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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

TD 9162

RIN 1545-BB66

Federal Unemployment Tax Deposits -- De Minimis Threshold

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the deposit of Federal Unemployment Tax Act (FUTA) taxes. The regulations change the accumulated amount of tax liability above which taxpayers must begin depositing Federal unemployment taxes. The regulations affect employers that have an accumulated FUTA tax liability of \$500 or less.

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

Applicability Date: For dates of applicability, see §31.6302(c)-3(a)(2) and (3).

FOR FURTHER INFORMATION CONTACT: Heather L. Dostaler, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under section 6302 relating to mode or time of collection. The current rules relating to the deposit of FUTA taxes

generally require employers to deposit taxes on a quarterly basis. An exception provides that an employer is not required to make a deposit until accumulated FUTA tax liability exceeds \$100.

A notice of proposed rulemaking (REG-144908-02) providing an additional exception to the FUTA tax deposit requirements was published in the **Federal Register** (68 FR 42329) on July 17, 2003. Under the proposed exception, an employer would not be required to deposit FUTA taxes if the employer's liability for other employment taxes (FICA taxes and withheld income taxes) was below the threshold at which deposits were required for those other taxes.

Three written comments were received in response to the notice of proposed rulemaking, but there was no request for a public hearing and a public hearing was not held. All comments were considered and are available for public inspection upon request. After consideration of the written comments, the proposed regulations under section 6302 are adopted as revised by this Treasury decision. The public comments and the revisions are discussed below.

Summary of Comments

Two commentators expressed concern that the creation of an additional exception linked to the deposit rules for other employment taxes will create complexity and that a single exception based on FUTA tax liability is sufficient. One commentator expressed concern regarding the low threshold amounts under both exceptions, and also expressed concern that the proposed exception could be misinterpreted by those accustomed to referring only to the amount of accumulated FUTA taxes.

One commentator suggested that the regulations should exempt household

employers who file Schedule H, "Household Employment Taxes," with Form 1040. This comment is outside the scope of these regulations, which are limited to the deposit rules issued under section 6302. Household employment taxes reported on Schedule H are paid with the employer's income taxes.

Explanation of Provisions

After considering the public comments, the IRS and Treasury Department agree that a single exception based on a higher FUTA tax liability threshold is preferable to the exception in the proposed regulations. Accordingly, the final regulations do not include an exception linked to the deposit rules for other employment taxes. Instead, they increase the FUTA tax liability threshold from \$100 to \$500. Thus, an employer will not be required to make a deposit of FUTA taxes until FUTA tax liability exceeds \$500. This change is a simple and straightforward step to reduce the burden on small businesses.

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, and, because these 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, the notice of proposed rulemaking preceding these regulations was 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 Heather L. Dostaler of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

List of Subjects in 26 CFR Part 31

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

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

Paragraph 1. The authority citation for part 31 continues to read, in part, as follows:

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

Par. 2. In § 31.6302(c)-3, paragraphs (a)(2) and (a)(3) are revised to read as follows:

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

(a) * * *

(2) Special rule where accumulated amount does not exceed \$500. The provisions of paragraph (a)(1) of this section shall not apply with respect to any period described therein if the amount of the tax imposed by section 3301 for such period (as computed under section 6157) plus amounts not deposited for prior periods does not exceed \$500 (\$100 in the case of periods ending on or before December 31, 2004).

Thus, an employer shall not be required to make a deposit for a period unless his tax for such period plus tax not deposited for prior periods exceeds \$500.

(3) Requirement for deposit in lieu of payment with return. If the amount of tax reportable on a return on Form 940 exceeds by more than \$500 (\$100 in the case of calendar years before 2005) the sum of the amounts deposited by the employer pursuant to paragraph (a)(1) of this section for such calendar year, the employer shall, on or before the last day of the first calendar month following the calendar year for

which the return is required to be filed, deposit the balance of the tax due with an authorized financial institution.

* * * * *

/s/ Mark E. Matthews

Deputy Commissioner for Services and Enforcement.

Approved: November 23, 2004

/s/ Gregory Jenner

Acting Assistant Secretary of the Treasury.