rules regarding FTD coupons. Written public comments responding to the proposed regulations were received. No public hearing was held because the IRS did not receive any requests to speak at the public hearing.

After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions and Summary of Comments

1. Burden on Small Businesses

Many commentators expressed the concern that eliminating FTD coupons would burden small businesses. To help alleviate this perceived burden on small business, the regulations do not change the existing de minimis deposit rules allowing taxpayers with tax liabilities under certain thresholds to make a payment with a return. For example, under the de minimis deposit rules for employment taxes, that is, social security taxes, Medicare taxes, and withheld income taxes, an employer with a deposit liability of less than \$2,500 for a return period may (1) remit employment taxes with their quarterly or annual tax return, (2) voluntarily make deposits by EFT, or (3) use other methods of payment as provided by the instructions relating to the return.

Several commentators asserted that many small businesses will have difficulty using EFT because they lack computers or internet access. Businesses without a computer may use the ACH debit option, which requires only a telephone call, to schedule a payment through the Electronic Federal Tax Payment System (EFTPS), an authorized method of EFT pursuant to §31.6302-1(h)(4). To assist taxpayers new to EFTPS, United States-based live operator customer support is available toll-free 24 hours a day, year-round.

A commentator stated that requiring EFTPS will likely result in an increase in user errors based on taxpayers' computer illiteracy. Another commentator stated that requiring EFTPS will produce excessive costs in payment delays and requests for penalty abatement. According to IRS research, however, employers who pay electronically are 31 times less likely to make an error that results in interest or penalties than employers who use FTD coupons.

Several commentators expressed a reluctance to move away from the FTD coupon system based on taxpayers' familiarity with the current system and the relationships they have developed with their local banks. In deciding to discontinue the FTD coupon system, the Financial Management Service (FMS) considered current market conditions. In the last 18 months, more than 100 financial institutions, large and small, have stopped accepting FTD coupons. In many states, few financial institutions still process FTD coupons. Additionally, many states now require employers to file or pay their state business taxes electronically.

2. Alternative Payment Methods

Several commentators requested continued use of FTD coupons or the availability of alternative payment methods. These final regulations conform to the decision by FMS to eliminate the system that enables the processing of FTD coupons. As discussed above, many financial institutions no longer accept FTD coupons. If businesses are unwilling or unable to use EFTPS, they can arrange for a tax professional, financial institution, payroll service, or other trusted third party to make a deposit on their behalf using a master account. Businesses also can arrange for their financial institution to initiate a same-day tax wire payment on their behalf.

One commentator requested that the IRS continue to allow taxpayers to make payments by sending a check or money order to an IRS address when a new entity has applied for, but has not received, an employer identification number (EIN). The time it takes to receive an EIN, however, should no longer be an impediment to using EFTPS. Businesses within the United States or U.S. territories can apply for an EIN online using the IRS website. Once the application is completed, the information is validated during the online session, and an EIN is issued immediately. United States and international applicants may also obtain an EIN instantly using the telephone.

3. Raising the De Minimis Amounts

Several commentators requested raising the de minimis amounts above \$2,500 for payments that may be made with a return. The de minimis deposit rules, however vary according to the type of tax involved. For example, the de minimis threshold is less than \$2,500 per quarter for Form 720, Quarterly Federal Excise Tax Return, under §40.6302(c)-1(e)(3), but less than \$200 per calendar year for Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, under §1.6302-2(a)(1)(iv). Changing the existing de minimis deposit rules would create additional complexity and confusion for taxpayers, would upset the current established regulatory scheme, and unduly complicate enforcement of EFTPS.

4. Security and Distrust of Electronic Payment Systems

Several commentators expressed a distrust of electronic payment systems and their security. EFTPS is a safe and secure tax payment system. Online payments require three unique types of information for authentication: a Taxpayer Identification Number, a Personal Identification Number (PIN), and an Internet password. EFTPS provides an instant, printable confirmation number for every payment scheduled. Payments scheduled by phone require a taxpayer identification number and a PIN. Taxpayers who schedule an FTD by phone will receive an eight digit acknowledgement number for future reference.

Moreover, IRS will only receive confirmation that the payment was made. The IRS will not have access to any taxpayer's financial account. Businesses that do not wish to use EFTPS can arrange for their tax professional, financial institution, payroll service, or other trusted third party to make an FTD on their behalf using a master account. Businesses also may arrange for their financial institution to initiate a same-day tax wire payment for them.

5. EFTPS Registration

Several commentators asserted that EFTPS registration is time-consuming, should be easier to use, and should make EFTPS available immediately. All taxpayers now using FTD coupons will be pre-enrolled in Treasury's free EFTPS. When they receive notification of pre-enrollment, they can use the phone or Internet to activate their PIN, enter their financial account information, and begin scheduling payments on the same day.

