

preceding calendar quarter, the 1,000 barrel amount will be reduced for each such person by allocating that amount among all such persons in accordance with the rules of section 4992(e).

(d) *Special rules for September.* Deposits of 14-day rule taxes for the second semimonthly period in September must be made in the manner prescribed by § 40.6302(c)-1(e) applied with the following modifications:

(1) Each reference to 9-day rule taxes is treated, instead, as a reference to 14-day rule taxes.

(2) The deposit required for the period ending September 30th must be made at the time prescribed in paragraph (b) of this section (rather than at the time prescribed in § 40.6302(c)-1(b)(6)(i)).

(e) *Effective date and termination date.* This section is effective April 1, 1991, for deposits that relate to calendar quarters beginning after March 31, 1991. This section terminates on the date that section 518 of the Highway Revenue Act of 1982 terminates.

[T.D. 8442, 57 FR 48177, Oct. 22, 1992, as amended by T.D. 8685, 61 FR 58007, Nov. 12, 1996]

§ 40.9999-1 Examples.

The following examples illustrate the rules of this part 40.

Example 1. Luxury tax; one-time filing. (i) *Facts.* On March 20, 1991, A, an individual, purchases a new automobile outside the United States for \$102,000. In April of 1991, A imports the automobile into the U.S. and uses it for personal use. At the time of importation, the automobile's retail value is \$100,000. Thus, A is liable for the luxury tax imposed by section 4001. The amount of A's section 4001 tax liability is \$7,000, 10% of the amount by which the \$100,000 retail value exceeds \$30,000. The liability is incurred in the second calendar quarter of 1991, the quarter during which the automobile is imported and used. The fuel economy of the automobile's model type is at least 22.5 miles per gallon, so that A is not liable for the gas guzzler tax imposed by section 4064. A did not import the automobile in the course of its trade or business, does not engage in any activities with respect to which tax is reportable on Form 720 in the course of a trade or business, and was not required to file a Form 720 for the preceding calendar quarter.

(ii) *Filing requirement.* A must file a return of the luxury tax on Form 720 (§ 40.6011(a)-1(a)(1)) for the second calendar quarter of

1991 (§ 40.6011(a)-1(a)(2)) reporting A's \$7,000 luxury tax liability. The Form 720 is due by July 31, 1991, the last day of the first month following the calendar quarter (§ 40.6071(a)-1(a)(1)). A's Form 720 for the second calendar quarter of 1991 is a first return (§ 40.6011(a)-1(a)(2)(ii)). Because A did not import the automobile in the course of its trade or business and is not otherwise required to file a Form 720 for the calendar quarter on account of transactions in the course of a trade or business, the return is a one-time filing (§ 40.6011(a)-2(b)). As a one-time filing, A's Form 720 also constitutes a final return. Therefore, in accordance with the instructions for Form 720, A checks the box marked "Final Return."

(iii) *Payment requirement.* Because A's Form 720 is a one-time filing, A is not required to make deposits of tax (§ 40.6302(c)-1(f)(2)). Instead, A pays the \$7,000 of tax with the return.

Example 2. Luxury tax; deposit requirement; safe harbor based on current liability. (i) *Facts.* On March 16, 1993, B, an individual in the business of automobile dealing, sells in a first retail sale a new automobile subject to the luxury tax imposed by section 4001. The amount of B's section 4001 tax liability is \$12,000. The sale of the automobile is in the course of B's business, but B does not expect to sell any other automobiles subject to the luxury tax. B is not required to file a Form 720 for the first calendar quarter of 1993 by reason of any other activity, and has not in the past filed a Form 720.

(ii) *Filing requirement.* B must file a return of the luxury tax (§ 40.6011(a)-1(a)(1)) on Form 720 for the first calendar quarter of 1993 (§ 40.6011(a)-1(a)(2)) reporting B's \$12,000 luxury tax liability. The Form 720 is due by April 30, 1993, the last day of the first month following the calendar quarter (§ 40.6071(a)-1(a)(1)). Although B does not ordinarily engage in transactions giving rise to a luxury tax liability in B's business, the tax is due with respect to a transaction engaged in by B in the course of a trade or business. Thus, the return is not a one-time filing under § 40.6011(a)-2(b), and B must file a Form 720 for each subsequent calendar quarter until B files a final return in accordance with § 40.6011(a)-2 (§ 40.6011(a)-1(a)(2)). However, if B does not expect to incur liability for luxury tax in subsequent quarters (i.e., has permanently ceased all operations with respect to which liability for tax was incurred), B's Form 720 also constitutes a final return (§ 40.6011(a)-2(a)(1)), and B is not required to file a return reporting zero tax liability in subsequent quarters. If B's Form 720 is also a final return, B checks the box marked "Final Return" in accordance with the instructions for the return.

