

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8793]

RIN 1545-AW38

Payment by Credit Card and Debit Card

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that authorize the Secretary of the Treasury to accept payment of internal revenue taxes by credit card or debit card. The temporary regulations reflect changes to the law made by the Taxpayer Relief Act of 1997, and will affect all persons who pay their tax liabilities by credit card or debit card pursuant to guidance prescribed by the Secretary. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective Date: These temporary regulations are effective January 1, 1999.

Applicability Date: For dates of applicability, see §301.6311-2T(h) of these regulations.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Mitchel S. Hyman, (202) 622-3620 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

**Background**

This document contains temporary regulations amending the Procedure and Administration Regulations (26 CFR part 301) under sections 6103 and 6311 of the Internal Revenue Code. The regulations reflect the amendment of sections 6103 and 6311 by section 1205 of the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 788, 995)(1997 Act) and section 4003(k) of the Tax and Trade Relief Extension Act of 1998 (Public Law 105-277, 112 Stat. 2681).

As amended by the 1997 Act, section 6311(a) provides that it shall be lawful for the Secretary to receive payment for internal revenue taxes by any commercially acceptable means that the Secretary deems appropriate to the extent and under the conditions provided in regulations prescribed by the Secretary. The legislative history accompanying the Act explains that commercially acceptable means includes "electronic funds transfers, including those arising from credit cards, debit cards, and charge cards." H. Conf. Rep. 220, 105th Cong., 1st Sess. 652 (1997). The current regulations under Treas. Reg. §301.6311-1 permit payment of taxes by checks, drafts drawn on financial institutions, or money orders. The temporary regulations add payments by credit cards (which includes charge cards) and debit cards to the acceptable methods of payment under section 6311.

Methods of payment by electronic funds transfer other than

by credit card or debit card are currently authorized by section 6302 of the Internal Revenue Code and its implementing regulations. For example, Treas. Reg. § 1.6302-4 permits individuals to voluntarily remit payments of income taxes by electronic funds transfer. Thus, the temporary regulations only address payments by credit card and debit card. Section 6302 and its regulations will remain the authority for forms of payment by electronic funds transfer other than payments by credit card and debit card.

Section 6103(a) of the Code prohibits disclosure of returns and return information except as expressly provided in the Code. Section 1205(c)(1) of the 1997 Act (as amended by section 6012(b)(2) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206) added section 6103(k)(9) to the Code. Section 6103(k)(9) authorizes the IRS to disclose returns and return information to financial institutions and others to the extent necessary for the administration of section 6311. Section 6103(k)(9) further provides that disclosures of information for purposes other than to accept payments by check or money order (for example, by credit card, or debit card) shall be made only to the extent authorized by written procedures promulgated by the Secretary. Section 6311(e) provides that no person shall use or disclose any information obtained pursuant to section 6103(k)(9) related to credit card or debit card transactions except to the extent authorized by written procedures promulgated by the Secretary.

Any person who uses or discloses information in violation of section 6311(e) is subject to civil liability for damages. See I.R.C. section 7431(h), added by section 1205(c)(2) of the 1997 Act (as amended by Public Law 105-206, section 6012(b)(3)).

#### **Explanation of Provisions**

The temporary regulations provide that internal revenue taxes may be paid by credit card or debit card. Payment of taxes by credit card or debit card is voluntary on the part of the taxpayer. However, only credit cards or debit cards approved by the Secretary may be used for this purpose, only the types of tax liabilities specified by the Secretary may be paid by credit card or debit card, and all such payments must be made in the manner and in accordance with the forms, instructions, and procedures prescribed by the Secretary. Thus, payments by credit card or debit card may be limited to certain designated cards, to payments made through certain service providers, or to payments of specific types of taxes. It is anticipated that the Secretary will be entering into contracts with specific card issuers or other persons such as third parties who will process the credit and debit card transactions, to facilitate payments by credit cards and debit cards, subject to the requirement that the Secretary may not pay any fee or provide any other monetary consideration under such contracts.