One commentator asked the IRS to change the EFTPS enrollment process to include a variable to identify fiscal tax year taxpayers because EFTPS sometimes rejects payments by entities that operate on a fiscal tax year due to tax year-end mismatches. This suggestion was not adopted because the IRS already autocorrects payments for fiscal year taxpayers. When a taxpayer schedules an FTD through EFTPS, the system will ask the taxpayer to select the year and quarter to which the payment should be applied. This process should ensure that EFTPS payments are applied correctly.

6. Foreign Taxpayers

One commentator stated that U.S. banks are reluctant to open U.S. bank accounts for foreign corporations. Another commentator asserted that it is difficult for a U.S. citizen residing abroad to open or maintain a U.S. bank account. This commentator suggested that the IRS adapt the registration form and EFTPS software to allow for payments to the IRS from foreign bank accounts, and that the Treasury Department and IRS issue regulations requiring U.S. banks to open U.S. bank accounts for U.S. citizens residing abroad with a foreign address. These suggestions were not adopted. Foreign taxpayers may arrange for their financial institution to initiate a same-day wire payment

on their behalf. Foreign taxpayers may also arrange for their qualified intermediary, tax professional, payroll service, or other trusted third party to make a deposit on their behalf using a master account.

7. One-Day Rule

A commentator requested clarification of the One-Day Rule in §31.6302-1(c) and Example 4 in §31.6302-1(d). The commentator argued that the One-Day Rule should be applied only when an employer has accumulated \$100,000 or more in undeposited employment taxes within the deposit period applicable to its status as a monthly or semi-weekly depositor and that Example 4 should be modified consistent with this result. These suggestions were not adopted. The commentator misinterprets the existing rules, which use accumulated taxes rather than undeposited taxes to determine the application of the One-Day rule. The proposed rules merely updated the existing rules and examples to be consistent with the elimination of the FTD coupon system and did not modify this aspect of the existing rules.

Example 4 in the proposed regulations correctly illustrates how the One-Day Rule applies in combination with a subsequent deposit obligation. Example 4 involves Employer D, a depositor subject to the semi-weekly rule for calendar year 2011. On Monday, January 10, 2011, D accumulates \$115,000 in employment taxes. Because D has accumulated \$100,000 or more in employment taxes, the One-Day Rule applies, and D therefore must deposit the \$115,000 in employment taxes by the next business day, which is Tuesday, January 11, 2011. On Tuesday, January 11, 2011, D accumulates an additional \$30,000 in employment taxes. Because the \$115,000 in employment taxes accumulated on Monday is already subject to the One-Day Rule, there are no other accumulated taxes to be taken into account in determining D's deposit obligation for the additional \$30,000 in employment taxes accumulated on Tuesday. Therefore, D has an additional and separate deposit obligation of \$30,000 on Tuesday that must be satisfied by the following Friday. This example is adopted in the final regulations without change.

8. Delay the January 1, 2011 Effective Date

Several commentators requested a delay in the effective date of these temporary and final regulations. These regulations implement the decision of FMS to eliminate the system that enables the processing of FTD coupons as of January 2011. In order to facilitate the transition from FTD coupons, all taxpayers now using coupons will be pre-enrolled in EFTPS. The IRS has begun notifying taxpayers of the upcoming changes and, upon publication of these regulations, will increase efforts to notify affected taxpayers of the EFT requirement. Since April 2010, the Department of Treasury and IRS have been reaching out to critical external stakeholders, including the Small Business Administration and financial institutions and their associations, about the pending FTD changes, and will continue to offer informational sessions and free marketing materials to assist external stakeholders in informing and educating taxpayers about the new requirements.

9. Business Days and Legal Holidays

Prior to the advent of EFTPS, taxpayers made FTDs using an FTD coupon at a government depository bank. Because FTDs could only be made on days the banks were open, the timeliness of deposits under section 6302 was determined by reference to banking days. Furthermore, because many banks are closed on statewide legal holidays, the IRS treated statewide legal holidays as legal holidays in determining the timeliness of deposits.

Since a taxpayer will no longer be able to use a government depository bank to make an FTD using an FTD coupon, these regulations remove references to “banking days” and instead determine the timeliness of deposits by reference to “business days,” meaning every calendar day that is not a Saturday, Sunday, or legal holiday under section 7503. Additionally, because EFTPS is available 24 hours a day, seven days a week, the final regulations provide that, consistent with section 7503, the term “legal holiday” for FTD purposes includes only those legal holidays in the District of Columbia. Thus, a statewide legal holiday will no longer be considered a legal holiday unless the holiday coincides with a legal holiday in the District of Columbia. The following days are currently legal holidays in the District of Columbia: New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, District of Columbia Emancipation Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and the day of the inauguration of the President, in every fourth year. The final regulations include several minor changes from the proposed regulations to reflect this application of the legal holiday rule and provide an additional example to illustrate it. See §31.6302-1(d) Example 5.

