



# American Payroll Association

Government Relations • Washington, DC

September 22, 2010

Mr. Michael E. Hara  
Office of the Associate Chief Counsel (Procedure and Administration)  
Internal Revenue Service  
CC:PA:LPD:PR  
(REG – 153340-09)  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

## **Comments on REG-153340-09: Electronic Funds Transfer of Depository Taxes**

Dear Mr. Hara:

The American Payroll Association appreciates the opportunity to provide comments on the proposed regulations relating to federal tax deposits (FTD) made by electronic funds transfer (EFT). We support the elimination of the FTD coupons and have always found the Electronic Federal Tax Payment System (EFTPS) to be a reliable and low-burden method for making and tracking federal employment tax deposits.

Our comments pertain to the conditions under which an employer is subject to the one-day rule (Section 31.6302-1(c)) and the related examples (§ 31.6302-1(d)).

1. The one-day rule should be applied only when an employer has accumulated \$100,000 or more of *undeposited* employment taxes within the deposit period applicable to its status as a monthly or semi-weekly depositor.
2. It would be helpful to add an example in which an employer has two pay days within one semi-weekly period, each of which incurs a liability less than \$100,000, but which, combined, incur a liability of \$100,000 or more. Using the logic in our item 1, if the taxes from the first pay day are deposited by the day of the second pay day, then the taxes from neither pay day will be subject to the one-day rule.

## **Description of the American Payroll Association**

The APA is a nonprofit association of over 21,000 payroll professionals, most of whom are responsible for the payroll of approximately 15,000 employers throughout 50 states, the District of Columbia, and U.S. territories. Our membership also includes representatives of large, medium, and small payroll service providers, who in turn process payroll for an additional 1.5 million employers, representing an aggregate total of one-third of the private-sector workforce. The employers for whom APA members process payrolls are diverse in size and industry.

Payroll professionals must issue correct and timely pay; calculate proper tax withholding; remit taxes to federal, state, and local agencies; file accurate tax and information returns (Forms W-2); and withhold and remit child support funds and other involuntary deductions. In addition, payroll professionals play a key role in upholding federal, state, and local immigration and labor laws and in administering employer benefit plans.

APA's central mission is to educate its members and the entire payroll industry about the best practices in paying America's workers their wages while successfully complying with all federal, state, and local laws. We achieve this mission through a variety of educational opportunities, including professional certification, print and online news publications, reference books and materials, and national, regional, and local seminars and conferences.

APA's secondary mission is to work with legislative and executive branches of all levels of government to find effective ways for employers to meet their compliance obligations and support government objectives while minimizing administrative burden for government, employers, and individual workers/taxpayers.

## **1. One-Day Rule Should Apply to Accumulated and Undeposited Employment Taxes**

We feel that the one-day rule should be applied only when an employer has accumulated \$100,000 or more of *undeposited* employment taxes within the deposit period applicable to its status as a monthly or semi-weekly depositor. We find Example 4 within §31.6302-1(d) to be using this logic, but the proposed regulation does not ever use the word "undeposited."

In Example 4, the employer, a semi-weekly depositor, accumulates \$115,000 in employment taxes on Monday (and presumably deposits those taxes on Tuesday, in accordance with the next-day rule). On Tuesday, it accumulates an additional \$30,000 in employment taxes, and the example states that this obligation must be deposited by Friday (the normal due date for taxes related to a wage payment on a Saturday, Sunday, Monday, or Tuesday by a semi-weekly depositor).

With regard to the \$30,000 liability, the example appears to be applying the one-day rule only to accumulated and undeposited employment taxes. At the time of Tuesday's wage payment, it has no undeposited employment taxes, and the one-day rule is not applied.

If the example were applying the one-day rule based only on accumulation of employment taxes within the applicable deposit period, without regard to whether any of the taxes have been deposited, then the \$30,000 liability from Tuesday's wage payment would be due on Wednesday instead of Friday (the combination of Monday's liability of \$115,000 and Tuesday's liability of \$30,000 meets the \$100,000 threshold).

This clarification of the rule may be made by inserting the word "undeposited" in the following places:

- § 31.6302-1(c)(3): "..., if on any day within a deposit period (monthly or semi-weekly) an employer has accumulated \$100,000 or more of undeposited employment taxes, ..."
- § 31.6302-1(c)(3)(i): "A monthly depositor takes into account only those undeposited employment taxes accumulated in the calendar month in which the day occurs; and"
- § 31.6302-1(c)(3)(ii): "A semi-weekly depositor takes into account only those undeposited employment taxes accumulated in the Wednesday–Friday or Saturday–Tuesday semi-weekly period in which the day occurs."

**2. Add An Example Of Two Pay Days Within One Period That, Only If Combined, Incur A Liability Of \$100,000 Or More.**

It would be helpful to add an example within § 31.6302-1(d) in which an employer has two pay days within one semi-weekly period, each of which incurs a liability less than \$100,000, but which, combined, incur a liability of \$100,000 or more. Using the logic in our item 1, if the taxes from the first pay day are deposited by the day of the second pay day, then the taxes from neither pay day will be subject to the one-day rule.

It may be best to make this “Example 4” and to adjust the numbering of succeeding examples.

Example 4. Application of One-Day Rule to Two Deposit Obligations Within One Period.

Employer D is subject to the semi-weekly rule for calendar year 2011. On Wednesday, January 19, 2011, D accumulates \$60,000 in employment taxes. This deposit obligation must be satisfied by Wednesday, January 26, 2011. However, D satisfies the obligation on Friday, January 21, 2011. On Friday, January 21, 2011, D accumulates an additional \$75,000 in employment taxes. Because the obligation incurred on Wednesday, January 19, 2011, has already been deposited, the total accumulated and undeposited employment taxes is \$75,000, which is below the \$100,000 threshold for the one-day rule, and the deposit obligation must be satisfied by Wednesday, January 26, 2011.

**Thank You**

Thank you for considering our comments. If you need any more information, please call me.

Sincerely,



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