
26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, sections 6302, 6656; 1.6302-2, 31.6302-1, 31.6302-2, 31.6302-4, 31.6302(c)-3, 40.6302(c)-1, 301.6656-1.)

Rev. Proc. 99-10

SECTION 1. PURPOSE

This revenue procedure provides guidance with respect to the failure-to-deposit penalty provisions of § 6656 of the Internal Revenue Code, as amended by § 3304(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 742 (1998) (RRA). This revenue procedure describes

how a taxpayer may designate the application of its federal tax deposits for a particular return period in order to minimize the failure-to-deposit penalty under § 6656 with respect to deposits required to be made after January 18, 1999.

SECTION 2. BACKGROUND

.01 Section 6656 provides that in the case of any failure by any person to deposit (as required by the Code or regulations) on the date prescribed any amount of tax in a government depository, there will be imposed upon such person a penalty equal to the applicable percentage of the amount of the underpayment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The penalty ranges from 2 to 15 percent depending upon the lateness of the deposit.

.02 Revenue Procedure 90-58, 1990-2 C.B. 642, effective for return periods beginning after March 31, 1991, provides that deposits for a return period will be applied in a date-made order against deposit liabilities in a due-date order. Thus, the Service will apply a deposit first to satisfy the oldest past due deposit liability within the same return period. Other credits to the taxpayer's account, such as an overpayment from the previous return period, will be similarly applied.

.03 The rationale underlying Rev. Proc. 90-58 is that it is generally in the best interest of depositors that strive to be compliant to have the oldest deposit liability in the return period satisfied first, thus preventing the penalty rate on that liability from escalating. However, if a depositor inadvertently misses a deposit early in a return period but makes all succeeding deposits on a timely basis, the result can be multiple failure-to-deposit penalties.

.04 Notice 98-14, 1998-8 I.R.B. 27, provides an interim procedure that taxpayers may use to request abatement of the failure-to-deposit penalty imposed by § 6656 when the deposit liabilities against which the Service applies deposits, as set forth in Rev. Proc. 90-58, produces multiple failure-to-deposit penalties as a result of a single failure to deposit. Under that notice, taxpayers that wish to request relief are instructed to call the toll-free number shown on the penalty notice. Notice 98-14 applies with respect to return periods beginning after December 31, 1997.

.05 Section 3304(a) of the RRA added new § 6656(e), which permits a taxpayer receiving a penalty notice (with respect to any deposit of tax made for a specific tax return period) to designate, during the 90-day period beginning on the date of a penalty notice, the deposit period or periods within the return period to which a deposit of tax shall apply. Pursuant to § 3304(d)(1) of the RRA, § 6656(e) is effective for federal tax deposits required to be made after January 18, 1999 (180 days after the July 22, 1998, enactment of the RRA).

SECTION 3. SCOPE

.01 *Applicability.*

(1) This revenue procedure applies to a taxpayer requesting abatement of the failure-to-deposit penalty imposed by § 6656 when the deposit liabilities against which the Service applies deposits or credits, as set forth in Rev. Proc. 90-58, produces multiple failure-to-deposit penalties for any tax specified in section 3.01(2) of this revenue procedure.

(2) This revenue procedure applies with respect to all taxes required to be deposited after January 18, 1999, pursuant to § 6302 and the regulations thereunder

that are reported on the following Internal Revenue Service forms:

(a) Form 720, Quarterly Federal Excise Tax Return;

(b) Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return;

(c) Form 941, Employer's Quarterly Federal Tax Return;

(d) Form 943, Employer's Annual Tax Return for Agricultural Employees;

(e) Form 945, Annual Return of Withheld Federal Income Tax;

(f) Form CT-1, Employer's Annual Railroad Retirement and Unemployment Repayment Tax Return; or

(g) Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

.02 *Inapplicability.* This revenue procedure does not address changes made to § 6656 by § 3304(c) of the RRA for deposits required to be made after December 31, 2001. The Service intends to provide future guidance with respect to those changes.

SECTION 4. RELIEF PROCEDURE

Any taxpayer that receives a penalty

notice for a return period showing multiple failure-to-deposit penalties for any tax specified in section 3.01(2) of this revenue procedure that is required to be deposited after January 18, 1999, may, within 90 days of the date of the penalty notice, call the toll-free number shown on the penalty notice and designate the deposit period, or periods, within such specified return period to which the deposit(s) of, or credit(s) against, the tax for the return period are to be applied. To the extent that the taxpayer's designation is within the scope of § 6656(e), the Service will adjust the multiple penalties to reflect the penalty amount due on the remaining failure(s) to deposit and so notify the taxpayer in writing.

