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*§ 31.6302-2 Federal tax deposit rules for amounts withheld under the Railroad Retirement Tax Act (R.R.T.A.) attributable to payments made after December 31, 1992.*

- (a) General rule.
- (b) Separate application of deposit rules.
- (c) Modification of Monthly rule determination.
  - (1) General rule.
  - (2) Exception.
  - (d) Effective/Applicability date.

*§ 31.6302-3 Federal tax deposit rules for amounts withheld under the backup withholding requirements of Section 3406 for payments made after December 31, 1992.*

- (a) General Rule.
- (b) Treatment of backup withholding amounts separately.
- (c) Example.

*§ 31.6302-4 Deposit rules for withheld income taxes attributable to nonpayroll taxes.*

[T.D. 8436, 57 FR 44102, Sept. 24, 1992, as amended by T.D. 9239, 71 FR 14, Jan. 3, 2006; T.D. 9405, 73 FR 37379, July 1, 2008; T.D. 9440, 73 FR 79358, Dec. 29, 2008; T.D. 9507, 75 FR 75901, Dec. 7, 2010; T.D. 9566, 76 FR 77675, Dec. 14, 2011]

**§ 31.6302-1 Deposit rules for taxes under the Federal Insurance Contributions Act (FICA) and withheld income taxes.**

- (a) *Introduction.* With respect to employment taxes attributable to payments made after December 31, 1992, an employer is either a monthly depositor or a semi-weekly depositor based on an annual determination. An employer

must generally deposit employment taxes under one of two rules: the Monthly rule in paragraph (c)(1) of this section, or the Semi-Weekly rule in paragraph (c)(2) of this section. Various exceptions and safe harbors are provided. Paragraph (f) of this section provides certain safe harbors for employers who inadvertently fail to deposit the full amount of taxes. Paragraph (c)(3) of this section provides an overriding exception to the Monthly and Semi-Weekly rules where an employer has accumulated \$100,000 or more of employment taxes. Paragraph (e) of this section provides the definition of employment taxes.

(b) *Determination of status*—(1) *In general.* The determination of whether an employer is a monthly or semi-weekly depositor for a calendar year is based on an annual determination and generally depends upon the aggregate amount of employment taxes reported by the employer for the lookback period as defined in paragraph (b)(4) of this section.

(2) *Monthly depositor*—(i) *In general.* An employer is a monthly depositor for the entire calendar year if the aggregate amount of employment taxes reported for the lookback period is \$50,000 or less.

(ii) *Special rule.* An employer ceases to be a monthly depositor on the first day after the employer is subject to the One-Day (\$100,000) rule in paragraph (c)(3) of this section. At that time, the employer immediately becomes a semi-weekly depositor for the remainder of the calendar year and for the following calendar year.

(3) *Semi-weekly depositor.* An employer is a semi-weekly depositor for the entire calendar year if the aggregate amount of employment taxes reported for the lookback period exceeds \$50,000.

(4) *Lookback period*—(i) *In general.* For employers who file Form 941, “Employer’s QUARTERLY Federal Tax Return,” (or any related Spanish-language returns or returns for U.S. possessions) the lookback period for each calendar year is the twelve month period ended the preceding June 30. For example, the lookback period for calendar year 2006 is the period July 1, 2004, to June 30, 2005. The lookback period for employers who file Form 944,

“Employer’s ANNUAL Federal Tax Return,” or filed Form 944 (or any related Spanish-language returns or returns for U.S. possessions) for either of the two previous calendar years, is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2006 is calendar year 2004. In determining status as either a monthly or semi-weekly depositor, an employer should determine the aggregate amount of employment tax liabilities reported on its return(s) (Forms 941 or Form 944) for the lookback period. The amount of employment tax liabilities reported for the lookback period is the amount the employer reported on either Forms 941 or Form 944 even if the employer is required to file the other form for the current calendar year. New employers shall be treated as having employment tax liabilities of zero for any part of the lookback period before the date the employer started or acquired its business.

