



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR EMPLOYMENT TAX TERRITORY MANAGERS, GROUP
MANAGERS AND SPECIALISTS

FROM: Anita M. Babb /s/ *Anita M Babb*
Acting Chief, SB/SE Employment Tax Operations

SUBJECT: Interim Guidance on Interest Free Date

The purpose of this memorandum is to provide guidance regarding the date to enter on closing documents to properly compute the interest-free adjustment on employment tax cases.

Internal Revenue Code Section 6205 and the regulations thereunder permit an employer who has made an under collection or underpayment of FICA or RRTA tax (both the employer and employee shares) or federal income tax withholding and who ascertains the error after filing the return reporting such tax to make an interest-free adjustment. An error is ascertained when the employer has sufficient knowledge of the error to be able to correct it. The interest-free adjustment is made by reporting the additional amount due as an adjustment on a current return (e.g., Form 941) filed for the return period in which the error is ascertained, or by reporting the amount on a supplemental return for the return period in which the wages or compensation was paid. In both cases, the return with the adjustment or the supplemental return must be filed by the due date of the return for the return period in which the error was ascertained. Section 6205 does not apply to FUTA.

Executed Form 2504 and Form 2504-WC are supplemental returns for purposes of making an interest-free adjustment of an error ascertained in the course of the examination. See Revenue Ruling 75-464.

To be entirely interest-free, full payment of the underpayment adjustment must be made on or before the due date of the return for the return period in which the error was ascertained, e.g., the return period in which the Form 2504 or Form 2504-WC are signed. If the tax adjustment is not paid when due, interest will begin accruing on the day following the due date of the return for that period. Note that for adjustments related to Form 944 and Form 945, the due date for the return is January 31 of the following year.

Examiners are required to provide the due date of the return for the quarter in which the error was ascertained, or, in an examination situation, the date on which Form 2504 or Form 2504-WC was signed. The correct date and Transaction Code 308 must be entered on Form 5344 (Item 11). This entry is necessary even if the deficiency is already paid to ensure that the taxpayer is not charged interest from the original due date of the return.

On Form 3198, on page 2 "Special Interest Features," examiners must enter "interest-free adjustment." This will provide the case closing unit with the data necessary to properly instruct IRS systems as to the adjustments and the interest-free period at closing.

Examples in Examination Situations:

Agreement Date	Quarter Ends	Filing Due Date	Entry for Forms 5344 and 3198	Interest Begins
01/1/2007	03/31/2007	04/30/2007	04/30/2007	05/1/2007
06/15/2007	06/30/2007	07/31/2007	07/31/2007	08/1/2007
08/7/2007	09/30/2007	10/31/2007	10/31/2007	11/1/2007
10/15/2007	12/31/2007	01/31/2008	01/31/2008	02/1/2008

Interest-free provisions apply to FICA/RRTA tax and income tax withholding adjustments, including those computed under Internal Revenue Code Section 3509 and to which the Classification Settlement Program applies, provided the requirements of Section 6205 are met.

Effect on Other Documents: Interim Guidance Memorandum will be incorporated into IRM 4.23.8.3 by January 7, 2009.

The above guidance is effective immediately. If you have any questions, please contact Anita Bartels, Senior Policy Analyst, SB/SE Employment Tax Operations.

cc: www.irs.gov