SECTION 5. EXAMPLES

.01 *Example 1.* For the first calendar quarter of 1999, A, a semi-weekly employment tax depositor within the meaning of § 31.6302-1 of the Employment Taxes and Collection of Income Tax at Source Regulations, accumulates the following employment tax deposit liabilities for its bi-weekly paydates, and makes the following deposits:

<i>Deposit due date</i>	<i>Required deposit</i>	<i>Actual deposit</i>	<i>Amount applied by IRS to previous underdeposits under Rev. Proc. 90-58</i>	<i>Amount applied to required deposit</i>	<i>Underdeposit</i>
1-6-99	\$7,000	\$7,000	\$0	\$7,000	\$0
1-21-99	\$5,000	\$4,000	\$0	\$4,000	\$1,000
2-3-99	\$5,000	\$5,000	\$1,000	\$4,000	\$1,000
2-18-99	\$8,000	\$8,000	\$1,000	\$7,000	\$1,000
3-3-99	\$6,000	\$6,000	\$1,000	\$5,000	\$1,000
3-17-99	\$5,000	\$4,000	\$1,000	\$3,000	\$2,000
3-31-99	\$10,000	\$10,000	\$2,000	\$8,000	\$2,000

During April 1999, A completes its Form 941 for the first quarter and discovers the January 21, 1999, and March 17, 1999, underdeposits. On April 30, 1999,

the due date for the Form 941, A files the Form 941 and deposits \$2,000.

The Service mails a notice to A dated July 21, 1999, advising that A is subject to

the § 6656 failure-to-deposit penalty as follows:

<i>Date of underdeposit</i>	<i>Amount of underdeposit</i>	<i>Days late</i>	<i>Applicable penalty rate</i>	<i>Penalty amount</i>
1-21-99	\$1,000	13	5%	\$50
2-3-99	\$1,000	15	5%	\$50
2-18-99	\$1,000	13	5%	\$50
3-3-99	\$1,000	14	5%	\$50
3-17-99	\$2,000	14	5%	\$100
3-31-99	\$2,000	30	10%	\$200
			TOTAL	\$500

Under §6656(e), A has until October 18, 1999, to designate its deposits for the first quarter of 1999 by calling the toll-free number shown on the penalty notice. On August 19, 1999, A calls the toll-free number shown on the penalty notice and designates its February 3, 1999, February

18, 1999, March 3, 1999, March 17, 1999, and March 31, 1999, deposits to each apply entirely to the federal tax deposit due on each of those respective days. By so designating its deposits, A is no longer subject to the failure-to-deposit penalty for its federal tax deposits due on Febru-

ary 3, 1999, February 18, 1999, March 3, 1999, and March 31, 1999. However, A continues to be liable for the January 21, 1999, and March 17, 1999, underdeposits. The Service will reduce the total penalty amount to which A is subject to \$200 as follows:

<i>Date of underdeposit</i>	<i>Amount of underdeposit</i>	<i>Days late</i>	<i>Applicable penalty rate</i>	<i>Penalty amount</i>
1-21-99	\$1,000	99	10%	\$100
3-17-99	\$1,000	44	10%	\$100
			TOTAL	\$200

.02 Example 2. For the first calendar quarter of 1999, B, a semi-weekly employment tax depositor within the mean-

ing of § 31.6302-1 of the regulations, accumulates \$5,000 of employment tax liabilities for each of its bi-weekly pay-

dates, and makes \$5,000 deposits as follows:

<i>Deposit liability due date</i>	<i>Date of deposit</i>	<i>Days late</i>	<i>Applicable penalty rate</i>	<i>Penalty amount</i>
1-6-99	1-6-99	0	0	\$0
1-21-99	1-22-99	1	2%	\$100
2-3-99	2-4-99	1	2%	\$100
2-18-99	2-19-99	1	2%	\$100
3-3-99	3-4-99	1	2%	\$100
3-17-99	3-18-99	1	2%	\$100
3-31-99	4-1-99	1	2%	\$100
			TOTAL	\$600

The Service mails a notice to B dated July 28, 1999, advising that B is subject to a \$600 failure-to-deposit penalty under § 6656. Under §6656(e), B has until October 25, 1999, to designate the deposit li-

ability due dates to which its deposits for the first quarter of 1999 will be applied by calling the toll-free number shown on the penalty notice. On September 30, 1999, B calls the toll-free number shown on the

penalty notice and designates that its deposits be applied to its deposit liability due dates as follows:

Date of deposit	Application of deposit		Days late	Applicable penalty rate	Penalty amount
	Deposit liability due date	Taxpayer designation			
1-6-99	1-6-99	1-6-99	0	0%	\$0
1-22-99	1-21-99	2-3-99	0	0%	\$0
2-4-99	2-3-99	2-18-99	0	0%	\$0
2-19-99	2-18-99	3-3-99	0	0%	\$0
3-4-99	3-3-99	3-17-99	0	0%	\$0
3-18-99	3-17-99	3-31-99	0	0%	\$0
4-1-99	3-31-99	1-21-99	70	10%	\$500
				TOTAL	\$500

By so designating its deposits, the Service will reduce the total penalty amount to which B is subject to \$500.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for federal tax deposits required to be made after January 18, 1999.

SECTION 7. EFFECT ON OTHER DOCUMENTS

.01 Notice 98-14 is superseded with respect to federal tax deposits required to be made after January 18, 1999. Notice 98-14 continues to apply to deposits required to be made on or before January 18, 1999, with respect to return periods beginning after December 31, 1997.

.02 Rev. Proc. 90-58 is amplified.

DRAFTING INFORMATION

The principal author of this revenue procedure is Marc C. Porter of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Marc C. Porter at (202) 622-4940 (not a toll-free call).