

Section 6302.—Mode or Time of Collection

26 CFR 31.6302-1: 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.

T.D. 8723

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

Federal Tax Deposits by Electronic Funds Transfer

A G E N C Y: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

S U M M A R Y: This document contains final regulations relating to the deposit of Federal taxes by electronic funds transfer (EFT). The regulations provide rules regarding which taxpayers must make deposits by EFT, the types of Federal taxes that must be deposited by EFT, and when deposits by EFT must begin. The regulations affect taxpayers required to make deposits of Federal taxes by EFT. The final regulations reflect changes to the Internal Revenue Code of 1986 (Code) made by the North American Free Trade Agreement Implementation Act and the Small Business Job Protection Act of 1996.

DATES: The final regulations are effective July 14, 1997. For dates of applicability of these regulations, see §31.6302-1(h)(2).

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, 202-622-6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 523 of the North American Free Trade Agreement Implementation Act, Public Law 103-182, 107 Stat. 2057 (December 8, 1993), amended section 6302 of the Code by enacting a new subsection (h) requiring the Secretary of the Treasury to prescribe such regulations as may be nec-

essary for the development and implementation of an EFT system to be used for the collection of depository taxes.

On July 11, 1994, the IRS published temporary regulations (T.D. 8553) in the Federal Register (59 FR 35414) relating to the deposit of Federal taxes by EFT. A notice of proposed rulemaking (IA-03-94) cross-referencing the temporary regulations was also published in the Federal Register for the same day (59 FR 35418). Subsequently, on March 21, 1996, additional temporary regulations (T.D. 8661) were published in the Federal Register (61 FR 11548) as well as a notice of proposed rulemaking (IA-03-94, 61 FR 11595) that both cross-referenced the temporary regulations published that day and amended the notice of proposed rulemaking published July 11, 1994. Many written comments were received in response to these notices of proposed rulemaking. A public hearing on the 1994 notice was held on October 3, 1994. There were no requests for a public hearing on the 1996 notice and none was held.

Section 1809 of the Small Business Job Protection Act of 1996, Public Law 104-188, 110 Stat. 1755 (August 20, 1996), delayed the date by which certain taxpayers must begin EFT deposits.

After consideration of all comments, the regulations proposed by IA-03-94 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed below.

Explanation of Provisions

Under the temporary regulations, the requirement to deposit by EFT is based on the taxpayer's total deposits of certain taxes during certain "determination periods." If the taxpayer's deposits of the taxes during a determination period exceed a prescribed dollar threshold, the taxpayer must use EFT to make deposits on and after the date prescribed in the temporary regulations.

DELAY IN JANUARY 1, 1997, START-UP DATE

The Small Business Job Protection Act of 1996 provides that taxpayers first required by the temporary regulations to de-

posit by EFT for return periods beginning on and after January 1, 1997, need not begin to deposit by EFT until July 1, 1997. The final regulations provide that these taxpayers must use EFT to make deposits that are due on or after July 1, 1997, and relate to return periods beginning on or after January 1, 1997. For example, a corporation to which this rule applies, and which files its income tax returns on a calendar year basis, must use EFT to make corporate and estimated income tax deposits that are due on or after July 1, 1997. Thus, the corporation's September 15, 1997, and subsequent estimated tax payments must be made by EFT.

PENALTY RELIEF

Under Notice 97-43, (1997-30 I.R.B.), the IRS announced that no penalties for failure to deposit by EFT will be imposed through December 31, 1997, on any taxpayer first required to deposit by EFT on or after July 1, 1997. These taxpayers will remain liable for the failure-to-deposit penalty (absent reasonable cause) under section 6656 if they fail to make a required deposit (using either EFT or paper coupons) in a timely manner.

THRESHOLD FOR JANUARY 1, 1999 MANDATE

The temporary regulations provide that if a taxpayer's employment tax deposits during 1997 exceed \$20,000, or, if no employment taxes are deposited, the other taxes deposited in 1997 exceed \$20,000, the taxpayer must begin depositing by EFT for return periods beginning on and after January 1, 1999. Based on information available in 1994, the IRS and Treasury Department concluded that the \$20,000 threshold was necessary to assure that 94% of employment taxes and 94% of other depository taxes would be collected by EFT in fiscal year 1999 and subsequent years as required by section 6302(h). Based on information currently available, the IRS and Treasury Department have concluded that the statutory requirement for 1999 and subsequent years will be satisfied without the need to reduce the threshold below \$50,000. Accordingly, the final regulations raise the threshold for the January 1, 1997 through

December 31, 1997 determination period from \$20,000 to \$50,000.

