

Part III. Administrative, Procedural, and Miscellaneous

Electronic Funds Transfer — Temporary Waiver of Failure to Deposit Penalty for Certain Taxpayers

Notice 99-12

This notice provides guidance relating to the waiver of penalties announced in News Release IR-98-68, issued November 18, 1998. In IR-98-68, the Internal Revenue Service announced that it will waive the failure-to-deposit penalty under § 6656 of the Internal Revenue Code for certain taxpayers first required to make federal tax deposits by electronic funds transfer beginning on or after July 1, 1997.

BACKGROUND

Section 6302(h)(1)(A) provides that the Secretary will prescribe regulations necessary for the development and implementation of an electronic funds transfer system for the collection of depository taxes. Section 6302(h)(2) provides a phase-in schedule for the system.

Section 31.6302-1(h) of the Employment Taxes and Collection of Income Tax at Source Regulations prescribes rules for implementing an electronic funds transfer system for the collection of depository taxes. Under the regulation, taxpayers are required to deposit taxes by electronic funds transfer if the amount of their depository taxes in a specified earlier year exceeds the applicable threshold amount. The regulation provides that taxpayers with more than \$50,000 of federal employment tax deposits in calendar year 1995 must use electronic funds transfer to make deposits that are due on or after July 1, 1997, and relate to return periods beginning on or after January 1, 1997. Taxpayers with more than \$50,000 in employment tax deposits in calendar year 1996 must use electronic funds transfer to make deposits of taxes relating to return periods beginning on or after January 1, 1998. Taxpayers with more than \$50,000

in employment tax deposits in calendar year 1997 must begin to use electronic funds transfer to make deposits of taxes relating to return periods beginning on or after January 1, 1999.

In addition, under the regulations, taxpayers with no employment tax deposits in either 1995 or 1996, but with more than \$50,000 in other federal tax deposits in either 1995 or 1996, must use electronic funds transfer to make deposits of taxes relating to return periods beginning on or after January 1, 1998. Taxpayers with no employment tax deposits in 1997, but with more than \$50,000 in other federal tax deposits in 1997, must use electronic funds transfer to make deposits of taxes relating to return periods beginning on or after January 1, 1999.

Section 6656(a) provides that in the case of any failure by any person to deposit taxes on the prescribed date in an authorized government depository, a penalty applies unless the failure is due to reasonable cause and not due to willful neglect. Rev. Rul. 95-68, 1995-2 C.B. 272, provides that, absent reasonable cause, a taxpayer that is required to deposit federal taxes by electronic funds transfer is subject to the 10 percent failure-to-deposit penalty if the taxpayer deposits the taxes by means other than electronic funds transfer.

Notice 97-43, 1997-30 I.R.B. 9, provides that, in the case of taxpayers first required to deposit electronically on or after July 1, 1997, the Internal Revenue Service will not impose the failure-to-deposit penalty under § 6656 solely for the failure to make the deposit electronically, provided the deposit is otherwise made in a timely manner. This waiver applies only to deposit obligations incurred on or before December 31, 1997.

Section 931 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 881, provides that no penalty shall be imposed under the Internal Revenue Code solely by reason of a failure by a person to use the electronic fund transfer system es-

tablished under § 6302(h) of the Code if (1) the person is a member of a class of taxpayers first required to use such system on or after July 1, 1997, and (2) the failure occurs before July 1, 1998.

Notice 98-30, 1998-22 I.R.B. 9, provides that, in the case of taxpayers first required to deposit electronically on or after July 1, 1997, the Internal Revenue Service will not impose the failure to deposit penalty under § 6656 solely for the failure to make the deposit electronically provided the deposit is otherwise made in a timely manner. This waiver applies only to deposit obligations incurred on or before December 31, 1998.

CONTINUED TEMPORARY WAIVER OF PENALTY FOR CERTAIN TAXPAYERS

For taxpayers first required to make federal tax deposits electronically on or after July 1, 1997, the Service will not impose the 10 percent § 6656 penalty solely for the failure to make those deposits by electronic funds transfer. However, a taxpayer will remain liable for the failure to deposit penalty under § 6656 (absent reasonable cause) if the taxpayer fails to make a required deposit in a timely manner.

This waiver of the failure to deposit penalty applies only to deposit obligations incurred on or before June 30, 1999. The penalty waiver includes deposits made after June 30, 1999, provided the deposit obligation was incurred on or before June 30, 1999.

This waiver of the failure to deposit penalty does not apply to taxpayers that were required to begin using electronic funds transfer in 1995 or 1996.

DRAFTING INFORMATION

The principal author of this notice is Vincent G. Surabian of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding the penalty waiver, contact Mr. Surabian at (202) 622-4940 (not a toll-free call).