

that date, see § 1.83–7 as published in 26 CFR part 1 (revised as of April 1, 2003).

**§ 1.83–7T [Removed]**

■ **Par. 3.** Section 1.83–7T is removed.

**Linda M. Kroening,**

*Acting Assistance Deputy Commissioner for Services and Enforcement.*

Approved: July 28, 2004.

**Gregory Jenner,**

*Acting Assistant Secretary of the Treasury.*

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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 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.** Section 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).

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: June 21, 2004.

**Gregory Jenner,**

*Acting Assistant Secretary of the Treasury.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD05-04-146]

**RIN 1625-AA09**

**Drawbridge Operation Regulations; Manasquan River, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Commander, Fifth Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations to test an alternate drawbridge operation schedule for the Route 70 Bridge across Manasquan River, mile 3.4, at Riviera Beach, New Jersey. Under this temporary 90-day deviation, the draw of the bridge will open on signal on the hour, except that from 5 p.m. to 7 p.m., Monday through Friday, except Federal holidays; and from 11 p.m. to 7 a.m. every day the draw need not be opened. The purpose of this temporary deviation is to test an alternate drawbridge operation schedule for 90 days and solicit comments from the public.

**DATES:** This deviation is effective from August 2, 2004, through October 31, 2004. Comments must reach the Coast Guard on or before 5 November 2004.

**ADDRESSES:** You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Commander (obr), Fifth Coast Guard District maintains the public docket for this test schedule. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for

inspection or copying at the above address.

**Request for Comments**

We encourage you to participate in this test deviation by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this test deviation CGD05-04-146, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

**FOR FURTHER INFORMATION CONTACT:**

Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

**SUPPLEMENTARY INFORMATION:** Effective on July 11, 2003, the bridge owner, the New Jersey Department of Transportation, was officially permitted to operate the Route 70 Bridge across Manasquan River with new regulations. The new operating regulations listed at 33 CFR § 117.727 allows the draw of the bridge to open on signal on the hour, except that from 4 p.m. to 7 p.m. Monday through Friday, except Federal holidays; and from 11 p.m. to 7 a.m., every day the draw need not be open.

Based on comments received on the new operating regulations of the bridge and in an effort to facilitate vessel and vehicular traffic while providing for the reasonable needs of navigation, the District Commander has offered a test period to reexamine the rush hour closure periods during the forthcoming recreational boating season. The new proposal will test a new rush hour period from 5 p.m. to 7 p.m. Monday through Friday, except Federal holidays, as opposed to the current 4 p.m. to 7 p.m. regulatory hours. Therefore, the last drawbridge opening for vessels before the rush hour will occur at 4 p.m. and first opening following the rush hour will be at 7 p.m.

Under this 90-day temporary deviation, effective from August 2, 2004 through October 31, 2004, the Route 70 Bridge across Manasquan River shall open on signal on the hour, except that from 5 p.m. to 7 p.m., Monday through Friday, except Federal holidays; and from 11 p.m. to 7 a.m., every day the draw need not be opened.

This deviation from the operating regulations is authorized under 33 CFR 117.43.