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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 49

TD 9149

RIN 1545-BB76

Collected Excise Taxes; Duties of Collector

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the obligations of persons that receive payments for air transportation or communications services subject to excise tax when persons liable for tax refuse to pay the tax. These temporary regulations affect persons that receive payments subject to tax and persons liable for those taxes. The text of the temporary regulations also serves as the text of the proposed regulations (REG-163909-02) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective October 1, 2004.

Applicability Dates: For dates of applicability, see §§40.6302(c)-3T(b)(2)(ii) and 49.4291-1T.

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

SUPPLEMENTARY INFORMATION:

### **Background**

This document contains amendments to the Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and Services Excise Tax Regulations (26 CFR part 49). Section 4251 of the Internal Revenue Code (Code) imposes an excise tax on amounts paid for certain communications services. Sections 4261(a) and (b) impose excise taxes on amounts paid for taxable transportation of persons by air. Section 4261(e)(3) provides that any amount paid to an air carrier or related party for the right to provide mileage awards for (or other reductions in the cost of) any transportation of persons by air is treated for purposes of section 4261(a) as an amount paid for taxable transportation and is therefore subject to tax. Section 4261(c) imposes an excise tax on any amount paid for the air transportation of persons that begins or ends in the United States. Section 4271 imposes an excise tax on amounts paid for taxable transportation of property by air. These taxes collectively are referred to as collected excise taxes.

For each of the collected excise taxes, the person liable for the tax is the person making the payment on which tax is imposed (the taxpayer). Under section 4291, the person receiving the payment on which tax is imposed (the collector) generally must collect the tax from the person making the payment and pay it over to the government.

If the taxpayer refuses to pay the tax the collector is required, under §49.4291-1, to report this refusal to the IRS. The IRS will then assert the tax against the taxpayer.

Current regulations do not specify the time within which the collector must report this refusal to the IRS.

Collectors are responsible for filing returns with respect to the collected excise taxes and for making deposits of tax as required by section 6302. Section 40.6302(c)-3 provides an alternative method for computing the amount of deposits of collected excise taxes. Under the alternative method, collectors may compute the amount of tax to be deposited on the basis of amounts considered as collected instead of on the basis of actual collections of tax. A person may use the alternative method with respect to a tax only if the person separately accounts for the tax. The separate account must reflect for each month all items of tax that are included in amounts billed or tickets sold to customers during the month and items of adjustment (including bad debts and errors) relating to the tax for prior months within the period of limitations for credits or refunds. When a collector using the alternative method determines that a taxpayer has refused to pay the tax, the collector adjusts the separate account to reflect that the tax was not collected. Current regulations do not specify the time for adjusting the separate account to reflect that refusal.

The temporary regulations provide that the collector must report the refusal to pay the tax to the IRS by the due date of the return on which the tax would have been reported but for the refusal to pay. In addition, the temporary regulations provide that, for a person using the alternative method, the separate account cannot be adjusted to reflect a refusal to pay tax for the month unless such refusal has been reported.

## **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. For applicability of the the Regulatory Flexibility Act, please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## **Drafting Information**

The principal author of these regulations is Patrick S. Kirwan, 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**

### 26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

### 26 CFR Part 49

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 40 and 49 are amended as follows:

### PART 40--EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by adding an entry in numerical order to read, in part, as follows:

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

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

Par. 2. Paragraph (b)(2)(ii) of §40.6302(c)-3 is amended by:

- a. Removing the language ~~and~~ at the end of paragraph (b)(2)(ii)(A).
- b. Redesignating paragraph (b)(2)(ii)(B) as paragraph (b)(2)(ii)(C) and removing the language ~~Items~~ and adding ~~Other items~~ in its place.
- c. Adding new paragraph (b)(2)(ii)(B) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) [Reserved]. For further guidance, see §40.6302(c)-3T(b)(2)(ii)(B).

\* \* \* \* \*

Par. 3. Section 40.6302(c)-3T is added to read as follows:

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

(a) through (b)(2)(ii)(A) [Reserved]. For further guidance, see §40.6302(c)-3(a) through (b)(2)(ii)(A).

(b)(2)(ii)(B) Applicable October 1, 2004, the account required under §40.6302(c)-3(b)(2)(i)(A) may not reflect an item of adjustment for any month during a quarter if the adjustment results from a refusal to pay or inability to collect the tax and the uncollected tax has not been reported under §49.4291-1 of this chapter on or before the due date of the return for that quarter; and

(b)(2)(ii)(C) through (g) [Reserved]. For further guidance, see §40.6302(c)-3(b)(2)(ii)(C) through (g).

#### PART 49--FACILITIES AND SERVICES EXCISE TAXES

Par. 4. The authority citation for part 49 continues to read, in part, as follows:

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

Par. 5. Section 49.4291-1 is amended by adding a sentence after the third sentence to read as follows:

§49.4291-1 Persons receiving payment must collect tax.

\* \* \* For further guidance, see §49.4291-1T. \* \* \*

Par. 6. Section 49.4291-1T is added to read as follows:

§49.4291-1T Persons receiving payment must collect tax (temporary).

Applicable October 1, 2004, a person required to report uncollected tax under §49.4291-1 must make the report on or before the due date of the return on which the

refusal to pay or inability to collect such tax is reflected (or could be reflected but for the limitation in §40.6302(c)-3T).

/s/ Mark E. Matthews

Deputy Commissioner for Services and Enforcement.

Approved: June 21, 2004

/s/ Gregory Jenner

Acting Assistant Secretary of the Treasury.