(ii) *Adjustments and claims for refund.* The employment tax liability reported on the original return for the return period is the amount taken into account in determining whether the aggregate amount of employment taxes reported for the lookback period exceeds \$50,000. Any amounts reported on adjusted returns or claims for refund pursuant to sections 6205, 6402, 6413, and 6414 filed after the due date of the original return are not taken into account when determining the aggregate amount of employment taxes reported for the lookback period. Prior period adjustments reported on Forms 941 or Form 944 for 2008 and earlier years are taken into account in determining the employment tax liability for the return period in which the adjustments are reported.

(c) *Deposit rules*—(1) *Monthly rule.* An employer that is a monthly depositor must deposit employment taxes accumulated with respect to payments made during a calendar month by electronic funds transfer by the 15th day of the following month. If the 15th day of the following month is a Saturday, Sunday, or legal holiday in the District of Columbia under section 7503, taxes will be treated as timely deposited if deposited on the next succeeding day

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which is not a Saturday, Sunday, or legal holiday.

(2) *Semi-Weekly rule*—(i) *In general.* An employer that is a semi-weekly deposi-

tor for a calendar year must deposit employment taxes by electronic funds transfer by the dates set forth below:

Payment dates/semi-weekly periods	Deposit date
(A) Wednesday, Thursday and/or Friday .....	On or before the following Wednesday.
(B) Saturday, Sunday, Monday and/or Tuesday .....	On or before the following Friday.

(ii) *Semi-weekly period spanning two return periods.* If the return period ends during a semi-weekly period in which an employer has two or more payment dates, two deposit obligations may exist. For example, if one quarterly return period ends on Thursday and a new quarterly return period begins on Friday, employment taxes from payments on Wednesday and Thursday are subject to one deposit obligation, and employment taxes from payments on Friday are subject to a separate deposit obligation. Two separate federal tax deposits are required.

(iii) *Special rule for computing days.* Semi-weekly depositors have at least three business days following the close of the semi-weekly period by which to deposit employment taxes accumulated during the semi-weekly period. Business days include every calendar day other than Saturdays, Sundays, or legal holidays in the District of Columbia under section 7503. If any of the three weekdays following the close of a semi-weekly period is a legal holiday, the employer has an additional day for each day that is a legal holiday by which to make the required deposit. For example, if the Monday following the close of a Wednesday to Friday semi-weekly period is Memorial Day, a legal holiday, the required deposit for the semi-weekly period is not due until the following Thursday rather than the following Wednesday.

(3) *Exception—One-Day rule.* Notwithstanding paragraphs (c)(1) and (c)(2) of this section, if on any day within a deposit period (monthly or semi-weekly) an employer has accumulated \$100,000 or more of employment taxes, those taxes must be deposited by electronic funds transfer in time to satisfy the tax obligation by the close of the next day. If the next day is a Saturday, Sunday, or legal holiday in the District of Columbia under section 7503, the taxes

will be treated as timely deposited if deposited on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of determining whether the \$100,000 threshold is met—

(i) A monthly depositor takes into account only those employment taxes accumulated in the calendar month in which the day occurs; and

(ii) A semi-weekly depositor takes into account only those employment taxes accumulated in the Wednesday–Friday or Saturday–Tuesday semi-weekly period in which the day occurs.

(4) *Deposits required only on business days.* No taxes are required to be deposited under this section on any day that is a Saturday, Sunday, or legal holiday. Deposits are required only on business days. Business days include every calendar day other than Saturdays, Sundays, or legal holidays. For purposes of this paragraph (c), legal holidays shall have the same meaning provided in section 7503. Pursuant to section 7503, the term *legal holiday* means a legal holiday in the District of Columbia. For purposes of this paragraph (c), the term “legal holiday” does not include other Statewide legal holidays.

(5) *Exception to the monthly and semi-weekly deposit rules for employers in the Employers’ Annual Federal Tax Program (Form 944).* Generally, an employer who files Form 944 for a taxable year may remit its accumulated employment taxes with its timely filed return for that taxable year and is not required to deposit under either the monthly or semi-weekly rules set forth in paragraphs (c)(1) and (c)(2) of this section during that taxable year. An employer who files Form 944 whose actual employment tax liability exceeds the eligibility threshold, as set forth in §§ 31.6011(a)–1(a)(5) and 31.6011(a)–4(a)(4), will not qualify for this exception and

should follow the deposit rules set forth in this section.