Under the temporary regulations, a payment by credit card or debit card received by the Secretary will be deemed made when the credit card or debit card transaction is authorized by the card

issuer, provided the payment is actually received by the Secretary in the ordinary course of business and is not returned due to correction of errors relating to the credit card or debit card account.

The temporary regulations provide, as required by section 6311(d)(3), that payments of taxes by credit card or debit card are subject to the error resolution procedures of section 161 of the Truth in Lending Act, 15 U.S.C. section 1666, section 908 of the Electronic Fund Transfer Act, 15 U.S.C. 1693f, or any similar provisions of state law, only for the purpose of resolving errors relating to the credit card or debit card account, but not for the purpose of resolving any errors, disputes, or adjustments relating to the underlying tax liability. These provisions ensure that any disputes concerning the merits of the tax liability will be resolved in the traditional administrative and judicial forums (e.g., filing a petition in Tax Court, paying the disputed tax and filing a claim for refund), and will not be raised in any dispute with the card issuer, financial institution, or other person participating in the credit card or debit card transaction.

As authorized by section 6311(d)(3)(E), the temporary regulations permit the Secretary to return funds erroneously received due to errors relating to the credit card or debit card account by arranging for a credit to the taxpayer's account with the issuer of the credit card or debit card or other appropriate financial institution or person. Returns of funds through credit

card or debit card credits, however, are only available to correct errors relating to the credit card and debit card account, and not to refund overpayments of taxes.

The temporary regulations also provide that the Internal Revenue Service may not impose any fee or charge on persons making payment of taxes by credit card or debit card. The regulations provide that the imposition of fees or charges by issuers of credit cards or debit cards or by any other financial institution or person participating in the credit card or debit card transaction are not prohibited. The Internal Revenue Service may not receive any part of any fees that may be charged.

The temporary regulations also provide the procedures required under sections 6103(k)(9) and 6311(e) with respect to use and disclosure of information relating to payment of taxes by credit card and debit card. IRS personnel are authorized to disclose to card issuers, financial institutions, and other persons information necessary to process the tax payment or to bill or collect the amount charged or debited (for example, to resolve billing errors). Pursuant to section 6311(e), information received by any person in connection with payment of tax by credit card or debit card shall be treated as confidential by all persons who receive such information, whether such information is received from the Secretary or from any other person including the taxpayer.

The temporary regulations set forth the limited purposes and activities for which such information may be used or disclosed by

card issuers, financial institutions, and other persons. The permitted purposes and activities principally involve credit card and debit card processing, billing, collection, account servicing, account transfers, internal business records, legal compliance, and legal proceedings. The temporary regulations expressly prohibit selling the information, sharing it with credit bureaus, or using it for any marketing purpose, for example, marketing tax-related products or any marketing that targets those who have used a credit card or debit card to pay taxes.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that these regulations must be effective by January 1, 1999, to permit taxpayers the opportunity to pay taxes by credit card for the 1999 filing season, and, therefore, it has been determined that sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations. It has also been determined that because the 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 Internal Revenue Code, this temporary regulation will be 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 Mitchel S. Hyman of the Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 301**

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

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

## PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6103(k)(9)-1T is added to read as follows:

§301.6103(k)(9)-1T Disclosure of returns and return information relating to payment of tax by credit card and debit card (temporary).

Officers and employees of the Internal Revenue Service may disclose to card issuers, financial institutions or other persons such return information as the Secretary deems necessary in connection with processing credit card and debit card transactions to effectuate payment of tax as authorized by §301.6311-2T. Officers and employees of the Service may disclose

such return information to such persons as the Secretary deems necessary in connection with billing or collection of the amounts charged or debited, including resolution of errors relating to the credit card or debit card account as described in §301.6311-2T(d).

Par. 3. Section 301.6311-2T is added to read as follows:

§301.6311-2T Payment by credit card and debit card (temporary).

