

## Internal Revenue Service, Treasury

## § 31.6205-1

### § 31.6109-1 Supplying of identifying numbers.

(a) *In general.* The returns, statements, and other documents required to be filed under this subchapter shall reflect such identifying numbers as are required by each return, statement, or document and its related instructions. See § 301.6109-1 of this chapter (Regulations on Procedure and Administration).

(b) *Effective date.* The provisions of this section are effective for information which must be furnished after April 15, 1974. See 26 CFR § 31.6109-1 (revised as of April 1, 1973) for provisions with respect to information which must be furnished before April 16, 1974.

[39 FR 9946, Mar. 15, 1974]

### § 31.6109-2 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each employment tax return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 9436, 73 FR 78453, Dec. 22, 2008]

### § 31.6151-1 Time for paying tax.

(a) *In general.* The tax required to be reported on each tax return required under this subpart is due and payable to the internal revenue officer with whom the return is filed at the time prescribed in § 31.6071(a)-1 for filing such return. See the applicable sections in Part 301 of this chapter (Regulations on Procedure and Administration), for provisions relating to interest on underpayments, additions to tax, and penalties.

(b) *Cross references.* For provisions relating to the use of authorized financial institutions in depositing the taxes, see §§ 31.6302(c)-1, 31.6302(c)-2, and 31.6302(c)-3. For rules relating to

the payment of taxes in nonconvertible foreign currency, see § 301.6316-7 of this chapter (Regulations on Procedure and Administration).

[T.D. 6872, 31 FR 149, Jan. 6, 1966; T.D. 6915, 32 FR 5261, Mar. 29, 1967; T.D. 7037, 35 FR 6709, Apr. 28, 1970; T.D. 7953, 49 FR 19644, May 9, 1984; T.D. 8952, 66 FR 33832, June 26, 2001]

### § 31.6157-1 Cross reference.

For provisions relating to the time and manner of depositing the tax imposed by section 3301, see the provisions of § 31.6302(c)-3. For provisions relating to the time and manner of depositing the railroad unemployment repayment tax imposed by section 3321(a), see § 31.6302(c)-2A.

[T.D. 7037, 35 FR 6709, Apr. 28, 1970, as amended at T.D. 8227, 53 FR 34736, Sept. 8, 1988]

### § 31.6161(a)(1)-1 Extensions of time for paying tax.

No extension of time will be granted for payment of any of the taxes to which the regulations in this part have application.

### § 31.6205-1 Adjustments of underpayments.

(a) *In general.* (1) An employer who has underreported and underpaid employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employer FICA tax under section 3111, employee Railroad Retirement Tax Act (RRTA) tax under section 3201 or employer RRTA tax under section 3221, or income tax required under section 3402 to be withheld, with respect to any payment of wages or compensation, shall correct such error as provided in this section. Such correction may constitute an interest-free adjustment as provided in paragraph (b) or (c) of this section.

(2) No correction will be eligible for interest-free adjustment treatment if the failure to report relates to an issue that was raised in an examination of a prior return period or if the employer knowingly underreported its employment tax liability.

(3) Every correction under this section of an underpayment of tax with respect to a payment of wages or compensation shall be made on the form prescribed by the IRS that corresponds to the return being corrected. The

form, filed in accordance with this section and the instructions, will constitute an adjusted return for the return period being corrected.

(4) Every adjusted return on which an underpayment is corrected pursuant to this section shall designate the return period in which the error was ascertained and the return period being corrected, explain in detail the grounds and facts relied upon to support the correction, and set forth such other information as may be required by the regulations in this section and by the instructions relating to the adjusted return.

(5) For purposes of this section, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(6) No correction will be eligible for interest-free adjustment treatment pursuant to this section after the earlier of the following:

(i) Receipt from the IRS of notice and demand for payment thereof based upon an assessment.

(ii) Receipt from the IRS of a Notice of Determination of Worker Classification (Notice of Determination) in connection with such underpayment. Prior to receipt of a Notice of Determination, the taxpayer may, in lieu of making a payment, make a cash bond deposit that would have the effect of stopping the accrual of any interest, but would not deprive the taxpayer of its right to receive a Notice of Determination and to petition the Tax Court under section 7436.