(6) *Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.* An employer who filed Form 944 for the preceding year but will file Form 941 instead for the current year will be deemed to have timely deposited its current year's January deposit obligation(s) under paragraphs (c)(1) through (c)(4) of this section if the employer deposits the amount of such deposit obligation(s) by March 15 of that year.

(7) *Exception to the monthly and semi-weekly deposit rules for employers making interest-free adjustments.* An employer filing an adjusted return under § 31.6205-1 to report taxes that were accumulated in a prior return period shall pay the amount of the adjustment by the time it files the adjusted return, and the amount timely paid will be deemed to have been timely deposited by the employer. The payment may be made by a check or money order with the adjusted return, by electronic funds transfer, or by other methods of payment as provided by the instructions relating to the adjusted return.

(d) *Examples.* The provisions of paragraphs (a), (b) and (c) of this section are illustrated by the following examples:

*Example 1 Monthly depositor.* (i) *Determination of status.* For calendar year 2011, Employer A determines its depositor status using the lookback period July 1, 2009 to June 30, 2010. For the four calendar quarters within this period, A reported aggregate employment tax liabilities of \$42,000 on its quarterly Forms 941. Because the aggregate amount did not exceed \$50,000, A is a monthly depositor for the entire calendar year 2011.

(ii) *Monthly rule.* During December 2011, A (a monthly depositor) accumulates \$3,500 in employment taxes. A has a \$3,500 deposit obligation that must be satisfied by the 15th day of the following month. Since January 15, 2012, is a Sunday, and January 16, 2012, Dr. Martin Luther King, Jr.'s Birthday, is a legal holiday, A's deposit obligation will be satisfied if the deposit is made by electronic funds transfer by the next business day, January 17, 2012.

*Example 2 Semi-weekly depositor.* (i) *Determination of status.* For the calendar year 2011, Employer B determines its depositor status using the lookback period July 1, 2009 to June 30, 2010. For the four calendar quarters

within this period, B reported aggregate employment tax liabilities of \$88,000 on its quarterly Forms 941. Because that amount exceeds \$50,000, B is a semi-weekly depositor for the entire calendar year 2011.

(ii) *Semi-weekly rule.* On Friday, January 7, 2011, B (a semi-weekly depositor) has a pay day on which it accumulates \$4,000 in employment taxes. B has a \$4,000 deposit obligation that must be satisfied by the following Wednesday, January 12, 2011.

(iii) *Deposit made within three business days.* On Friday, January 14, 2011, B (a semi-weekly depositor) has a pay day on which it accumulates \$4,200 in employment taxes. Generally, B would have a required deposit obligation of employment taxes that must be satisfied by the following Wednesday, January 19, 2011. Because Monday, January 17, 2011, is Dr. Martin Luther King, Jr.'s Birthday, a legal holiday, B has an additional day to make the required deposit. B has a \$4,200 deposit obligation that must be satisfied by the following Thursday, January 20, 2011.

*Example 3 One-Day rule.* On Monday, January 10, 2011, Employer C accumulates \$110,000 in employment taxes with respect to wages paid on that date. C has a deposit obligation of \$110,000 that must be satisfied by the next business day. If C was not subject to the semi-weekly rule on January 10, 2011, C becomes subject to that rule as of January 11, 2011. See paragraph (b)(2)(ii) of this section.

*Example 4 One-Day rule in combination with subsequent deposit obligation.* Employer D is subject to the semi-weekly rule for calendar year 2011. On Monday, January 10, 2011, D accumulates \$115,000 in employment taxes. D has a deposit obligation that must be satisfied by the next business day. On Tuesday, January 11, D accumulates an additional \$30,000 in employment taxes. Although D has a \$115,000 deposit obligation incurred earlier in the semi-weekly period, D has an additional and separate deposit obligation of \$30,000 on Tuesday that must be satisfied by the following Friday.

*Example 5 Legal Holidays.* Employer E conducts business in State X. Wednesday, August 31, 2011, is a statewide legal holiday in State X which is not a legal holiday in the District of Columbia. On Friday, August 26, 2011, E (a semi-weekly depositor) has a pay day on which it accumulates \$4,000 in employment taxes. E has a \$4,000 deposit obligation that must be satisfied on or before the following Wednesday, August 31, 2011, notwithstanding that the day is a statewide legal holiday in State X.