(a) Authority to receive--(1) Payments by credit card and debit card. Internal revenue taxes may be paid by credit card or debit card as authorized by this section. Payment of taxes by credit card or debit card is voluntary on the part of the taxpayer. However, only credit cards or debit cards approved by the Secretary may be used for this purpose, only the types of tax liabilities specified by the Secretary may be paid by credit card or debit card, and all such payments must be made in the manner and in accordance with the forms, instructions and procedures prescribed by the Secretary. All references in this section to "tax" also include interest, penalties and additions to tax.

(2) Payments by electronic funds transfer other than payments by credit card and debit card. Provisions relating to payments by electronic funds transfer other than payments by credit card and debit card are contained in section 6302 and the Treasury Regulations promulgated pursuant to section 6302.

(3) Definitions--(i) Credit card means any credit card as defined in section 103(k) of the Truth in Lending Act, 15 U.S.C. section 1602(k), including any credit card, charge card or other

credit device issued for the purpose of obtaining money, property, labor or services on credit.

(ii) Debit card means any accepted card or other means of access as defined in section 903(1) of the Electronic Funds Transfer Act, 15 U.S.C. 1693a(1), including any debit card or similar device or means of access to an account issued for the purpose of initiating electronic fund transfers to obtain money, property, labor or services.

(b) When payment is deemed made. A payment of tax by credit card or debit card shall be deemed made when the issuer of the credit card or debit card properly authorizes the transaction, provided the payment is actually received by the Secretary in the ordinary course of business and is not returned pursuant to paragraph (d)(3) of this section.

(c) Payment not made--(1) Continuing liability of taxpayer. A taxpayer who tenders payment of taxes by credit card or debit card is not relieved of liability for such taxes until the payment is actually received by the Secretary and is not required to be returned pursuant to paragraph (d)(3) of this section. This continuing liability of the taxpayer is in addition to, and not in lieu of, any liability of the issuer of the credit card or debit card or financial institution pursuant to paragraph (c)(2) of this section.

(2) Liability of financial institutions. If a taxpayer has tendered a payment of internal revenue taxes by credit card or debit card, and the credit card or debit card transaction has

been guaranteed expressly by a financial institution, and the United States is not duly paid, the United States shall have a lien for the guaranteed amount of the transaction upon all the assets of the institution making such guarantee. The unpaid amount shall be paid out of such assets in preference to any other claims whatsoever against such guaranteeing institution, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such institution.

(d) Resolution of errors relating to the credit card or debit card account--(1) In general. Payments of taxes by credit card or debit card shall be subject to the applicable error resolution procedures of section 161 of the Truth in Lending Act, 15 U.S.C. 1666, or section 908 of the Electronic Fund Transfer Act, 15 U.S.C. 1693f, or any similar provisions of state law, for the purpose of resolving errors relating to the credit card or debit card account, but not for the purpose of resolving any errors, disputes or adjustments relating to the underlying tax liability.

(2) Matters covered by error resolution procedures. (i) The error resolution procedures of paragraph (d)(1) of this section apply to the following types of errors:

(A) An incorrect amount posted to the taxpayer's account as a result of a computational error, numerical transposition, or similar mistake.

(B) An amount posted to the wrong taxpayer's account.

(C) A transaction posted to the taxpayer's account without the taxpayer's authorization.

(D) Similar types of errors that would be subject to resolution under these procedures in ordinary commercial transactions.

(ii) An error described in paragraphs (d)(2)(i)(A) through (D) of this section may only be resolved through the procedures referred to in paragraph (d)(1) of this section and cannot be a basis for any claim or defense in any administrative or court proceeding involving the Secretary.

(3) Return of funds pursuant to error resolution procedures. Notwithstanding section 6402 of the Internal Revenue Code, if a taxpayer is entitled to a return of funds pursuant to the error resolution procedures of paragraph (d)(1) of this section, the Secretary may, in the Secretary's sole discretion, effect such return by arranging for a credit to the taxpayer's account with the issuer of the credit card or debit card or any other financial institution or person that participated in the transaction in which the error occurred.