(7) Subject to the exceptions specified in paragraphs (a)(2) and (a)(6) of this section, Form 2504, "Agreement and Collection of Additional Tax and Acceptance of Overassessment (Excise or Employment Tax)," Form 2504-WC, "Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment in Worker Classification Cases (Employment Tax)," and such other forms as may be prescribed by the IRS, constitute adjusted returns for purposes of this section.

(8) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§1.6041-2 and 31.6051-1. For provisions relating to filing in-

formation returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§1.6041-2 and 31.6051-2.

(9) For the period of limitations upon assessment and collection of taxes, see §301.6501(a)-1.

(b) *Federal Insurance Contributions Act and Railroad Retirement Tax Act*—(1) *Undercollection ascertained before return is filed.* If an employer collects less than the correct amount of employee FICA or RRTA tax from an employee with respect to a payment of wages or compensation, and if the employer ascertains the error before filing the return on which the employee tax with respect to such wages or compensation is required to be reported, the employer shall nevertheless report on the return and pay to the IRS the correct amount of employee tax. If the employer does not report the correct amount of tax in these circumstances, the employer may not later correct the error through an interest-free adjustment.

(2) *Error ascertained after return is filed.* (i) If an employer files a return on which FICA tax or RRTA tax is required to be reported, and reports on the return less than the correct amount of employee or employer FICA or RRTA tax with respect to a payment of wages or compensation, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of tax by reporting the additional amount due on an adjusted return for the return period in which the wages or compensation was paid, accompanied by a detailed explanation of the amount being reported on the adjusted return and any other information as may be required by this section and by the instructions relating to the adjusted return. The reporting of the underpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed within the period of limitations for assessment for the return period being corrected, and by the due date for filing the return for the return period in which the error is

ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected, without regard to the employer's current filing requirements. For example, an employer with a current annual filing requirement who is correcting an error on a previously filed quarterly return must file the adjusted return by the due date for filing a quarterly return for the quarter in which the error is ascertained. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the adjusted return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(ii) If an employer files a return reporting FICA tax for a return period although the employer was required to file a return reporting RRTA tax, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of RRTA tax by reporting the correct amount of RRTA tax on an original return for reporting RRTA tax for the return period for which the incorrect return was filed, accompanied by an adjusted return corresponding to the incorrect return that was filed to correct the erroneously reported and paid FICA tax. The adjusted return must include a detailed explanation of the amounts being reported on the original return and the adjusted return and any other information as may be required by the regulations in this section and by the instructions relating to the adjusted return. The reporting of the correct amounts for the period constitutes an adjustment within the meaning of this section only if the returns are filed by the due date of the return for reporting the RRTA tax for the return period in which the error is ascertained. Pursuant to § 31.3503-1, the amount of erroneously paid FICA tax will be credited against the underpaid RRTA tax. Any remaining underpayment of RRTA tax adjusted in accordance with this section must be paid to the IRS by the time the returns

are filed in accordance with this paragraph. If an adjustment is reported pursuant to this section, but the amount of the remaining underpayment is not paid when due, interest accrues from that date (see section 6601).

(iii) If an employer files a return reporting RRTA tax for a return period although the employer was required to file a return reporting FICA tax, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of FICA tax by reporting the correct amount of FICA tax on an original return for reporting FICA tax for the return period for which the incorrect return was filed (or an adjusted return for reporting the FICA tax if an original return was already filed for such return period to report the income tax required to be withheld under section 3402), accompanied by an adjusted return corresponding to the incorrect return that was filed to correct the erroneously reported and paid RRTA tax. The adjusted return(s) must include a detailed explanation of the amount being reported on the original return and/or the adjusted return(s) and any other information as may be required by the regulations in this section and by the instructions relating to the form. The reporting of the correct amounts for the period constitutes an adjustment within the meaning of this section only if the returns are filed by the due date of the return for reporting the FICA tax for the return period in which the error is ascertained. Pursuant to § 31.3503-1, the amount of erroneously paid RRTA tax will be credited against the underpaid FICA tax. Any remaining underpayment of FICA tax adjusted in accordance with this section must be paid to the IRS by the time the returns are filed in accordance with this paragraph (b)(2)(iii). If an adjustment is reported pursuant to this section, but the amount of the remaining underpayment is not paid when due, interest accrues from that date (see section 6601).