*Example 6 Extension of time to deposit for employers who filed Form 944 for the preceding year satisfied.* F (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. F filed Form 944 on January 31, 2007, reporting a total employment tax liability for

2006 of \$3,000. Because F's annual employment tax liability for the 2006 taxable year exceeded \$1,000 (the applicable eligibility threshold for that taxable year), the IRS notified F to file Forms 941 for calendar year 2007 and thereafter. Based on F's liability during the lookback period (calendar year 2005, pursuant to paragraph (b)(4)(i) of this section), F is a monthly depositor for 2007. F accumulates \$1,000 in employment taxes during January 2007. Because F is a monthly depositor, F's January deposit obligation is due February 15, 2007. F does not deposit these accumulated employment taxes on February 15, 2007. F accumulates \$1,500 in employment taxes during February 2007. F's February deposit is due March 15, 2007. F deposits the \$2,500 of employment taxes accumulated during January and February on March 15, 2007. Pursuant to paragraph (c)(6) of this section, F will be deemed to have timely deposited the employment taxes due for January 2007, and, thus, the IRS will not impose a failure-to-deposit penalty under section 6656 for that month.

(e) *Employment taxes defined.* (1) For purposes of this section, the term "employment taxes" means—

(i) The employee portion of the tax withheld under section 3102;

(ii) The employer tax under section 3111;

(iii) The income tax withheld under sections 3402 and 3405, except income tax withheld with respect to payments made after December 31, 1993, on the following—

(A) Certain gambling winnings under section 3402(q);

(B) Retirement pay for service in the Armed Forces of the United States under section 3402;

(C) Certain annuities described in section 3402(o)(1)(B); and

(D) Pensions, annuities, IRAs, and certain other deferred income under section 3405; and

(iv) The income tax withheld under section 3406, relating to backup withholding with respect to reportable payments made before January 1, 1994.

(2) The term *employment taxes* does not include taxes with respect to wages for domestic service in a private home of the employer, unless the employer is otherwise required to file a Form 941 or Form 944 under §31.6011(a)-4 or §31.6011(a)-5. In the case of employers paying advance earned income credit amounts for periods ending before January 1, 2011, the amount of taxes required to be deposited shall be reduced

by advance amounts paid to employees. Also, see §31.6302-3 concerning a taxpayer's option with respect to payments made before January 1, 1994, to treat backup withholding amounts under section 3406 separately.

(f) *Safe harbor/De minimis rules*—(1) *Single deposit safe harbor.* An employer will be considered to have satisfied its deposit obligation imposed by this section if—

(i) The amount of any shortfall does not exceed the greater of \$100 or 2 percent of the amount of employment taxes required to be deposited; and

(ii) The employer deposits the shortfall on or before the shortfall make-up date.

(2) *Shortfall defined.* For purposes of this paragraph (f), the term "shortfall" means the excess of the amount of employment taxes required to be deposited for the period over the amount deposited for the period. For this purpose, a period is either a monthly, semi-weekly or daily period.

(3) *Shortfall make-up date*—(i) *Monthly rule.* A shortfall with respect to a deposit required under the Monthly rule must be deposited or remitted no later than the due date for the quarterly return, in accordance with the applicable form and instructions.

(ii) *Semi-Weekly rule and One-Day rule.* A shortfall with respect to a deposit required under the Semi-Weekly rule or the One-Day rule must be deposited on or before the first Wednesday or Friday (whichever is earlier), falling on or after the 15th day of the month following the month in which the deposit was required to be made or, if earlier, the return due date for the return period.

(4) *De minimis rule*—(i) *De minimis deposit rules for quarterly and annual return periods beginning on or after January 1, 2001.* If the total amount of accumulated employment taxes for the return period is *de minimis* and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited. The total amount of accumulated employment taxes is *de minimis* if it is less than \$2,500 for the

return period or if it is *de minimis* pursuant to paragraph (f)(4)(ii) of this section.

(ii) *De minimis deposit rule for quarterly return periods beginning on or after January 1, 2010.* For purposes of paragraph (f)(4)(i) of this section, if the total amount of accumulated employment taxes for the immediately preceding quarter was less than \$2,500, unless §31.6302-1(c)(3) applies to require a deposit at the close of the next day, then the employer will be deemed to have timely deposited the employer's employment taxes for the current quarter if the employer complies with the time and method payment requirements contained in paragraph (f)(4)(i) of this section.