(iii) *Deposit requirement; in general.* Because the return is not a one-time filing, B is required to make a deposit of tax (§ 40.6302(c)-

1(b)(1)(i) for the semimonthly period in which the liability was incurred. Under § 40.6302(c)-1(b)(5)(i), B must deposit an amount not less than the net tax liability incurred during the semimonthly period, in this case \$12,000. Deposits of luxury tax for a semimonthly period are due by the 9th day of the following semimonthly period (the 9-day rule under § 40.6302(c)-1(b)(6)(i)). Thus, B must deposit the \$12,000 by April 9, 1993. Form 8109, *Federal Tax Deposit Coupon*, completed in accordance with the instructions to the form must accompany the deposit (§ 40.6302(c)-1(d)).

(iv) *Deposit requirement; safe harbor.* B may also meet the deposit requirement by using a safe harbor rule. B did not file a return for the second preceding calendar quarter, so B does not qualify for the safe harbor based on look-back quarter liability (§ 40.6302(c)-1(c)(2)(i)), but B may use the safe harbor based on current liability (§ 40.6302(c)-1(c)(3)(i)). Under this safe harbor, B's deposit for the semimonthly period must be at least 95% of B's net tax liability for the semimonthly period (§ 40.6302(c)-1(c)(3)(i)(A)), B's deposit must be timely (§ 40.6302(c)-1(c)(3)(i)(B)), and B must pay the amount of any underpayment of tax by the due date of the return (§ 40.6302(c)-1(c)(3)(i)(D)). B meets this safe harbor by depositing \$11,400 (95% of \$12,000) by April 9, 1993, and by paying \$600 (the amount of the underpayment (\$12,000 minus \$11,400)) with the return by April 30, 1993.

Example 3. Classes of tax (aviation fuel tax, foreign insurance tax, ozone-depleting chemicals tax); books kept on a monthly basis; deposit requirement; safe harbor based on look-back quarter liability. (i) *Facts.* (1) M, a corporation, is an aviation fuel wholesaler registered under section 4101 with respect to the tax imposed by section 4091, and is therefore treated as a producer for purposes of the section 4091 tax on the sale of aviation fuel by its producer. M's net aviation fuel tax liability in the fourth quarter of 1990 was \$36,000. The aviation fuel tax liability incurred by M during each calendar month in the second calendar quarter of 1991 is as follows:

Apr. 1st-30th	\$10,000
May 1st-31st	15,000
Jun. 1st-30th	12,000
Total	\$37,000

(2) M also purchases insurance from a foreign insurer, thereby incurring liability for the tax imposed by section 4371 on policies issued by a foreign insurer. M's net section 4371 tax liability in the fourth quarter of 1990 was \$6,000. The section 4371 liability incurred by M during each calendar month in the second calendar quarter of 1991, is as follows:

Apr. 1st-30th	\$0
May 1st-31st	0

June 1st-30th	6,000
Total	\$6,000

(3) In addition, M imports into the United States and sells CFC-12, an ozone-depleting chemical subject to tax under section 4681. M's net ozone-depleting chemicals tax liability for the fourth calendar quarter of 1990 was \$3,300. The ozone-depleting chemicals tax liability incurred by M during each calendar month in the second calendar quarter of 1991 is as follows:

Apr. 1st-30th	\$1,300
May 1st-31st	1,500
June 1st-30th	1,500
Total	\$4,300

(4) M keeps its books on a monthly basis. M makes deposits and files Form 720 each quarter to report liability for the aviation fuel tax, the section 4371 tax, and the ozone-depleting chemicals tax. M's total net tax liability for the second calendar quarter of 1991 is \$47,300.

(i) *Filing requirement.* Because M must report ozone-depleting chemicals tax, M's Form 720 for the second calendar quarter of 1991 is due by Tuesday, September 3, 1991. The Form 720 would ordinarily be due by August 31st (the last day of the second month after the end of the calendar quarter (§ 40.6071(a)-2(a)), but August 31, 1991 is a Saturday, and Monday, September 2, 1991, is Labor Day, a legal holiday. Thus, under section 7503, M has additional time to file. If M had reported only aviation fuel and section 4371 tax liability on M's Form 720 for the second calendar quarter of 1991, the Form 720 would have been due by July 31, 1991, the last day of the first month after the end of the calendar quarter (§ 40.6071(a)-1(a)(1)). However, only one Form 720 is filed for a calendar quarter (§ 40.6071(a)-1(a)(2)). Thus, M's responsibility for reporting ozone-depleting chemicals tax allows M to delay the filing of the Form 720. Although M may delay the filing of its Form 720 until two months after the quarter ends, M must deposit the full amount of the aviation fuel tax and foreign insurance tax for the quarter by the date the return of those taxes would ordinarily be due (i.e. July 31, 1991) (§ 40.6071(a)-1(a)(2)). Under § 40.6011(a)-1(a)(2), M must continue to file a Form 720 for each calendar quarter until M files a final return in accordance with § 40.6011(a)-2.

