

## Internal Revenue Service, Treasury

## § 31.6402(a)-2

such period plus tax not deposited for prior periods exceeds \$500.

(b) *Manner of deposit*—(1) *In general.* A deposit required to be made by an employer under this section shall be made separately from a deposit required by any other section. An employer may make one, or more than one, remittance of the amount required to be deposited. An employer that is not required to deposit an amount of tax by this section may nevertheless voluntarily make that deposit. For the requirement to deposit tax under the Federal Unemployment Tax Act by electronic funds transfer, see § 31.6302-1(h).

(2) *Time deemed paid.* For the time an amount deposited by electronic funds transfer is deemed paid, see § 31.6302-1(h)(9). For the time an amount remitted with a return is deemed paid, see § 31.6302-1(i)(3).

(c) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

[T.D. 7037, 35 FR 6709, Apr. 28, 1970; 35 FR 7070, May 5, 1970, as amended by T.D. 7062, 35 FR 14840, Sept. 24, 1970; T.D. 7953, 49 FR 19645, May 9, 1984; 49 FR 25239, June 20, 1984; T.D. 8723, 62 FR 37494, July 14, 1997; T.D. 8952, 66 FR 33831, 33832, June 26, 2001; T.D. 9162, 69 FR 69820, Dec. 1, 2004; T.D. 9239, 71 FR 13, Jan. 3, 2006; T.D. 9507, 75 FR 75903, Dec. 7, 2010]

### § 31.6302(c)-4 Cross references.

(a) *Failure to deposit.* For provisions relating to the penalty for failure to make a deposit within the prescribed time, see section 6656.

(b) *Saturday, Sunday, or legal holiday.* For provisions relating to the time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday, see the provisions of § 301.7503-1 of this chapter (Regulations on Procedure and Administration).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960. Redesignated by T.D. 7037, 35 FR 6709, Apr. 28, 1970, as amended by T.D. 8947, 66 FR 32542, June 15, 2001]

### § 31.6361-1 Collection and administration of qualified State individual income taxes.

Except as otherwise provided in §§ 301.6361-1 to 301.6385-2, inclusive, of this chapter (Regulations on Procedure and Administration), the provisions of

this part under subtitle F or chapter 24 of the Internal Revenue Code of 1954 relating to the collection and administration of the taxes imposed by chapter 1 of such Code on the incomes of individuals (or relating to civil or criminal sanctions with respect to such collection and administration) shall apply to the collection and administration of qualified State individual income taxes (as defined in section 6362 of such Code and the regulations thereunder) as if such taxes were imposed by chapter 1 of chapter 24.

(86 Stat. 944, 26 U.S.C. 6364; and 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 7577, 43 FR 59360, Dec. 20, 1978]

### § 31.6402(a)-1 Credits or refunds.

(a) *In general.* For regulations under section 6402 of special application to credits or refunds of employment taxes, see §§ 31.6402(a)-2, 31.6402(a)-3, and 31.6414-1. For regulations under section 6402 of general application to credits or refunds, see §§ 301.6402-1 and 301.6402-2. For provisions relating to adjustments without interest of overpayments of taxes under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act or income tax withholding, see §§ 31.6413(a)-1 and 31.6413(a)-2.

(b) *Period of limitation.* For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)-1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 9405, 73 FR 37379, July 1, 2008]

### § 31.6402(a)-2 Credit or refund of tax under Federal Insurance Contributions Act or Railroad Retirement Tax Act.

(a) *Claim by person who paid tax to IRS*—(1) *In general.* (i) Except as provided in paragraph (a)(1)(iii) of this section, any person may file a claim for credit or refund for an overpayment (except to the extent that the overpayment must be credited pursuant to

§ 31.3503-1) if the person paid to the Internal Revenue Service (IRS) more than the correct amount of 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, employee representative RRRTA tax under section 3211, or employer RRRTA tax under section 3221, or interest, addition to the tax, additional amount, or penalty with respect to any such tax.

