

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 30, and 602

[TD 8947]

RIN 1545-AY79

Penalties for Underpayments of Deposits and Overstated Deposit Claims

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of final regulations.

SUMMARY: This document makes conforming amendments to certain final regulations to reflect the removal of final regulations, relating to the penalty for underpayment of deposits of taxes and the penalty for overstated deposit claims. These regulations are obsolete due to amendments to section 6656 of the Internal Revenue Code. The removal of these regulations will not affect taxpayers.

DATES: The amendments and removal of these regulations is effective June 15, 2001.

FOR FURTHER INFORMATION CONTACT: Robin M. Tuczak, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background and Explanation of Provisions**

This document removes two sections from the Procedure and Administration Regulations (26 CFR part 301) relating to penalties for underpayment of Federal tax deposits and overstated deposit claims under section 6656 of the Internal Revenue Code.

The Omnibus Budget Reconciliation Act of 1989, Public Law 101-239 (103 Stat. 2106, 1989) amended section 6656, modifying the penalty rates relating to a failure to make a Federal tax deposit and removing the penalty relating to overstatement of Federal tax deposits. These changes have rendered §§301.6656-1 and 301.6656-2 obsolete.

Section 301.6656-1 was revised and §301.6656-2 was added by TD 7925, published in the **Federal Register** for December 13, 1983 (LR-311-81, 48 FR 5453). Section 301.6656-2 was added to implement changes made by the Economic Recovery Tax Act of 1981, Public Law 97-34 (95 Stat. 172, 1981). Section 301.6656-1 was revised to remove outdated provisions relating to deposits made before January 1, 1970, based on the law in effect for those deposits.

Section 301.6656-1 reflects that, at the time it was revised, the penalty for underpayment of deposits was five percent of the amount of the underpayment without regard to the period during which the underpayment continued, absent reasonable cause. The Omnibus Budget Reconciliation Act of 1986, Public Law 99-509 (100 Stat. 1874, 1986) amended section 6656 to impose a ten percent penalty for underpayment. The Omnibus Budget Reconciliation Act of 1989 further amended this section to provide for a penalty that is equal to an applicable percentage of the amount of the underpayment based on the duration of the underpayment. This regulation does not reflect the most recent amendments to section 6656. Furthermore, all relevant

information regarding underpayment penalties is put forth in the code section or in other published guidance. This regulation does not provide any additional guidance regarding the current underpayment penalties as set forth in section 6656 and therefore may be removed.

Section 301.6656-2 explains and expands upon former section 6656(b), Overstated Deposit Claims. The Omnibus Budget Reconciliation Act of 1989 removed former section 6656(b), making this regulation obsolete.

In addition, §301.6656-3 is redesignated as §301.6656-1. Further, §§1.6302-1(d) and 1.6302-2(d) of the Income Tax Regulations and §§31.6302-1(m)(1) and 31.6302(c)-4(a) of the Employment Tax Regulations are revised to remove references to the removed regulations under section 6656.

#### **Effect on other Documents**

The final regulations §§301.6656-1 and 301.6656-2 published in the **Federal Register** for December 13, 1983 (LR-311-81, 48 FR 5453) are removed as of June 15, 2001.

#### **Special Analyses**

It has been determined that the removal of these regulations is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Because this rule merely removes regulatory provisions made obsolete by statute, prior notice and comment and a delayed effective date are unnecessary and contrary to the public interest. 5 U.S.C. 553(b)(B) and (d). Because no notice of

proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

**Drafting Information**

The principal author of the removal of the regulations is Robin M. Tuczak of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 301

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

26 CFR Part 602

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 31, 301, and 602 are amended as follows:

PART 1--INCOME TAXES

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

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

Par. 2. In §1.6302-1, paragraph (d) is revised to read as follows:

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

\* \* \* \* \*

(d) Failure to deposit. For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

Par. 3. In §1.6302-2, paragraph (d) is revised to read as follows:

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

\* \* \* \* \*

(d) Penalties for failure to make deposits. For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

\* \* \* \* \*

PART 31--EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 4. The authority citation for part 31 continues to read in part as follows:

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

Par. 5. In §31.6302-1, paragraph (m)(1) is revised 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.

\* \* \* \* \*

(m) \* \* \* (1) Failure to deposit penalty. For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

\* \* \* \* \*

Par. 6. In §31.6302(c)-4, paragraph (a) is revised to read as follows:

§31.6302(c)-4 Cross references.

(a) Failure to deposit. For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

\* \* \* \* \*

PART 301--PROCEDURE AND ADMINISTRATION

Par. 7. The authority citation for part 301 continues to read in part as follows:

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

**§§301.6656-1 and 301.6656-2 [Removed]**

Par. 8. Sections 301.6656-1 and 301.6656-2 are removed.

**§301.6656-3 [Redesignated as §301.6656-1]**

Par. 9. Section 301.6656-3 is redesignated as new §301.6656-1.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 11. In §602.101, paragraph (b) is amended by removing the entries for 301.6656-1 and 301.6656-2 from the table.

Robert E. Wenzel

Deputy Commissioner of Internal Revenue

Approved: June 1, 2001

Mark A. Weinberger

Assistant Secretary of the Treasury