TECHNICAL CORRECTION—FIRST REQUIRED DEPOSIT

The final regulations revise the special rule requiring taxpayers with no employment tax deposits to use EFT if their deposits of other taxes exceed a specified threshold. As revised, the requirement to deposit by EFT “applies to all depository taxes due with respect to deposit obligations incurred for return periods beginning on and after the applicable effective date.” The words “for return periods beginning” were inadvertently omitted in the temporary regulations.

MISCELLANEOUS

The definition of *time deemed deposited* has been revised solely for purposes of clarity.

Certain obsolete provisions in the temporary regulations relating to agreements entered into by the Commissioner with third party bulk data processors for the period prior to January 1, 1995, have been deleted.

Public Comment

Some commentators asked if the IRS intends to notify each affected taxpayer of the EFT requirement before the date on which the taxpayer must begin depositing by EFT. The IRS mailed several advance notices to each taxpayer that became subject to the EFT requirement in 1997, and plans to provide similar notices to taxpayers required to begin depositing by EFT in 1998.

Other commentators stated that it would be easier for taxpayers to determine whether they are subject to the rules if the thresholds were based on *deposit liabilities incurred* during the calendar year rather than *deposits made* during the calendar year. Although the specific suggestion was not adopted, the IRS is addressing the underlying concern in other ways. The IRS will make the threshold determination for affected taxpayers and, as indicated above, notify those taxpayers, in advance, of their obligation to begin depositing by EFT.

Some commentators suggested that the final regulations should clarify whether tax payments made with returns by check, money order, etc. are taken into account

in threshold determinations. Payments submitted with a return are not “deposits” and are, therefore, not taken into account in determining if a threshold has been exceeded for EFT purposes.

Other commentators stated that the determination period for EFT should be the same as the lookback period used in determining a taxpayer’s deposit status (semi-weekly or monthly) for employment tax deposit purposes. This suggestion was not adopted because the lookback periods for determining a taxpayer’s deposit status with respect to employment tax vary depending upon the type of employment tax being deposited (for example, Form 943 and 945 depositors have a calendar year lookback period whereas Form 941 depositors do not).

Several commentators suggested employers need a safe harbor more generous than the current 98 percent rule because deposits by EFT must be initiated earlier than current paper coupon deposits. The IRS and Treasury Department do not believe it is necessary to change the safe harbor. EFT depositors may use the Same Day Payment option (Electronic Tax Application (ETA)) and, when using this option, are not required to initiate deposits any earlier than paper coupon depositors. Thus, EFT depositors will have as much time as they have always had to determine the amount they are required to deposit.

One commentator indicated that following the ACH Holiday Schedule will cause problems for \$100,000 next-day depositors. The IRS and Treasury Department believe that the availability of ETA will alleviate any problems caused by the ACH Holiday Schedule.

Another commentator noted that many securities firms that have next-day deposits will be unable to comply with the EFT deposit requirement because of the nature of the securities business. The commentator recommends either exempting nonpayroll related income tax deposits from the EFT deposit requirement or allowing the use of Fedwire on a regular basis. Since ETA includes Fedwire value transfers, Fedwire non-value transfers, and Direct Access transactions, and is available for taxpayers to use on a regular basis, securities firms should be able to comply with the next-day deposit rule.

Another commentator suggested that a deposit by EFT should be considered

timely if initiated with the Automated Clearing House (ACH) in a timely and correct manner and that the taxpayer should not be responsible for possible ACH breakdowns. Rev. Rul. 94-46 (1994-2 C.B. 278), has been published to address this situation. The revenue ruling provides guidance on establishing reasonable cause for abatement of the failure-to-deposit penalty in certain situations involving deposits by EFT.

A commentator suggested that the regulations should allow taxpayers to make deposits by EFT from any institution that has the ability to make ACH credit or debit transfers and should not require the taxpayers to open accounts with a Treasury Financial Agent. A taxpayer is not required to open an account with a Treasury Financial Agent. The ACH debit and ACH credit options allow a taxpayer to make a deposit from any of the many institutions that have the ability to make ACH credit or debit transfers.

One commentator suggested that a \$500 minimum threshold should be provided for EFT deposits. This change would unduly complicate administration of the rules and has not been adopted.

Some of the issues raised in comments on the notice of proposed rulemaking published on July 11, 1994, were addressed in changes made to the temporary regulations by T.D. 8661. These issues were discussed in the preamble to T.D. 8661 and will not be addressed again here. In addition, several other comments that were outside the scope of this regulations project have not been addressed here.