(iii) *De minimis deposit rule for employers who file Form 944.* An employer who files Form 944 whose employment tax liability for the year equals or exceeds \$2,500 but whose employment tax liability for a quarter of the year is *de minimis* pursuant to paragraph (f)(4)(i) of this section will be deemed to have timely deposited the employment taxes due for that quarter if the employer fully deposits the employment taxes accumulated during the quarter by the last day of the month following the close of that quarter. Employment taxes accumulated during the fourth quarter can be either deposited by January 31 or remitted with a timely filed return for the return period.

(5) *Examples.* The provisions of this paragraph (f) may be illustrated by the following examples:

*Example 1 Safe-harbor rule satisfied.* On Monday, January 4, 1993, *J* (a semi-weekly depositor), pays wages and accumulates employment taxes. As required under this section, *J* makes a deposit on or before the following Friday, January 8, 1993, in the amount of \$4,000. Subsequently, *J* determines that it was actually required to deposit \$4,090 by Friday. *J* has a shortfall of \$90. The \$90 shortfall does not exceed the greater of \$100 or 2% of the amount required to be deposited (2% of \$4,090 = \$81.80). Therefore, *J* satisfies the safe harbor of paragraph (f)(1) of this section as long as the \$90 shortfall is deposited by the first deposit date (Wednesday or Friday) on or after the 15th day of the next month (in this case Wednesday, February 17, 1993).

*Example 2 Safe-harbor rule not satisfied.* The facts are the same as in *Example 1* except that on Friday, January 8, 1993, *J* makes a deposit of \$25,000, and later determines that

it was actually required to deposit \$26,000. Since the \$1,000 shortfall (\$26,000 less \$25,000) exceeds \$520 (the greater of \$100 or 2% of the amount required to be deposited (2% of \$26,000 = \$520)), the safe harbor of paragraph (f)(1) of this section is not satisfied, and absent reasonable cause, *J* will be subject to a failure-to-deposit penalty under section 6656.

*Example 3 De minimis deposit rule for employers who file Form 944 satisfied.* *K* (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. In the first quarter of 2006, *K* accumulates employment taxes in the amount of \$1,000. On April 28, 2006, *K* deposits the \$1,000 of employment taxes accumulated in the first quarter. *K* accumulates another \$1,000 of employment taxes during the second quarter of 2006. On July 31, 2006, *K* deposits the \$1,000 of employment taxes accumulated in the second quarter. *K*'s business grows and accumulates \$1,500 in employment taxes during the third quarter of 2006. On October 31, 2006, *K* deposits the \$1,500 of employment taxes accumulated in the third quarter. *K* accumulates another \$2,000 in employment taxes during the fourth quarter. *K* files Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of \$5,500 and submits a check for the remaining \$2,000 of employment taxes with the return. *K* will be deemed to have timely deposited the employment taxes due for all of 2006 because *K* complied with the *de minimis* deposit rule provided in paragraph (f)(4)(iii) of this section. Therefore, the IRS will not impose a failure-to-deposit penalty under section 6656 for any month of the year. Under this *de minimis* deposit rule, because *K* was required to file Form 944 for calendar year 2006, if *K*'s employment tax liability for a quarter is *de minimis*, then *K* may deposit that quarter's liability by the last day of the month following the close of the quarter. This *de minimis* rule allows *K* to have the benefit of the same quarterly *de minimis* amount *K* would have received if *K* filed Form 941 each quarter instead of Form 944 annually. Thus, because *K*'s employment tax liability for each quarter was *de minimis*, *K* could deposit quarterly.

(g) *Agricultural employers—special rules—(1) In general.* An agricultural employer reports wages paid to farm workers annually on Form 943 (Employer's Annual Tax Return for Agricultural Employees) and reports wages paid to nonfarm workers quarterly on Form 941 or annually on Form 944. Accordingly, an agricultural employer must treat employment taxes reportable on Form 943 ("Form 943 taxes") separately from employment taxes reportable on Form 941 or Form 944

(“Form 941 or Form 944 taxes”). Form 943 taxes and Form 941 or Form 944 taxes are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of paragraph (c)(3) of this section applies, or whether any safe harbor is applicable. In addition, Form 943 taxes and Form 941 or Form 944 taxes must be deposited separately. (See paragraph (b) of this section for rules for determining an agricultural employer’s deposit status for Form 941 taxes). Whether an agricultural employer is a monthly or semi-weekly depositor of Form 943 taxes is determined according to the rules of this paragraph (g).