(4) Matters not subject to error resolution procedures. The error resolution procedures of paragraph (d)(1) of this section do not apply to any error, question or dispute concerning the amount of tax owed by any person for any year. For example, these error resolution procedures do not apply to determine a taxpayer's entitlement to a refund of tax for any year for any reason, nor may they be used to pay a refund. All such matters

shall be resolved through administrative and judicial procedures established pursuant to the Internal Revenue Code and the rules and regulations thereunder.

(5) Payments of taxes by credit card or debit card are not subject to section 170 of the Truth in Lending Act, 15 U.S.C. 1666i, or to any similar provision of state law.

(e) Fees or charges. The Internal Revenue Service may not impose any fee or charge on persons making payment of taxes by credit card or debit card. This section does not prohibit the imposition of fees or charges by issuers of credit cards or debit cards or by any other financial institution or person participating in the credit card or debit card transaction. The Internal Revenue Service may not receive any part of any fees that may be charged.

(f) Authority to enter into contracts. The Secretary may enter into contracts related to receiving payments of tax by credit card or debit card if such contracts are cost beneficial to the Government. The determination of whether the contract is cost beneficial shall be based on an analysis appropriate for the contract at issue and at a level of detail appropriate to the size of the Government's investment or interest. The Secretary may not pay any fee or charge or provide any other monetary consideration under such contracts for such payments.

(g) Use and disclosure of information relating to payment of taxes by credit card and debit card. Information obtained by any person other than the taxpayer in connection with payment of

taxes by a credit card or debit card shall be treated as confidential, whether such information is received from the Secretary or from any other person (including the taxpayer). No person other than the taxpayer shall use or disclose such information except as follows:

(1) Card issuers, financial institutions, or other persons participating in the credit card or debit card transaction may use or disclose such information for the purpose and in direct furtherance of servicing cardholder accounts, including the resolution of errors in accordance with paragraph (d) of this section. This authority includes the following:

(i) Processing of the credit card or debit card transaction, in all of its stages through and including the crediting of the amount charged on account of tax to the United States Treasury.

(ii) Billing the taxpayer for the amount charged or debited with respect to payment of the tax liability.

(iii) Collection of the amount charged or debited with respect to payment of the tax liability.

(iv) Returning funds to the taxpayer in accordance with paragraph (d)(3) of this section.

(2) Card issuers, financial institutions or other persons participating in the credit card or debit card transaction may use and disclose such information for the purpose and in direct furtherance of any of the following activities:

(i) Assessment of statistical risk and profitability.

(ii) Transfer of receivables or accounts or any interest therein.

(iii) Audit of account information.

(iv) Compliance with Federal, State, or local law.

(v) Cooperation in properly authorized civil, criminal, or regulatory investigations by Federal, State, or local authorities.

(3) Notwithstanding the foregoing, use or disclosure of information relating to credit card and debit card transactions for purposes related to any of the following is not authorized:

(i) Sale or exchange of such information separate from the underlying receivable or account.

(ii) Marketing for any purpose, for example, marketing tax-related products or services, or marketing any product or service that targets those who have used a credit card or debit card to pay taxes.

(iii) Furnishing such information to any credit reporting agency or credit bureau, except with respect to the aggregate amount of a cardholder's account, with the amount attributable to payment of taxes not separately identified.

(4) Use and disclosure of information other than as authorized by this paragraph (g) may result in civil liability under section 7431(h) of the Internal Revenue Code.

(h) Effective date. This section applies to payments of taxes made on and after January 1, 1999, and through January 1, 2002.

/s/ Robert E. Wenzel

Deputy Commissioner of Internal Revenue

Approved: December 1, 1998

/s/ Donald C. Lubick

Assistant Secretary of the Treasury