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 section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the notices of proposed rulemaking preceding the regulations were issued prior to March 29, 1996, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the two notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advo-

cacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Amendments to the Regulations

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

PART1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the citations for “Section 1.6302–1(a)”, and Sections 1.6302–1T, 1.6302–2T and 1.6302–3T”, and “Section 1.6302–4T” and adding entries in numerical order to read as follows:

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

Section 1.6302–1 also issued under 26 U.S.C. 6302(c) and (h).

Section 1.6302–2 also issued under 26 U.S.C. 6302(h).

Section 1.6302–3 also issued under 26 U.S.C. 6302(h).

Section 1.6302–4 also issued under 26 U.S.C. 6302(a) and (c). * * *

Par. 2. Section 1.6302–1 is amended as follows:

1. The heading for paragraph (b) is revised.

2. The text of paragraph (b) is redesignated as paragraph (b)(1) and a heading for (b)(1) is added.

3. Paragraph (b)(2) is added.

4. The OMB parenthetical at the end of the section is removed.

The revised and added provisions read as follows:

§1.6302–1 Use of Government depositaries in connection with corporation income and estimated income taxes of tax-exempt organizations.

* * * * *

(b) *Manner of deposit*—(1) *Deposit by Federal tax deposit coupon.* * * *

(b)(2) *Deposits by electronic funds transfer.* For the requirement to deposit

corporation income and estimated income taxes and certain taxes of tax-exempt organizations by electronic funds transfer, see §31.6302–1(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to §31.6302–1(h) of this chapter remains subject to the rules of paragraph (b)(1) of this section.

§1.6302–1T [Removed]

Par. 3. Section 1.6302–1T is removed.

Par. 4. Section 1.6302–2 is amended as follows:

1. The heading for paragraph (b) is revised.

2. Paragraph (c) is redesignated as paragraph (b)(6).

3. A new paragraph (c) is added.

4. The OMB parenthetical at the end of the section is removed.

The revised and added provisions read as follows:

§1.6302–2 Use of Government depositaries for payment of tax withheld on non-resident aliens and foreign corporations.

* * * * *

(b) *Deposits by Federal tax deposit coupon.* * * *

(c) *Deposits by electronic funds transfer.* For the requirement to deposit taxes withheld on nonresident aliens and foreign corporations by electronic funds transfer, see §31.6302–1(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to §31.6302–1(h) of this chapter remains subject to the rules of paragraph (b) of this section.

* * * * *

§1.6302–2T [Removed]

Par. 5. Section 1.6302–2T is removed.

Par. 6. In §1.6302–3, paragraph (c) is revised to read as follows:

§1.6302–3 Use of Government depositaries in connection with estimated taxes of certain trusts.

* * * * *

(c) *Cross-references.* For further guidance and instructions for certain banks and financial institutions acting as fiduciaries with respect to taxable trusts, see Rev. Proc. 89–49 (1989–2 C.B. 615), (see §601.601(d)(2) of this chapter) or any suc-

cessor revenue procedure. For the requirement to deposit estimated tax payments of taxable trusts by electronic funds transfer, see §31.6302–1(h) of this chapter.

§1.6302–3T [Removed]

Par. 7. Section 1.6302–3T is removed.

Par. 8. Section 1.6302–4 is added to read as follows:

§1.6302–4 Use of financial institutions in connection with individual income taxes.

Voluntary payments by electronic funds transfer. An individual may voluntarily remit by electronic funds transfer all payments of tax imposed by subtitle A of the Code, including any payments of estimated tax. Such payments must be made in accordance with procedures to be prescribed by the Commissioner.

§1.6302–4T [Removed]

Par. 9. Section 1.6302–4T is removed.

PART31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 10. The authority citation for Part 31 is amended by removing the entries for “Section 31.6302–1T”, and “Section 31.6302(c)–3T” and revising the entry “Sections 31.6302–1 through 31.6302–3” and by adding an entry for “Section 31.6302(c)–3” to read as follows:

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

Sections 31.6302–1 through 31.6302–3 also issued under 26 U.S.C. 6302(a), (c), and (h). * * *

Section 31.6302(c)–3 also issued under 26 U.S.C. 6302(h).

Par. 11. In §31.0–1, paragraph (a) is amended by adding a sentence at the end of the paragraph to read as follows:

§31.0–1 Introduction.

(a) * * * The regulations in this part also provide rules relating to the deposit of other taxes by electronic funds transfer.

* * * * *

Par. 12. In §31.0–3, paragraph (f) is amended by adding a sentence at the end of the paragraph to read as follows:

§31.0–3 Scope of regulations.

* * * * *

(f) * * * Subpart G of this part also provides rules relating to the deposit of other taxes by electronic funds transfer.