(2) *Monthly depositor.* An agricultural employer is a monthly depositor of Form 943 taxes for a calendar year if the amount of Form 943 taxes accumulated in the lookback period (as defined in paragraph (g)(4) of this section) is \$50,000 or less. An agricultural employer ceases to be a monthly depositor of Form 943 taxes on the first day after the employer is subject to the One-Day rule in paragraph (c)(3) of this section. At that time, the agricultural employer immediately becomes a semi-weekly depositor of Form 943 taxes for the remainder of the calendar year and the succeeding calendar year.

(3) *Semi-weekly depositor.* An agricultural employer is a semi-weekly depositor of Form 943 taxes for a calendar year if the amount of Form 943 taxes accumulated in the lookback period (as defined in paragraph (g)(4) of this section) exceeds \$50,000.

(4) *Lookback period*—(i) *In general.* For purposes of this paragraph (g), the lookback period for Form 943 taxes is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 1993 is calendar year 1991. New employers shall be treated as having employment tax liabilities of zero for any lookback period before the date the employer started or acquired its business.

(ii) *Adjustments and Claims for Refund.* The employment tax liability reported on the original return for the return period is the amount taken into account in determining whether the amount of Form 943 taxes accumulated in the lookback period exceeds \$50,000.

Any amounts reported on adjusted returns or claims for refund pursuant to sections 6205, 6402, 6413 and 6414 filed after the due date of the original return are not taken into account when determining the amount of Form 943 taxes accumulated in the lookback period. However, prior period adjustments reported on Form 943 for 2008 and earlier years are taken into account in determining the employment tax liability for the return period in which the adjustments are reported.

(5) The following example illustrates the provisions of this section.

*Example.* A, an agricultural employer, employs both farm workers and nonfarm workers (employees in its administrative offices). A’s depositor status for calendar year 1993 for Form 941 taxes will be based upon its employment tax liabilities reported on Forms 941 for the third and fourth quarters of 1991 and the first and second quarters of 1992 (the period July 1 to June 30). A’s depositor status for Form 943 taxes will be based upon its employment tax liability reported on its annual Form 943 for calendar year 1991.

(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) *Applicability of requirement*—(i) *Deposits for return periods beginning before January 1, 2000.* (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

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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:

Threshold amount	Determination period	Applicable effective date
\$78 million .....	1-1-93 to 12-31-93 .....	Jan. 1, 1995.
\$47 million .....	1-1-93 to 12-31-93 .....	Jan. 1, 1996.
\$47 million .....	1-1-94 to 12-31-94 .....	Jan. 1, 1996.
\$50 thousand .....	1-1-95 to 12-31-95 .....	July 1, 1997.
\$50 thousand .....	1-1-96 to 12-31-96 .....	Jan. 1, 1998.
\$50 thousand .....	1-1-97 to 12-31-97 .....	Jan. 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 ex-

ceed 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:

Threshold amount	Determination period	Applicable effective date
\$50 thousand .....	1-1-95 to 12-31-95 .....	Jan. 1, 1998.
\$50 thousand .....	1-1-96 to 12-31-96 .....	Jan. 1, 1998.
\$50 thousand .....	1-1-97 to 12-31-97 .....	Jan. 1, 1999.

(C) This paragraph (h)(2)(i) applies only to deposits required to be made for return periods beginning before January 1, 2000. Thus, a taxpayer, including a taxpayer that is required under this paragraph (h)(2)(i) to make deposits by electronic funds transfer beginning in 1999 or an earlier year, is not required to use electronic funds

transfer to make deposits for return periods beginning after December 31, 1999, unless deposits by electronic funds transfer are required under paragraph (h)(2)(ii) of this section.