A separate notice is being issued with these final regulations to provide transitional relief. Notice 2010-__ states that the IRS will not assert penalties for FTDs made in 2011 that would be considered timely if statewide legal holidays were taken into account.

10. Other Differences from the Proposed Regulations

In addition to the changes described earlier in this preamble, the final regulations include four minor revisions that vary from the text of the proposed regulations. Sections 31.6071(a)-1(a) and (c) are revised, consistent with the intent of the proposed regulations, to eliminate the rules for FTD coupons. The table of contents in §31.6302-0 was updated to reflect the changes to the regulation headings. The heading to §40.6302(c)-1T has been revised to remove the reference to government depositories. Additionally, §40.6302(c)-3 is further revised to illustrate the computation of the three business day rule for excise taxes when an intervening day is a holiday consistent with the rules in §31.6302-1(c)(2)(iii) for employment taxes.

Special Analyses

It has been determined that this final rule 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 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, 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 final regulations is Michael E. Hara, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 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.

Amendments to the Regulations

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

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entries for sections 1.6302-1 through 1.6302-4 to read in part as follows:

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

Sections 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). * * *

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

1. Revising the heading.
2. Revising paragraph (a).
3. Removing paragraph (b)(1), redesignating paragraph (b)(2) as paragraph (b), and revising the heading for 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 December 31, 2010.

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 by the 15th day of the following 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. If the 15th day of the following month is a Saturday, Sunday, or legal holiday in the District of Columbia under section 7503, taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday. 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 in the District of Columbia 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.

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(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), 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. 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.

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(g) * * * Paragraph (b)(1) of this section applies to deposits and payments made after December 31, 2010.

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, publications, forms and instructions.

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(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 deposits and payments made after December 31, 2010.

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 the manner set forth in published guidance, publications, forms and instructions.

(b) Effective/applicability date. This section applies to deposits and payments made after December 31, 2010.

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 31.6071-1, 31.6302-1 through 6302-3, 31.6302-3, 31.6302-4, 31.6302(c)-2A and 31.6302(c)-3 and adding entries in numerical order to read in part as follows:

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

Section 31.6071(a)-1 also issued under 26 U.S.C.6071.

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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) and (h).

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). * * *

Par. 8. Section 31.6071(a)-1 is amended by

1. Revising paragraphs (a)(1) and (c).
2. Adding paragraph (g).

The revisions and the addition read as follows:

§31.6071(a)-1 Time for filing returns and other documents.

(a) Federal Insurance Contributions Act and income tax withheld from wages and from nonpayroll payments--(1) Quarterly or annual returns. Except as provided in paragraph (a)(4) of this section, each return required to be made under §§31.6011(a)-1 and 31.6011(a)-1T, in respect of the taxes imposed by the Federal Insurance Contributions Act (26 U.S.C. 3101-3128), or required to be made under §§31.6011(a)-4 and 31.6011(a)-4T, in respect of income tax withheld, shall be filed on or before the last day of the first calendar month following the period for which it is made. However, a return may be filed on or before the 10th day of the second calendar month following such period if timely deposits under section 6302(c) of the Code and the regulations have been made in full payment of such taxes due for the period.

* * * * *

(c) Federal Unemployment Tax Act. Each return of the tax imposed by the Federal Unemployment Tax Act required to be made under §31.6011(a)-3 shall be filed on or before the last day of the first calendar month following the period for which it is made. However, a return may be filed on or before the 10th day of the second calendar month following such period if timely deposits under section 6302(c) of the Code and the regulations thereunder have been made in full payment of such taxes due for the period.

* * * * *

(g) Effective/applicability date. The elimination of the rules of paragraph (a) and (c) of this section regarding the timeliness of deposits apply to deposits and payments made after December 31, 2010.

§31.6302-0 [Amended]

Par. 9. Section 31.6302-0 is amended by revising the entries for § 31.6302-1(c), (c)(2), (c)(2)(iii), (c)(4), (h), (h)(2), (h)(2)(ii), (h)(2)(iii), (i), (i)(3), (j), (n), and § 31.6302-2 (c) and (d), and by adding entries for § 31.6302-1 (h)(2)(iv) and (o) and § 31.6302-4 to read as follows:

§ 31.6302-0 Table of Contents.

* * * * *

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

* * * * *

(c) Deposit rules.