(ii) Except as provided in paragraph (a)(1)(iii) of this section, the claim for credit or refund must be made in the manner and subject to the conditions stated in this section. The claim for credit or refund must be filed on the form prescribed by the IRS and must designate the return period to which the claim relates, explain in detail the grounds and facts relied upon to support the claim, and set forth such other information as may be required by this section and by the instructions relating to the form used to make such claim. No refund or credit pursuant to this section for employer tax will be allowed unless the employer has first repaid or reimbursed its employee or has secured the employee's consent to the allowance of the claim for refund and includes a claim for the refund of such employee tax. However, this requirement does not apply to the extent that the taxes were not withheld from the employee or, after the employer makes reasonable efforts to repay or reimburse the employee or secure the employee's consent, the employer cannot locate the employee or the employee will not provide consent. No refund or credit of employee FICA or RRRTA tax overcollected in an earlier year will be allowed if the employee has claimed a refund or credit of the amount of the overcollection which has not been rejected or if the employee has taken the amount of such tax into account in claiming a credit against or refund of the employee's income tax, including instances in which the employee has included an overcollection of employee FICA or RRRTA tax in computing a special refund (see § 31.6413(c)-1).

(iii) *Additional Medicare Tax.* No refund or credit to the employer will be allowed for the amount of any overpay-

ment of Additional Medicare Tax imposed under section 3101(b)(2) or section 3201(a) (as calculated under section 3101(b)(2)), which the employer deducted or withheld from an employee.

(iv) For adjustments without interest of overpayments of FICA or RRRTA taxes, including Additional Medicare Tax, see § 31.6413(a)-2.

(v) For corrections of FICA and RRRTA tax paid under the wrong chapter, see § 31.6205-1(b)(2)(ii) and (b)(2)(iii) and § 31.3503-1.

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

(vii) For the period of limitations on credit or refund of taxes, see § 301.6511(a)-1.

(2) *Statements supporting employer's claims for employee tax.* (i) Every employer who files a claim for refund or credit of employee FICA tax under section 3101 or employee RRRTA tax under section 3201 collected from an employee must certify as part of the claim process that the employer has repaid or reimbursed the tax to its employee or has secured the employee's written consent to allowance of the filing of the claim for refund except to the extent that the taxes were not withheld from the employee. The employer must retain as part of its records the written receipt of the employee showing the date and amount of the repayment, evidence of reimbursement, or the written consent of the employee, whichever is used in support of the claim.

(ii) Every employer who files a claim for refund or credit of employee FICA tax under section 3101 or employee RRRTA tax under section 3201 collected from an employee in a calendar year prior to the year in which the credit or refund is claimed, also must certify as part of the claim process that the employer has obtained the employee's written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so,

such claim has been rejected, and that the employee will not claim refund or credit of the amount. The employer must retain the employee's written statement as part of the employer's records.

(b) *Claim by employee*—(1) *In general.* Except as provided in (b)(3) of this section, if more than the correct amount of employee tax under section 3101 or section 3201 is collected by an employer from an employee and paid to the IRS, the employee may file a claim for refund of the overpayment if—

(i) The employee does not receive repayment or reimbursement in any manner from the employer and does not authorize the employer to file a claim and receive refund or credit,

(ii) The overcollection cannot be corrected under §31.3503-1, and

(iii) In the case of overpaid employee social security tax due to having received wages or compensation from multiple employers, the employee has not taken the overcollection into account in claiming a credit against, or refund of, his or her income tax, or if so, such claim has been rejected. See §31.6413(c)-1.

(2) *Statements supporting employee's claim.* (i) Except as provided in (b)(3) of this section, each employee who makes a claim under paragraph (b)(1) of this section shall submit with such claim a statement setting forth (a) the extent, if any, to which the employer has repaid or reimbursed the employee in any manner for the overcollection, and (b) the amount, if any, of credit or refund of such overpayment claimed by the employer or authorized by the employer to be claimed by the employer. The employee shall obtain such statement, if possible, from the employer, who should include in such statement the fact that it is made in support of a claim against the United States to be filed by the employee for refund of employee tax paid by such employer to the IRS. If the employer's statement is not submitted with the claim, the employee shall make the statement to the best of his or her knowledge and belief, and shall include therein an explanation of his or her inability to obtain the statement from the employer.

(ii) Except as provided in paragraph (b)(3) of this section, each individual

who makes a claim under paragraph (b)(1) of this section also shall submit with such claim a statement setting forth whether the individual has taken the amount of the overcollection into account in claiming a credit against, or refund of, his or her income tax, and the amount, if any, so claimed (see §31.6413(c)-1).

