



## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[TD 9940]

RIN 1545-BP41

#### Misdirected Direct Deposit Refunds

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** These final regulations provide the procedures under section 6402(n) of the Internal Revenue Code (Code) for identification and recovery of a misdirected direct deposit refund. The final regulations reflect changes to the law made by the Taxpayer First Act. The final regulations affect taxpayers who have made a claim for refund, requested the refund be issued as a direct deposit, but did not receive a refund in the account designated on the claim for refund.

**DATES:** Effective date: These regulations are effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Applicability date: These regulations apply to reports to the IRS made after [date of publication] that a taxpayer never received a direct deposit refund.

**FOR FURTHER INFORMATION CONTACT:** Mary C. King at (202) 317-5433 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains amendments to 26 CFR part 301 under section 6402(n) of the Code and provides guidance on the procedures used to identify and recover tax refunds issued by electronic funds transfer (direct deposit) that were not delivered to the

account designated to receive the direct deposit refund on the federal tax return or other claim for refund. Section 6402(n) was added to the Code by section 1407 of the Taxpayer First Act, Public Law 116-25, 133 Stat. 981 (2019) (TFA) on July 1, 2019. On December 23, 2019, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (84 FR 70462) a notice of proposed rulemaking (REG-116163-19) providing the procedures under section 6402(n) for reporting, identification, and recovery of a misdirected direct deposit refund. The Treasury Department and the IRS received one comment responding to the proposed regulations. The comment is available at [www.regulations.gov](http://www.regulations.gov) or upon request. No public hearing was requested or held on the proposed regulations.

After consideration of the written comment, this Treasury Decision adopts the proposed regulations as final regulations with minor modifications, as described in the Summary of Comments and Explanation of Provisions. A detailed explanation of these regulations can be found in the preamble to the proposed regulations.

### **Summary of Comments and Explanation of Provisions**

The Treasury Department and the IRS received one comment regarding the proposed regulations. After consideration of the comment, the proposed regulations are adopted as final regulations without any substantive changes.

#### **I. Applicability Date**

A commenter expressed a concern that the procedures in these regulations would not apply to claims for refund from taxable years before the applicability date of the final regulations. The commenter requested that the procedures should be applied to refund claims for prior years. Consistent with the comment, the final regulations clarify that these procedures apply to any report of a misdirected direct deposit refund for a current or prior year submitted after the publication of the final regulations in the **Federal Register**.

## II. Coordination with Financial Institutions

Section 301.6402-2(g)(1) of the proposed regulations defines “misdirected direct deposit refund” as any refund of an overpayment of tax that is disbursed as a direct deposit but is not deposited into the account designated on the claim for refund to receive the direct deposit refund. The proposed regulations include in the definition of a misdirected direct deposit refund only those refunds which are actually issued as a direct deposit. A misdirected direct deposit refund does not include an overpayment that is credited against another outstanding tax liability of the taxpayer pursuant to section 6402(a) or that is offset pursuant to the law. An overpayment that is offset or applied as mandated by law is not a misdirected direct deposit refund because these actions are mandated by law. Section 301.6402-2(g)(1) of the final regulations clarifies this by striking the last sentence from the proposed regulations, as it is not needed to define a “misdirected direct deposit refund.” Instead, the final regulations clarify in section 301.6402-2(g)(3)(i) that the offset or setoff of an overpayment occurs prior to the issuance of a direct deposit. The IRS will determine if a reported missing refund is setoff or offset as part of the procedure for the identification of the account that received the misdirected direct deposit refund. This reorganization simplifies the definition of a misdirected direct deposit refund and more accurately describes the process of identification of a misdirected direct deposit refund.

The final regulations reflect this clarification to the definition of a misdirected direct deposit refund and the identification procedure, but the proposed regulations are otherwise adopted without change.

### **Special Analyses**

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the

Treasury Department and the Office of Management and Budget regarding review of tax regulations.

These regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements, or third-party disclosure requirements related to tax compliance. However, because a taxpayer or a taxpayer's representative may elect to report a missing refund using the procedures described in §301.6402-2(g)(2)(ii)(B), some taxpayers may use a form to report a missing refund. The collection of information in §301.6402-2(g)(2)(ii)(B) is through use of a Form 3911, "Taxpayer Statement Regarding Refund," and is the sole collection of information requirement established by the final regulations.