(ii) *Deposits for return periods beginning after December 31, 1999, and made before January 1, 2011.* Unless exempted under paragraph (h)(5) of this section,



for deposits for return periods beginning after December 31, 1999, and made before January 1, 2011, a taxpayer that deposits more than \$200,000 of taxes described in paragraph (h)(3) of this section during a calendar year beginning after December 31, 1997, must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes that are required to be made for return periods beginning after December 31 of the following year and must continue to deposit by electronic funds transfer in all succeeding years. As an example, a taxpayer that exceeds the \$200,000 deposit threshold during calendar year 1998 is required to make deposits for return periods beginning in or after calendar year 2000 by electronic funds transfer.

(iii) *Deposits made after December 31, 2010.* Unless exempted under paragraph (h)(5) of this section, a taxpayer that has a required tax deposit obligation described in paragraph (h)(3) of this section must use electronic funds transfer (as defined in paragraph (h)(4) of this section) to make all deposits of those taxes made after December 31, 2010.

(iv) *Voluntary deposits.* A taxpayer that is authorized to make payment of taxes with a return under regulations may voluntarily make a deposit 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 deposits.* 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.

(i) *Time and manner of remittance with a return—(1) General rules.* A remittance required to be made by this section that is authorized to be made with a return under regulations and is made with a return must be made separately from a remittance required by any other section. Further, a remittance

for a deposit period in one return period must be made separately from a remittance for a deposit period in another return period.

(2) *Payment of balance due.* If the aggregate amount of taxes reportable on the return for the return period exceeds the total amount deposited by the employer with regard to the return period pursuant to this section, the balance due must be remitted in accordance with the applicable form and instructions.

(3) *Time deemed paid.* In general, amounts remitted with a return under this section will be considered as paid on the date payment is received by the Internal Revenue Service at the place prescribed for filing by regulations or forms and instructions (or if section 7502(a) applies, by the date the payment is treated as received under section 7502(a)), or on the last day prescribed for filing the return (determined without regard to any extension of time for filing the return), whichever is later. In the case of the taxes imposed by chapter 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 remitted with a return under this section prior to April 15th of the calendar year immediately succeeding the calendar year that contains the period for which the amount was remitted, the amount will be considered paid on April 15th of the succeeding calendar year.

(j) *Voluntary payments by electronic funds transfer.* Any person may voluntarily remit by electronic funds transfer any payment of tax imposed by subtitle C of the Internal Revenue Code. Such payment must be made in accordance with procedures prescribed by the Commissioner.

(k) *Special rules—(1) Notice exception.* The provisions of this section are not applicable with respect to employment taxes for any month in which the employer receives notice that a return is required under §31.6011(a)-5 (or for any subsequent month for which such a return is required), if those taxes are also required to be deposited under the separate accounting procedures provided in §301.7512-1 of the Regulations on

Procedure and Administration (which procedures are applicable if notification is given by the Commissioner of failure to comply with certain employment tax requirements). In cases in which a monthly return is required under §31.6011(a)-5 but the taxes are not required to be deposited under the separate accounting procedures provided in §301.7512-1, the provisions of this section shall apply except those provisions shall not authorize the deferral of any deposit to a date after the date on which the return is required to be filed.

(2) *Wages paid in nonconvertible foreign currency.* The provisions of this section are not applicable with respect to wages paid in nonconvertible foreign currency pursuant to §301.6316-7.

(1) [Reserved]

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

(2) *Saturday, Sunday, or legal holiday.* For provisions relating to the time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday, see the provisions of §301.7503-1.

(n) *Effective/applicability dates.* Sections 31.6302-1 through 31.6302-3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. To the extent that the provisions of §§31.6302-1 through 31.6302-3 are inconsistent with the provisions of §§31.6302(c)-1 and 31.6302(c)-2, a taxpayer will be considered to be in compliance with §§31.6302-1 through 31.6302-3 if the taxpayer makes timely deposits during 1993 in accordance with §§31.6302(c)-1 and 31.6302(c)-2. Paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (e)(2), (f)(4)(i), (f)(4)(iii), (f)(5) *Example 3*, and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in §31.6302-1 as in effect prior to December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*,

(f)(4)(i), (f)(4)(iii), and (f)(5) *Example 3* of this section that apply to taxable years beginning on or after January 1, 2006, and before December 30, 2008, are contained in §31.6302-1T as in effect prior to December 30, 2008. The rules of paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in §31.6302-1 as in effect prior to January 1, 2006. The rules of paragraph (g) of this section eliminating use of Federal tax deposit coupons apply to deposits and payments made after December 31, 2010.