(3) *Additional Medicare Tax.* (i) If more than the correct amount of Additional Medicare Tax under section 3101(b)(2) or section 3201(a) (as calculated under section 3101(b)(2)), is collected by an employer from an employee and paid to the IRS, the employee may file a claim for refund of the overpayment and receive a refund or credit if the overcollection cannot be corrected under §31.3503-1 and if the employee has not received repayment or reimbursement from the employer in the context of an interest-free adjustment. The claim for refund shall be made on Form 1040, "U.S. Individual Income Tax Return," by taking the overcollection into account in claiming a credit against, or refund of, tax. The form to be used by residents of the U.S. Virgin Islands, Guam, American Samoa, or the Northern Mariana Islands is Form 1040-SS, "U.S. Self-Employment Tax Return (Including Additional Child Tax Credit for Bona Fide Residents of Puerto Rico)." The form to be used by residents of Puerto Rico is either Form 1040-SS or Form 1040-PR, "Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona Fide de Puerto Rico)." The employee may not authorize the employer to claim the credit or refund for the employee. See §31.6402(a)-2(a)(1)(iii).

(ii) In the case of an overpayment of Additional Medicare Tax under section 3101(b)(2) or section 3201(a) for a taxable year of an individual for which a Form 1040 (or other applicable return in the Form 1040 series) has been filed, a claim for refund shall be made by the individual on Form 1040X, "Amended U.S. Individual Income Tax Return."

### § 31.6402(a)-3

26 CFR Ch. I (4-1-14 Edition)

(c) *Effective/applicability date.* This section applies to claims for refund filed on or after November 29, 2013.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 9405, 73 FR 37379, July 1, 2008; T.D. 9645, 78 FR 71474, Nov. 29, 2013]

#### § 31.6402(a)-3 Refund of Federal unemployment tax.

Any person who pays to the district director more than the correct amount of—

(a) Tax under section 3301 of the Federal Unemployment Tax Act or a corresponding provision of prior law, or

(b) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for refund of the overpayment, in the manner and subject to the conditions stated in § 301.6402-2 of this chapter (Regulations on Procedure and Administration). See § 31.6413(d) and the corresponding section of prior law for provisions which bar the allowance or payment of interest on the amount of any refund based on credit allowable for contributions paid under the unemployment compensation law of a State.

#### § 31.6404(a)-1 Abatements.

For regulations under section 6404 of general application to the abatement of taxes, see § 301.6404-1 of this chapter (Regulations on Procedure and Administration). Every claim filed by an employer for abatement of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, shall be made in the manner and subject to the conditions stated in paragraphs (a) (2) and (c) of § 31.6402(a)-2, as if the claim for abatement were a claim for refund.

#### § 31.6413(a)-1 Repayment or reimbursement by employer of tax erroneously collected from employee.

(a) *Federal Insurance Contributions Act and Railroad Retirement Tax Act—(1) Overcollection ascertained before return is filed.* (i) If an employer during any return period collects from an employee more than the correct amount of employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employee Railroad Retirement Tax Act (RRTA) tax under section 3201, and if

the employer ascertains the error before filing the return on which the employee tax is required to be reported, repays or reimburses the amount of the overcollection to the employee before filing the return for such return period, and obtains and keeps as part of its records the written receipt of the employee showing the date and amount of the repayment or evidence of reimbursement, the employer shall not report on any return or pay to the IRS the amount of the overcollection.

(ii) Any overcollection not repaid or reimbursed to the employee as provided in paragraph (a)(1)(i) of this section shall be reported and paid to the IRS on the return for reporting such tax for the return period in which the overcollection is made. However, the reporting and payment of the overcollection may subsequently be treated as an overpayment error ascertained after the return is filed for purposes of paragraph (a)(2) of this section.

(iii) For purposes of this paragraph (a)(1), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(2) *Error ascertained after return is filed.* (i) Except as provided in paragraph (a)(2)(ii) of this section, if an employer files a return for a return period on which FICA tax or RRTA tax is reported, collects from an employee and pays to the IRS more than the correct amount of the employee FICA or RRTA tax, and if the employer ascertains the error after filing the return and within the applicable period of limitations on credit or refund, the employer shall repay or reimburse the employee in the amount of the overcollection prior to the expiration of such limitations period. However, this paragraph (a)(2) does not apply to the extent that, after reasonable efforts, the employer cannot locate the employee, or the employee does not provide the employer with the written statement required by § 31.6413(a)-1(a)(2)(iv). This paragraph (a)(2) has no application in any case in which an overcollection is made the subject of a claim by the employer for refund or credit under the procedure provided in § 31.6402(a)-2.

(ii) If an employer files a return for a return period on which Additional Medicare Tax under section 3101(b)(2)