For the purposes of the Paperwork Reduction Act, 44 U.S.C. §§3501-3520, the reporting burden associated with the collection of information with respect to section 6402(n) will be reflected in Paperwork Reduction Act submissions for IRS Form 3911 (OMB Control Number 1545-1384). The estimated average time to complete Form 3911 is five minutes. However, use of a form is not required in every case. There are certain situations in which a taxpayer may instead elect to investigate a missing refund over the telephone or in person at the Office of the Taxpayer Advocate and, after the IRS identifies the tax refund and informs the taxpayer that the refund was issued as a direct deposit, orally report that the already-identified refund is missing. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). The certification is based on the information that follows. There is no significant impact from these regulations on any

small entity utilizing the procedures prescribed by these regulations to report a missing refund because there is no significant cost associated with reporting a missing refund. There is no fee charged in connection with reporting a missing refund, and the estimated time to complete a Form 3911, "Taxpayer Statement Regarding Refund," is five minutes. There are no tax consequences associated with the final rule, as it merely sets forth the procedures for reporting a missing refund and describes the process the IRS uses in locating a missing refund and, in some instances, issuing a replacement refund. The process in these regulations mirrors the existing process and does not change the reporting burden. Accordingly, the Treasury Department and the IRS have determined that this Treasury Decision will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business entities, and no comments were received.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This regulation does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132 (titled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and

does not impose substantial direct compliance costs on state and local governments or preempt state law, within the meaning of the Executive Order.

### **Drafting Information**

The principal author of these regulations is Mary C. King of the Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

### **List of Subjects in 26 CFR Part 301**

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

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Part 301 is amended as follows:

### **PART 301 – PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order for § 301.6402-2(g) to read in part as follows:

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

\* \* \* \* \*

Section 301.6402-2(g) also issued under 26 U.S.C. 6402(n).

\* \* \* \* \*

Par. 2. Section 301.6402-2 is amended by:

1. Redesignating paragraph (g) as paragraph (h) and adding new paragraph (g).
2. Revising the subject heading of newly redesignated paragraph (h) and adding a sentence at the end of the paragraph.

The additions and revision read as follows:

§301.6402-2 Claims for credit or refund.

\* \* \* \* \*

(g) Misdirected direct deposit refund--(1) Definition. The term misdirected direct deposit refund includes any refund of an overpayment of tax that is disbursed as a direct deposit but is not deposited into the account designated on the claim for refund to receive the direct deposit refund.

(2) Procedures for reporting a misdirected direct deposit refund--(i) In general. A taxpayer or a taxpayer's authorized representative may report to the IRS that the taxpayer never received a direct deposit refund and request a replacement refund. The report must include the name of the taxpayer who requested the refund, the taxpayer identification number of the taxpayer, the taxpayer's mailing address, the type of return to which the refund is related, the account number and routing number that the taxpayer requested the refund be directly deposited into, and any other information necessary to locate the misdirected direct deposit refund.

(ii) How to report a misdirected direct deposit refund. A reporting described in paragraph (g)(2)(i) of this section may be made in the following ways:

(A) By calling the IRS;

(B) On the form prescribed by the IRS and in accordance with the applicable publications, instructions, or other appropriate guidance;

(C) By contacting the Office of the Taxpayer Advocate by telephone, by mail, facsimile, or in person; or

(D) By submitting the appropriate form in person at a Taxpayer Assistance Center.

(3) Procedures for coordination with financial institutions--(i) Identification of the account that received the misdirected direct deposit refund. If the IRS receives a report described in paragraph (g)(2)(ii) of this section, the IRS will confirm that the

overpayment was issued as a direct deposit. The IRS will confirm that the overpayment was not credited or offset pursuant to the law in effect immediately prior to the direct deposit being disbursed. If the direct deposit described in the report was issued, the IRS will initiate a refund trace to request the assistance of the Department of the Treasury's Bureau of the Fiscal Service. In accordance with its own procedures, the Bureau of the Fiscal Service coordinates with the financial institution that holds directly or indirectly the deposit account into which the refund was made, requesting from the financial institution such information as is necessary to identify whether the financial institution received the refund; whether the financial institution returned, or will return, the refund to the IRS, or if no funds are available for return; whether a deposit was made into the account designated on the claim for refund; and the identity of the deposit account owner to whom the deposit was disbursed.

(ii) Coordination to recover the amounts transferred. Recovery of the misdirected direct deposit refund from a financial institution shall follow the procedures established by the Bureau of the Fiscal Service. The Bureau of the Fiscal Service shall request the return of the misdirected direct deposit refund from the financial institution that received it. The IRS may contact the financial institution directly to recover the misdirected direct deposit refund.

(4) Issuance of replacement refund. When the IRS has determined that a misdirected direct deposit refund has occurred, the IRS will issue a replacement refund in the full amount of the refund that was misdirected. The replacement refund may be issued as a direct deposit or as a paper check sent to the taxpayer's last known address.

(5) Applicability of this paragraph (g) to missing refunds. The provisions of paragraphs (g)(2) through (g)(3)(i) of this section should be used for any refund that was disbursed as a direct deposit and that the taxpayer reports as missing. For example,



although a refund that was deposited into an incorrect bank account because the taxpayer transposed two digits in their bank account number is not considered to be a misdirected direct deposit refund, the provisions of paragraphs (g)(2) through (g)(3)(i) of this section should be used. If the application of these procedures results in an amount recovered by the IRS, the recovered amount will be refunded or credited as allowed by law.

(h) Applicability dates. \* \* \* Paragraph (g) of this section applies to reports described in paragraph (g)(2)(ii) of this section made after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: December 8, 2020.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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