(3) *Return not filed because of failure to treat individual as employee.* If an employer fails to file a return for a return

period solely because the employer failed to treat any individuals properly as employees for the return period (and, therefore, failed to withhold and pay any employer or employee FICA or RRTA tax with respect to wages or compensation paid to the employees) and if the employer ascertains the error after the due date of the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall report the amount due by filing an original return required to be filed to report the tax for the return period for which the employer failed to file a return, accompanied by an adjusted return as provided in the instructions to the adjusted return. The adjusted return must include a detailed explanation of the amount being reported on the original return and adjusted return and any other information as may be required by this section and by the instructions relating to the adjusted return. The reporting of the correct amount of tax for the return period constitutes an adjustment within the meaning of this section only if the original and adjusted returns are filed by the due date of the return for reporting such tax for the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected, without regard to the employer's current filing requirements. For example, an employer with a current annual filing requirement who is correcting an error on a previously filed quarterly return must file the adjusted return by the due date for filing a quarterly return for the quarter in which the error is ascertained. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the returns are filed in accordance with this paragraph. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(c) *Income tax required to be withheld from wages*—(1) *Undercollection ascertained before return is filed.* If an employer collects less than the correct amount of income tax required to be

withheld from wages under section 3402, and if the employer ascertains the error before filing the return on which the withheld tax is required to be reported, the employer shall nevertheless report on the return and pay to the IRS the correct amount of tax required to be withheld. If the employer does not report the correct amount of tax in these circumstances, the employer may not correct the error through an interest-free adjustment.

(2) *Error ascertained after return is filed.* If an employer files a return on which income tax required to be withheld from wages is required to be reported and reports on the return less than the correct amount of income tax required to be withheld, and if the employer ascertains the error after filing the return, the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall adjust the underpayment of tax by reporting the additional amount due on an adjusted return for the return period in which the wages were paid, accompanied by a detailed explanation of the amount being reported on the adjusted return and any other information as may be required by this section and by the instructions relating to the adjusted return. The reporting of the underpayment on an adjusted return constitutes an adjustment within the meaning of this section only if the adjusted return is filed by the due date for filing the return for the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected, without regard to the employer's current filing requirements. For example, an employer with a current annual filing requirement who is correcting an error on a previously filed quarterly return must file the adjusted return by the due date for filing a quarterly return for the quarter in which the error is ascertained. However, an adjustment may only be reported pursuant to this section if the error is ascertained within the same calendar year that the wages to the employee were paid, unless the underpayment is attributable to an administrative error (that is, an

error involving the inaccurate reporting of the amount actually withheld), section 3509 applies to determine the amount of the underpayment, or the adjustment is reported on a Form 2504 or Form 2504-WC. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the adjusted return is filed. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(3) *Return not filed because of failure to treat individual as employee.* If an employer fails to file a return for a return period solely because the employer failed to treat any individuals properly as employees for the return period (and, therefore, failed to withhold and pay any income tax required to be withheld from wages), the employer shall correct the error through an interest-free adjustment as provided in this section. The employer shall report the amount due by filing an original return for the return period for which the employer failed to file a return, accompanied by an adjusted return as provided in the instructions to the adjusted return. The adjusted return must include a detailed explanation of the amount being reported on the original and adjusted returns and any other information as may be required by this section and by the instructions relating to the adjusted return. The reporting of the correct amount of tax for the return period constitutes an adjustment within the meaning of this section only if the original and adjusted returns are filed by the due date of the return for reporting such tax for the return period in which the error is ascertained. For purposes of the preceding sentence, the due date for filing the adjusted return is determined by reference to the return being corrected, without regard to the employer's current filing requirements. For example, an employer with a current annual filing requirement who is correcting an error on a previously filed quarterly return must file the adjusted return by the due date for filing a quarterly return for the quarter in which the error is ascertained. However, an adjustment may only be reported pursuant to this

section if the error is ascertained within the same calendar year that the wages to the employee were paid, or if section 3509 applies to determine the amount of the underpayment, or if the adjustment is reported on a Form 2504 or Form 2504-WC. The amount of the underpayment adjusted in accordance with this section must be paid to the IRS by the time the returns are filed in accordance with this paragraph. If an adjustment is reported pursuant to this section, but the amount of the adjustment is not paid when due, interest accrues from that date (see section 6601).