Par. 13. In §31.6302-1, paragraph (h) is redesignated as paragraph (i), and new paragraph (h) is added to read as follows:

§31.6302-1 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.

* * * * *

(h) *Time and manner of deposit—deposits required to be made by electronic funds transfer—(1) In general.* Section 6302(h) requires the Secretary to prescribe such regulations as may be necessary for the development and implementation of an electronic funds transfer system to be used for the collection of the depository taxes as described in paragraph (h)(3) of this section. Section 6302(h)(2) provides a phase-in schedule that sets forth escalating minimum percentages of those depository taxes to be deposited by electronic funds transfer. This paragraph (h) prescribes the rules necessary for implementing an electronic funds transfer system for collection of depository taxes and for effecting an orderly and expeditious phase-in of that system.

(2) *Threshold amounts, determination periods, and effective dates.* (i)(A) Taxpayers whose aggregate deposits of the taxes imposed by Chapters 21 (Federal Insurance Contributions Act), 22 (Railroad Retirement Tax Act), and 24 (Collection of Income Tax at Source on Wages) of the Internal Revenue Code during a 12-month determination period exceed the applicable threshold amount are required to deposit all depository taxes described in paragraph (h)(3) of this section by electronic funds transfer (as defined in paragraph (h)(4) of this section) unless exempted under paragraph (h)(5) of this section. If the applicable effective date is January 1, 1995, or January 1, 1996, the requirement to deposit by electronic funds transfer applies to all deposits required to be made on or after the applicable effective date. If the applicable effective date is July 1, 1997, the requirement to deposit by electronic funds transfer applies to all deposits required to be made on or after July 1, 1997 with respect to deposit obligations incurred for return periods beginning on or after January 1, 1997. If the

applicable effective date is January 1, 1998, or thereafter, the requirement to deposit by electronic funds transfer applies to all deposits required to be made with respect to deposit obligations incurred for return periods beginning on or after the applicable effective date. In general, each applicable effective date has one 12-month determination period. However, for the applicable effective date January 1, 1996, there are two determination periods. If the applicable threshold amount is exceeded in either of those determination periods, the taxpayer becomes subject to the requirement to deposit by electronic funds transfer, effective January 1, 1996. The threshold amounts, determination periods and applicable effective dates for purposes of this paragraph (h)(2)(i)(A) are as follows:

<i>Threshold Amount</i>	<i>Determination Period</i>	<i>Applicable Effective Date</i>
\$78 million	1-1-93 to 12-31-93	January 1, 1995
\$47 million	1-1-93 to 12-31-93	January 1, 1996
\$47 million	1-1-94 to 12-31-94	January 1, 1996
\$50 thousand	1-1-95 to 12-31-95	July 1, 1997
\$50 thousand	1-1-96 to 12-31-96	January 1, 1998
\$50 thousand	1-1-97 to 12-31-97	January 1, 1999

(B) Unless exempted under paragraph (h)(5) of this section, a taxpayer that does not deposit any of the taxes imposed by chapters 21, 22, and 24 during the applicable determination periods set forth in paragraph (h)(2)(i)(A) of this section, but that does make deposits of other depository taxes (as described in paragraph (h)(3) of this section), is nevertheless subject to the requirement to deposit by electronic funds transfer if the taxpayer's aggregate deposits of all depository taxes exceed the threshold amount set forth in this paragraph (h)(2)(i)(B) during an applicable 12-month determination period. This requirement to deposit by electronic funds transfer applies to all depository taxes due with respect to deposit obligations incurred for return periods beginning on or after the applicable effective date. The threshold amount, determination periods, and applicable effective dates for purposes of this paragraph (h)(2)(i)(B) are as follows:

<i>Threshold Amount</i>	<i>Determination Period</i>	<i>Applicable Effective Date</i>
\$50 thousand	1-1-95 to 12-31-95	January 1, 1998
\$50 thousand	1-1-96 to 12-31-96	January 1, 1998
\$50 thousand	1-1-97 to 12-31-97	January 1, 1999

(ii) Once a taxpayer is required to deposit by electronic funds transfer pursuant to this paragraph (h)(2), the taxpayer must continue to deposit by electronic funds transfer. Until such time as a taxpayer is required by this section to deposit by electronic funds transfer, the taxpayer may voluntarily make deposits by electronic funds transfer, but remains subject to the rules of paragraph (i) of this section, pertaining to deposits by Federal tax deposit (FTD) coupon, in making deposits other than by electronic funds transfer.