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(2) Semi-Weekly rule.

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(iii) Special rule for computing days.

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(4) Deposits required only on business days.

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(h) Time and manner of deposit--deposits required to be made by electronic funds transfer.

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(2) Applicability of requirement.

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(ii) Deposits for return periods beginning after December 31, 1999, and made before January 1, 2011.

(iii) Deposits made after December 31, 2010.

(iv) Voluntary deposits.

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(i) Time and manner of deposit.

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(3) Time deemed paid.

(j) Voluntary payments by electronic funds transfer.

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(n) [Reserved]. For further guidance, see § 31.6302-0T, the entry for § 31.6302-1T(n).

(o) Effective/Applicability date.

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

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(c) Modification of Monthly rule determination.

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(d) Effective/Applicability date.

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

Par. 10. 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 paragraphs (h)(2)(iii) and (iv).
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.

* * * * *

(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 in the District of Columbia under section 7503, taxes will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

(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 employment 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 in the District of Columbia under section 7503. If any of the three weekdays following the close of a semi-weekly period is a legal holiday, 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 in the District of

Columbia 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 Saturdays, Sundays, or legal holidays. For purposes of this paragraph (c), legal holidays shall have the same meaning provided in section 7503. Pursuant to section 7503, the term legal holiday means a legal holiday in the District of Columbia. For purposes of this paragraph (c), the term “legal holiday” does not include other Statewide legal holidays.

* * * * *

(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 by 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 by 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. Legal Holidays. Employer E conducts business in State X. Wednesday, August 31, 2011, is a statewide legal holiday in State X which is not a legal holiday in the District of Columbia. On Friday, August 26, 2011, E (a semi-weekly depositor) has a pay day on which it accumulates \$4,000 in employment taxes. E has a \$4,000 deposit obligation that must be satisfied on or before the following Wednesday, August 31, 2011, notwithstanding that the day is a statewide legal holiday in State X.

* * * * *

(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 deposits and payments made after December 31, 2010.

Par. 11. Section 31.6302-1T is amended by revising paragraphs (g)(1) and (n)(1) to 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 before 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 before 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) of this section eliminating use of Federal tax deposit coupons apply to deposits and payments made after December 31, 2010.

* * * * *

Par. 12. 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 deposits and payments made after December 31, 2010.

Par. 13. 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 deposits and payments made after December 31, 2010.

§31.6302(c)-2A [REMOVED]

Par. 14. Section 31.6302(c)-2A is removed.

Par. 15. 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 deposits and payments made after December 31, 2010.

PART 40--EXCISE TAX PROCEDURAL REGULATIONS

Par. 16. The authority citation for part 40 continues to read in part as follows:

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

Par. 17. 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 and payments made after December 31, 2010.

* * * * *

Par. 18. Section 40.6302(c)-1T is amended by revising the section heading to read as follows:

§40.6302(c)-1T Deposits (temporary).

* * * * *

§40.6302(c)-2 [Amended]

Par. 19. 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 after December 31, 2010” in its place.

Par. 20. Section 40.6302(c)-3 is amended as follows:

1. The heading is revised.

2. Paragraph (c) is revised.

3. In paragraph (g), the language "2004" is removed and "2004, and except that paragraph (f)(5) of this section does not apply after December 31, 2010" is added in its place.

The revisions read as follows:

§40.6302(c)-3 Deposits under chapter 33.

* * * * *

(c) Time to deposit. Under the alternative method, the deposit of tax for any semimonthly period must be made by the third business day after the seventh day of that semimonthly period. For purposes of this paragraph (c), a "business day" is any calendar day other than a Saturday, Sunday, or legal holiday. The term "legal holiday" means a legal holiday in the District of Columbia as defined in section 7503. Thus, for example, the deposit for the semimonthly period beginning on January 1, 2011 (relating to amounts billed between December 1st and December 15, 2010) is due by January 12, 2011, three business days after January 7, the seventh day of the semimonthly period. The deposit for the semimonthly period beginning on October 1, 2011 (relating to amounts billed between September 1st and September 15, 2011), is due by October 13, 2011, due to the October 10, 2011, Columbus Day holiday.

* * * * *

PART 301--PROCEDURE AND ADMINISTRATION

Par. 20. The authority citation for part 301 is amended to read in part as follows:

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

Par. 21. 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 deposits and payments made after December 31, 2010.

Par. 22. 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 taxpayer 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 and payments made after December 31, 2010.

§301.7502-2 [REMOVED]

Par. 23. Section 301.7502-2 is removed.

Steven T. Miller
Deputy Commissioner for Services and Enforcement

Approved: November 30, 2010

Michael Mundaca
Assistant Secretary of the Treasury (Tax Policy).