(d) *Deductions from employee—(1) Federal Insurance Contributions Tax Act and Railroad Retirement Tax Act.* If an employer collects less than the correct amount of employee FICA or RRTA tax from an employee with respect to a payment of wages or compensation, the employer must collect the amount of the undercollection by deducting the amount from remuneration of the employee, if any, paid after the employer ascertains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages or compensation. The correct amount of employee tax must be reported and paid, as provided in paragraph (b) of this section, whether or not the undercollection is corrected by a deduction made as prescribed in this paragraph (d)(1), and even if the deduction is made after the return on which the employee tax must be reported is due. If such a deduction is not made, the obligation of the employee to the employer with respect to the undercollection is a matter for settlement between the employee and the employer. If an employer makes an erroneous collection of employee tax from two or more of its employees, a separate settlement must be made with respect to each employee. An overcollection of employee tax from one employee may not be used to offset an undercollection of such tax from another employee. For provisions relating to the employer's liability for the tax, whether or not it collects the tax from the employee, see §31.3102-1(d). This paragraph (d)(1) does not apply if section 3509 applies to determine the employer's liability.

(2) *Income tax required to be withheld from wages.* If an employer collects less than the correct amount of income tax required to be withheld from wages during a calendar year, the employer must collect the amount of the undercollection on or before the last day of the year by deducting the amount from remuneration of the employee, if any, paid after the employer ascertains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages. The correct amount of income tax must be reported and paid, as provided in paragraph (c) of this section, whether or not the undercollection is corrected by a deduction made as prescribed in this paragraph (d)(2), and even if the deduction is made after the return on which the tax must be reported is due. If such a deduction is not made, the obligation of the employee to the employer with respect to the undercollection is a matter for settlement between the employee and the employer within the calendar year. If an employer makes an erroneous collection of income tax from two or more of its employees, a separate settlement must be made with respect to each employee. An overcollection of income tax from one employee may not be used to offset an undercollection of such tax from another employee. For provisions relating to the employer's liability for the tax, whether or not it collects the tax from the employee, see § 31.3403-1. For provisions relating to the employer's liability for an underpayment of tax unless the employer can show that the income tax against which the tax under section 3402 may be credited has been paid, see § 31.3402(d)-1. This paragraph (d)(2) does not apply if section 3509 applies to determine the employer's liability.

[T.D. 9405, 73 FR 37376, July 1, 2008]

**§ 31.6205-2 Adjustments of underpayments of hospital insurance taxes that accrue after March 31, 1986, and before January 1, 1987, with respect to wages of State and local government employees.**

(a) *Adjustments without interest.* A State or local government employer who makes, or has made, an undercollection or underpayment of the hos-

pital insurance taxes imposed by sections 3101(b) and 3111(b) that—

(1) Are required to be paid by reason of section 3121(u)(2), and

(2) Are required to be reported on returns due July 31, 1986, October 31, 1986, or February 2, 1987.

may make an adjustment without interest with respect to such taxes provided that all such taxes for the time period specified in paragraph (a)(2) (except for amounts that are subsequently paid pursuant to an interest-free adjustment under § 31.6205-1) are paid on or before February 2, 1987.

(b) *Example.* The application of the provisions of this section are illustrated by the following example:

*Example.* A State or local government employer should have withheld and paid \$100 dollars in hospital insurance taxes for the quarter beginning April 1, 1986, and ending June 30, 1986. The due date for the return and payment for that period is July 31, 1986. If the employer made the payment by February 2, 1987, then, under section 6601, interest is not assessable with respect to the underpayment of the hospital insurance taxes. If the employer did not make the payment by February 2, 1987, the interest is assessable for the period from July 31, 1986, until the time of payment.

[T.D. 8156, 52 FR 33582, Sept. 4, 1987]

**§ 31.6302-0 Table of Contents.**

This section lists the captions that appear in §§ 31.6302-1 through 31.6302-3.

§ 31.6302-1 *Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.*

- (a) Introduction.
- (b) Determination of status.
  - (1) In general.
  - (2) Monthly depositor.
    - (i) In General.
    - (ii) Special rule.
  - (3) Semi-weekly depositor.
  - (4) Lookback period.
    - (i)-(ii) [Reserved]
- (c) Deposit rules.
  - (1) Monthly rule.
  - (2) Semi-Weekly rule.
    - (i) In general.
    - (ii) Semi-weekly period spanning two return periods.
    - (iii) Special rule for computing days.
  - (3) Exception—One Day rule.
  - (4) Deposits required only on business days.
  - (5)-(6) [Reserved]