(o) *Effective/applicability date.* Paragraphs (c), (d) *Examples 1 through 5*, (h)(2)(ii), (h)(2)(iii), (h)(2)(iv), (i)(1) and (i)(3) of this section apply to deposits and payments made after December 31, 2010.

[T.D. 8436, 57 FR 44102, Sept. 24, 1992; 57 FR 48724, Oct. 28, 1992, as amended by T.D. 8504, 58 FR 68035, Dec. 23, 1993; T.D. 8436, 59 FR 6218, Feb. 10, 1994; T.D. 8723, 62 FR 37493, July 14, 1997; T.D. 8771, 63 FR 32736, June 16, 1998; T.D. 8822, 64 FR 32409, June 17, 1999; T.D. 8828, 64 FR 37676, July 13, 1999; T.D. 8909, 65 FR 76153, Dec. 6, 2000; T.D. 8946, 66 FR 28370, May 23, 2001; T.D. 8947, 66 FR 32542, June 15, 2001; T.D. 8952, 66 FR 33831, 33832, June 26, 2001; T.D. 9239, 71 FR 13, 15, Jan. 3, 2006; T.D. 9405, 73 FR 37379, July 1, 2008; T.D. 9440, 73 FR 79359, Dec. 29, 2008; T.D. 9507, 75 FR 75901, Dec. 7, 2010; T.D. 9524, 76 FR 26602, May 9, 2011; T.D. 9566, 76 FR 77676, Dec. 14, 2011; T.D. 9586, 77 FR 24612, Apr. 25, 2012]

**§ 31.6302-2 Deposit rules for taxes under the Railroad Retirement Tax Act (RRTA).**

(a) *General rule.* Except as otherwise provided in this section, the rules of §31.6302-1 determine the time and manner of making deposits of employee tax withheld under section 3202 and employer tax imposed under sections 3221 (a) and (b) attributable to payments made after December 31, 1992. Railroad retirement taxes described in section 3221(c) arising during the month must be deposited on or before the first date after the 15th day of the following month on which taxes are otherwise required to be deposited under §31.6302-1.

(b) *Separate application of deposit rules.* A person who accumulates tax under sections 3202 or 3221 shall not take that tax into account for purposes of determining when taxes described in

paragraph (e) of §31.6302-1 must otherwise be deposited.

(c) *Modification of Monthly rule determination—(1) General rule.* Except as otherwise provided in this section, any person is allowed to use the Monthly rule of §31.6302-1(c)(1) for an entire calendar year unless the amount of R.R.T.A. taxes required to be deposited under this section during the lookback period was more than \$50,000. The lookback period is defined as the calendar year preceding the calendar year just ended. Thus, for purposes of determining if an R.R.T.A. employer qualifies to use the Monthly rule for calendar year 1993, a lookback must be made to calendar year 1991. New employers shall be treated as having employment tax liabilities of zero for any calendar year during which the employer did not exist.

(2) *Exception.* An employer shall immediately cease to be allowed to use the Monthly rule after any day on which that employer is subject to the One-Day rule set forth in §31.6302-1(c)(3). Such employer immediately becomes subject to the Semi-Weekly rule of §31.6302-1(c)(2) for the remainder of the calendar year and the following calendar year.

(d) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

[T.D. 8436, 57 FR 44105, Sept. 24, 1992, as amended by T.D. 9507, 75 FR 75903, Dec. 7, 2010]

**§ 31.6302-3 Federal tax deposit rules for amounts withheld under the backup withholding requirements of section 3406 for payments made after December 31, 1992.**

(a) *General rule.* The rules of §31.6302-1 shall apply to determine the time and manner of making deposits of amounts withheld under the backup withholding requirements of section 3406.

(b) *Treatment of backup withholding amounts separately.* A taxpayer that withholds income tax under section 3406 with respect to reportable payments made after December 31, 1992, and before January 1, 1994, may, in accordance with the instructions provided with Form 941, deposit such tax under the rules of §31.6302-1 without