(iii) *Deposit requirement; in general.* M is required to make a deposit of tax for each semimonthly period in which liability is incurred (§ 40.6302(c)-1(b)(1)(i)). M is required to make deposits of tax because M's liability for the quarter exceeds \$2,000 (§ 40.6302(c)-1(f)(3)). Deposits of aviation fuel tax and section 4371 tax for a semimonthly period are due by the 9th day of the following semimonthly period (the 9-day rule under

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§ 40.6302(c)-1(b)(6)(i)). The 9-day rule does not apply to ozone-depleting chemicals tax (§ 40.6302(c)-1(b)(6)(ii)). Deposits of ozone-depleting chemicals tax for a semimonthly period are due by the last day of the second following semimonthly period (the 30-day rule under § 40.6302(c)-2(b)(1)). M uses the rule provided under § 40.6302(c)-1(b)(3) to compute its net tax liability for each semimonthly period. Thus, M divides monthly net tax liability for each tax by two to determine its semimonthly liability. The amount of M's deposit for a semimonthly period under the 9-day rule must be not less than the total net tax liability for 9-day rule taxes incurred during the semimonthly period (§ 40.6302(c)-1(b)(5)(i)). The amount of M's deposit for a semimonthly period under the 30-day rule must be not less than the total net tax liability for 30-day rule taxes incurred during the semimonthly period (§ 40.6302(c)-1(b)(5)(i)). Accordingly, M meets the deposit requirement if M makes the following deposits:

Deposit due by	Amount	Class of tax
Apr. 24th	\$5,000	9-day rule
May 9th	5,000	9-day rule
May 15th	650	30-day rule
May 24th	7,500	9-day rule
May 31st	650	30-day rule
June 10th	7,500	9-day rule
June 17th	750	30-day rule
June 24th	9,000	9-day rule
July 1st	750	30-day rule
July 9th	9,000	9-day rule
July 15th	750	30-day rule
July 31st	750	30-day rule

The deposit due on Monday, June 10th would ordinarily be due on June 9th, but June 9, 1991, is a Sunday. Thus, under section 7503, M has additional time to make the required deposit. Similarly, the deposits otherwise due on June 15th and June 30th are due under section 7503 on the next succeeding day that is not a Saturday or Sunday.

(iv) *Deposit requirements; safe harbor.* M may also meet the deposit requirement by using a safe harbor rule. M uses the safe harbor based on look-back quarter liability for both the aviation fuel and section 4371 taxes (9-day rule taxes) and the ozone-depleting chemicals tax (30-day rule tax). This is permitted because M filed a return reporting both of those classes of tax for the fourth quarter of 1990 (the look-back quarter under §§ 40.6302(c)-1(c)(2)(i) and 40.6302(c)-2(b)(2)(i)). The safe harbor rules apply separately to 9-day rule and 30-day rule taxes (§ 40.6302(c)-1(c)(1)(ii)). Therefore, M must compute the amount to deposit separately for each class of tax.

(1) M's combined net tax liability in the look-back quarter for 9-day rule taxes was \$42,000. M computes the amount to deposit for 9-day rule taxes based on M's combined look-back quarter liability for those taxes.

Accordingly, M meets the safe harbor for 9-day rule taxes by—

(A) Depositing \$7,000 (1/6 of \$42,000, M's combined net 9-day rule tax liability for the fourth calendar quarter of 1990 (§ 40.6302(c)-1(c)(2)(i)(A))) by the due dates specified above for 9-day rule taxes (§ 40.6302(c)-1(c)(2)(i)(B)); and

(B) Depositing \$1,000 (the amount by which the net 9-day rule tax liability for the second calendar quarter of 1991 (\$43,000) exceeds the net 9-day rule tax liability for the look-back quarter (\$42,000) by July 31, 1991 (§ 40.6302(c)-1(c)(2)(i)(C))).

(2) M's net tax liability in the look-back quarter for 30-day rule taxes was \$3,300. Accordingly, M meets the safe harbor for 30-day rule taxes by—

(A) Depositing \$550 (1/6 of \$3,300, M's ozone-depleting chemicals tax liability for the fourth calendar quarter of 1990 (§ 40.6302(c)-2(b)(2)(i)(A))) by the due dates specified above for 30-day rule taxes (§ 40.6302(c)-2(b)(2)(i)(B)); and

(B) Paying \$1,000 (the amount by which the net 30-day rule tax liability for the second calendar quarter of 1991 (\$4,300) exceeds the net 30-day rule tax liability for the look-back quarter (\$3,300)) by September 3, 1991, the due date of the return (§ 40.6302(c)-2(b)(2)(i)(C)).