(3) *Taxes required to be deposited by electronic funds transfer.* The requirement to deposit by electronic funds transfer under paragraph (h)(2) of this section applies to all the taxes required to be deposited under §§1.6302-1, 1.6302-2, and 1.6302-3 of this chapter; §§31.6302-1,

31.6302-2, 31.6302-3, 31.6302-4, and 31.6302(c)-3; and §40.6302(c)-1 of this chapter.

(4) *Definitions—(i) Electronic funds transfer.* An *electronic funds transfer* is any transfer of depository taxes made in accordance with Revenue Procedure 97-33, (1997-30 I.R.B.), (see §601.601(d)(2) of this chapter), or in accordance with procedures subsequently prescribed by the Commissioner.

(ii) *Taxpayer.* For purposes of this section, a *taxpayer* is any person required to deposit federal taxes, including not only individuals, but also any trust, estate, partnership, association, company or corporation.

(5) *Exemptions.* If any categories of taxpayers are to be exempted from the requirement to deposit by electronic funds transfer, the Commissioner will identify those taxpayers by guidance published in the Internal Revenue Bulletin. (See §601.601(d)(2)(ii)(b) of this chapter.)

(6) *Separation of deposit* . A deposit for one return period must be made separately from a deposit for another return period.

(7) *Payment of balance due* . If the aggregate amount of taxes reportable on the applicable tax return for the return period exceeds the total amount deposited by the taxpayer with regard to the return period, then the balance due must be remitted in accordance with the applicable form and instructions.

(8) *Time deemed deposited* . A deposit of taxes by electronic funds transfer will be deemed made when the amount is withdrawn from the taxpayer's account, provided the U.S. Government is the payee and the amount is not returned or reversed.

(9) *Time deemed paid* . In general, an amount deposited under this paragraph (h) will be considered to be a payment of tax on the last day prescribed for filing the applicable return for the return period (determined without regard to any extension of time for filing the return) or, if later, at the time deemed deposited under paragraph (h)(8) of this section. In the case of the taxes imposed by chapters 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 deposited prior to April 15th of the calendar year immediately succeeding the calendar year that includes the period for which the amount was deposited, the amount will be considered paid on April 15th.

* * * * *

§31.6302-1T [Removed]

Par. 14. Section 31.6302-1T is removed.

Par. 15. Section 31.6302(c)-3 is amended as follows:

- 1. The heading for paragraph (b) is revised.
- 2. Paragraph (c) is revised.

3. Paragraph (d) is added.

The revised and added provisions read as follows:

§31.6302(c)-3 Use of Government depositaries in connection with tax under the Federal Unemployment Tax Act.

* * * * *

(b) *Manner of deposit—deposits required to be made by Federal tax deposit (FTD) coupon* . * * *

(c) *Manner of deposit—deposits required to be made by electronic funds transfer* . For the requirement to deposit tax under the Federal Unemployment Tax Act by electronic funds transfer, see §31.6302-1(h). A taxpayer not required to deposit by electronic funds transfer pursuant to §31.6302-1(h) remains subject to the rules of paragraph (b) of this section.

(d) *Effective date* . The provisions of paragraphs (a) and (b) of this section apply with respect to calendar quarters beginning after December 31, 1969. The provisions of paragraph (c) of this section apply with respect to calendar quarters beginning on or after January 1, 1995.

§31.6302(c)-3T [Removed]

Par. 16. Section 31.6302(c)-3T is removed.

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Par. 17. The authority citation for part 40 is amended by revising the entry for “Sections 40.6302(c)-1, 40.6302(c)-2, 40.6302(c)-3, and 40.6302(c)-4” and removing the entry for “Section 40.6302(c)-1T” to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 40.6302(c)-1 also issued under 26 U.S.C. 6302(a) and (h).
Sections 40.6302(c)-2, 40.6302(c)-3, and 40.6302(c)-4 also issued under 26 U.S.C. 6302(a).

Par. 18. Section 40.6302(c)-1 is amended as follows:

1. The text of paragraph (d) is redesignated paragraph (d)(1) and a paragraph heading is added for (d)(1).

2. Paragraph (d)(2) is added.
The added provisions read as follows:

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

* * * * *

(d) *Remittance of deposit* —(1) *Deposits by Federal tax deposit coupon* . * * *

(2) *Deposits by electronic funds transfer* . For the requirement to deposit excise taxes by electronic funds transfer, see §31.6302-1(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to §31.6302-1(h) of this chapter remains subject to the rules of this paragraph (d). * * * * *

§40.6302(c)-1T [Removed]

Par. 19. Section 40.6302(c)-1T is removed.

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved June 27, 1997.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on July 11, 1997, 8:45 a.m., and published in the issue of the Federal Register for July 14, 1997, 62 F.R. 37490)