

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 40

[TD 8887]

RIN 1545-AV02

Deposits of Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the availability of the safe harbor deposit rule based on look-back quarter liability and affects persons required to make deposits of excise taxes. This document also contains final regulations related to floor stocks taxes and affects persons liable for those taxes. The regulations implement changes made by the Small Business Job Protection Act of 1996 and the Airport and Airway Trust Fund Tax Reinstatement Act of 1997.

DATES: Effective Date: These regulations are effective June 8, 2000.

Applicability Dates: For dates of applicability of these regulations, see §§40.6302(c)-1(c)(2)(iv)(C) and 40.6302(c)-2(b)(2)(iii)(C).

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

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations (TD 8740) relating to the safe harbor deposit rule based on look-back quarter liability and to floor stock taxes were published in the **Federal Register** on December 29, 1997 (62 FR 67568) along with a notice of proposed rulemaking (REG-102894-97) cross-referencing the temporary regulations (62 FR 67589). Written comments and requests for a public hearing were solicited. However, no comments or requests were received and no public hearing was held.

The proposed regulations are adopted without revision by this Treasury decision.

Effect on Other Documents

The following publication is obsolete as of June 8, 2000:

Notice 97-15, 1997-1 C.B. 387.

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 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 Assistant 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 continues to read in part as follows:

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

Par. 2. In §40.0-1, paragraph (a) is amended by revising the second sentence to read as follows:

§40.0-1 Introduction.

(a) * * * The regulations set forth administrative provisions relating to the excise taxes imposed by chapters 31, 32, 33, 34, 36, 38, and 39 (except for the chapter 32 tax imposed by section 4181 (firearms tax) and the chapter 36 taxes imposed by sections 4461 (harbor maintenance tax) and 4481 (heavy vehicle use tax)), and to floor stocks taxes imposed on articles subject to any of these taxes. * * *

* * * * *

§40.0-1T [Removed]

Par. 3. Section 40.0-1T is removed.

Par. 4. In §40.6011(a)-1, paragraph (a)(2)(iii) is added to read as follows:

§40.6011(a)-1 Returns.

(a) * * *

(2) * * *

(iii) Floor stocks tax return. A return reporting liability for a floor stocks tax described in §40.0-1(a) is a return for the calendar quarter in which the tax payment is due and not the calendar quarter in which the liability for tax is incurred.

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§40.6011(a)-1T [Removed]

Par. 5. Section 40.6011(a)-1T is removed.

Par. 6. Section 40.6302(c)-1 is amended as follows:

1. Paragraph (c)(2)(iv) is added.

2. Paragraph (f)(1) is amended by adding a sentence to the end of the paragraph.

The additions read as follows:

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

* * * * *

(c) * * *

(2) * * *

(iv) Modification for new or reinstated taxes—(A) Applicability. The safe harbor rule of paragraph (c)(2)(i) of this section is modified for any calendar quarter in which a person's liability for a class of tax includes liability for any new or reinstated tax. For this purpose, a new or reinstated tax is--

(1) Any tax (including an alternative method tax) that was not in effect at all times during the look-back quarter; and

(2) Any alternative method tax that was not in effect at all times during the month preceding the look-back quarter.

(B) Modification. The safe harbor rule of paragraph (c)(2)(i) of this section does not apply to a class of tax unless the deposit of taxes in that class for each semimonthly period in the calendar quarter is not less than the greater of--

(1) 1/6 of the net tax liability reported for the class of tax for the look-back quarter; or

(2) The sum of--

(i) 95 percent of the net tax liability incurred with respect to new or reinstated taxes during the semimonthly period; and

(ii) 1/6 of the net tax liability reported for all other taxes in the class for the look-back quarter.

(C) Effective date. This paragraph (c)(2)(iv) applies to tax liabilities for new or reinstated taxes incurred after February 28, 1997, except that paragraph (c)(2)(iv)(A)(2) of this section applies only for calendar quarters beginning after December 31, 1997.

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(f) * * * (1) * * * Also, no deposit is required in the case of any floor stocks tax described in §40.0-1(a).

* * * * *

§40.6302(c)-1T [Removed]

Par. 7. Section 40.6302(c)-1T is removed.

Par. 8. In §40.6302(c)-2, paragraph (b)(2)(iii) is added to read as follows:

§40.6302(c)-2 Special rules for use of Government depositaries under section 4681.

* * * * *

(b) * * *

(2) * * *

(iii) Modification for new chemicals--(A) Applicability. The safe harbor rule of paragraph (b)(2)(i) of this section is modified for any calendar quarter in which a person's liability for section 4681 tax includes liability with respect to any new chemical. For this purpose, a new chemical is any chemical that was not subject to tax at all times during the look-back quarter.

(B) Modification. The safe harbor rule of paragraph (b)(2)(i) of this section does not apply unless the deposit of section 4681 taxes for each semimonthly period in the calendar quarter is not less than the greater of--

(1) 1/6 of the net tax liability reported under section 4681 for the look-back quarter; or

(2) The sum of--

(i) 95 percent of the net tax liability incurred under section 4681 with respect to

the new chemical during the semimonthly period; and

(ii) 1/6 of the net tax liability reported under section 4681 with respect to all other chemicals for the look-back quarter.

(C) Effective date. This paragraph (b)(2)(iii) applies to tax liabilities for new chemicals incurred after February 28, 1997.

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§40.6302(c)-2T [Removed]

Par. 9. Section 40.6302(c)-2T is removed.

Robert E. Wenzel
Deputy Commissioner of Internal Revenue

Approved: 5/22/00

Jonathan Talisman
Deputy Assistant Secretary of the Treasury