Example 4. Air transportation tax; deposits and reporting based on alternative method. (i) *Facts.* (1) P, a corporation engaged in providing air transportation subject to tax under section 4261 (a) and (b), is responsible for collecting and paying over that tax. P maintains a separate account in which all items of air transportation tax included in tickets sold are recorded and makes returns of tax on the basis of amounts considered as collected. P does not compute the amount of deposits of tax on the basis of actual collections. P files Form 720 on a quarterly basis to report the tax. P reported \$54,000 of section 4261 (a) and (b) tax for the third calendar quarter of 1992. P is not required to report any other taxes on its Form 720.

(2) For the last month of 1992 and the first two months of 1993, P's separate account reflects the following:

Tickets sold during	Tax
Dec. 1st-15th	\$11,000
Dec. 16th-31st	11,000
Jan. 1st-15th	7,500
Jan. 16th-31st	7,500
Feb. 1st-15th	9,500
Feb. 16th-28th	9,500
Total	\$56,000

(3) The tax is considered as collected during the first week of the second semimonthly period following the semimonthly period in which the tickets were sold to the customers. Accordingly, the tax included in

tickets sold during the period December 1992 through February 1993 is considered as collected as follows:

For tickets sold during	Tax is considered as collected during
Dec. 1st-15th	Jan. 1st-7th
Dec. 16th-31st	Jan. 16th-22nd
Jan. 1st-15th	Feb. 1st-7th
Jan. 16th-31st	Feb. 16th-22nd
Feb. 1st-15th	Mar. 1st-7th
Feb. 16th-28th	Mar. 16th-22nd

(ii) *Filing requirement.* Because P is responsible for collecting and paying over air transportation tax, P must file the return of that tax (§ 40.6011(a)-1(a)(3)). P's Form 720 for the first calendar quarter of 1993 is due by Tuesday, June 1, 1993. P's Form 720 would ordinarily be due by May 31, 1993 (the last day of the second month after the end of the calendar quarter (§ 40.6071(a)-2(a)), but May 31, 1993, is Memorial Day, a legal holiday. Thus, under section 7503, P has additional time to file. Under § 40.6011(a)-1(a)(2), P must continue to file a Form 720 for each calendar quarter until P files a final return under § 40.6011(a)-2.

(iii) *Deposit requirement; in general.* Because P maintains the separate account required under § 40.6302(c)-3(b)(2)(ii) and makes returns of tax on the basis of amounts of tax considered as collected, P may use the alternative method to compute the amount of tax to be deposited (§ 40.6302(c)-3(b)(2)). P is required to make a deposit of tax for each semimonthly period in which tax is considered as collected (§ 40.6302(c)-1(b)(1)(iii)). P must deposit an amount not less than the net amount of tax that is considered as collected during the semimonthly period (§ 40.6302(c)-3(d)). Under the alternative method, deposits of air transportation tax are due by the third banking day after the end of the week during which the tax is considered as collected (§ 40.6302(c)-3(c)). Accordingly, P meets the deposit requirement for the first quarter of 1993 if P makes the following deposits:

By Jan. 12th	\$11,000
By Jan. 27th	11,000
By Feb. 10th	7,500
By Feb. 25th	7,500
By Mar. 10th	9,500
By Mar. 25th	9,500

(iv) *Deposit requirement; safe harbor.* P may also meet the deposit requirement by using a safe harbor rule (§ 40.6302(c)-1(c)(1)(i)). P uses the safe harbor based on look-back quarter liability. This is permitted because P filed a return reporting tax imposed on air transportation under section 4261 (a) and (b) for the third quarter of 1992 (the look-back quarter under § 40.6302(c)-1(c)(2)(i)). P meets this safe harbor by—

(1) Depositing \$9,000 (1/3 of \$54,000, P's net tax liability for the third calendar quarter of 1992 (§ 40.6302(c)-1(c)(2)(i)(A)) by the due dates specified above (§ 40.6302(c)-1(c)(2)(i)(B)); and

(2) Paying \$2,000 (the amount by which the net tax liability for the first calendar quarter of 1993 (\$56,000) exceeds the net tax liability for the look-back quarter (\$54,000)) by June 1, 1993, the due date of the return (§ 40.6302(c)-1(c)(2)(i)(D)).

(v) *Reporting requirement.* Under the alternative method, P's Form 720 for the first quarter of 1993 reports the \$56,000 of air transportation taxes considered as collected during that quarter (§ 40.6302(c)-3(e)).

[T.D. 8442, 57 FR 48177, Oct. 22, 1992; 58 FR 6575, Jan. 29, 1993, as amended by T.D. 8685, 61 FR 58007, Nov. 12, 1996]

PART 41—EXCISE TAX ON USE OF CERTAIN HIGHWAY MOTOR VEHICLES

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