IRM PROCEDURAL UPDATE

DATE: 05/26/2020

NUMBER: sbse-20-0520-0642

SUBJECT: Administrative Waivers $100,000 - Next Business Day Rules for NSO, SAR, and RSU Transactions

AFFECTED IRM(s)/SUBSECTION(s): 20.1.4.26.2

CHANGE(s):

IRM 20.1.4.26.2(5) Expanded instruction to NSO, stock-settled SAR, and stock-settled RSU. Clarified time frame for settlement.

5. 26 CFR 31.6302-1(c) requires an employer to deposit employment taxes on the next business day after $100,000 or more of employment taxes have been accumulated during the deposit period. The employer's employment taxes are accumulated for determining the $100,000 next-day deposit obligation once the liability incurs; the employee's employment taxes are accumulated once they are withheld. See Treas. Reg. § 31.6302-1(e) and Rev. Rul. 75-191.

    a. Consistent with IRC 83 and the employment tax treatment of most forms of non-cash compensation, the employer becomes liable for its share of employment taxes and must withhold the employee's employment taxes (income tax withholding and employee share of FICA taxes) at the time that a nonstatutory stock option (NSO) or stock appreciation right settled in stock (stock-settled SAR) is exercised or when an employer initiates payment of a restricted stock unit settled in stock (stock-settled RSU). See GLAM 2020-004.

    b. The Service allows for an administrative waiver of the FTD penalty in certain circumstances where the FTD penalty is asserted on a $100,000 next-day deposit obligation of employment taxes arising from the exercise of a NSO, the exercise of a stock-settled SAR, or payment of a stock-settled RSU within a deposit period. Pending further guidance, consult Counsel if an employer asserts that the deposit obligation applied at a different date to the employee's employment taxes because they were not withheld.

    c. To figure the amount of penalty that may be abated due to the administrative waiver, the penalty must be recalculated on the $100,000 next-day deposit obligation (arising from the income/wages inclusion with respect to a NSO, stock-settled SAR or stock-settled RSU) using the settlement date of the NSO, stock-settled SAR or

stock-settled RSU as the liability incurred date for determining the $100,000 next-day deposit obligation.

d. In the case of a NSO or stock-settled SAR, the taxpayer must provide the exercise date and settlement date prior to consideration. In the case of a stock-settled RSU, the taxpayer must provide the payment initiation date and settlement date prior to consideration. Accept the settlement date provided when settlement occurred within two business days of: (i) the exercise date for a NSO or stock-settled SAR or, (ii) the payment initiation date for a stock-settled RSU. Otherwise, use the second business day after the exercise date or payment initiation date, as applicable, if the settlement date occurred more than 2 business days after the exercise date or payment initiation date.

e. Command code FTDPN can be used to recalculate the FTD penalty figured on the $100,000 next-day deposit obligation (arising from the income/wages inclusion with respect to a NSO, stock-settled SAR or stock-settled RSU) using the settlement date of the NSO, stock-settled SAR, or stock-settled RSU as the liability incurred date. In order to correctly recalculate the FTD penalty using CC FTDPN, two separate penalty calculations must be initiated and combined per the following steps:

FTD Penalty Recalculation	
Steps	**Action**
(1) From the FTDPN liability screen,	a. Remove the cumulative daily liability amount(s) within the deposit period that created the $100,000 next-day deposit obligation arising from a NSO, stock-settled SAR, or stock-settled RSU. b. Move the curser to the last liability listed for the quarter and transmit (Page Up).
(2) Page over to the FTDPN credit screen,	a. Remove the corresponding deposit(s) designated for the liability amount(s) removed in (1) above. b. Move the curser after the last deposit listed on the credit screen and transmit (Page Up) for the penalty result. c. Add the resulting penalty amount to the second penalty computation amount figured in (3) and (4) below:
(3) Using the blank liability	a. Combine the liability amount(s)

screen accessed through FTDPNA (or FTDPNG if the settlement date used for the recomputation is for a date in the subsequent quarter),	removed in (1) above. b. Enter the combined amount as a single liability incurred on the settlement date of the NSO, stock-settled SAR, or stock-settled RSU provided by the taxpayer. **NOTE:** The time frame for the settlement date is restricted to no later than the two days after the exercise date of the NSO or stock-settled SAR or two days after the payment initiation date for a stock-settled RSU.
(4) Page to the credit screen,	a. Overlay the transaction code of the first credit (to remove all credits on the page) with NNN and transmit. b. Page to the credit screen and enter ONLY the deposit amounts applicable to the liability amounts entered in (3). c. Move the curser after the last deposit listed on the credit screen and transmit (Page Up) for the penalty result. d. Add the resulting penalty amount to the first penalty computation arrived at from (1) and (2) above.
(5) Using PRC 043 (Administrative Waiver) in the fourth position of the adjustment document,	Abate the difference between the assessed penalty and the recalculated penalty amount arrived at in (4) above.