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**From:**

**Sent:** Monday, March 09, 2009 12:41:54 PM

**To:**

**Cc:**

**Subject:** Your Request for Assistance

In consultation with the Counsel experts on sections 6302 and 7503, we conclude that the Service is correct in not allowing the day after Thanksgiving to be excepted from the calculation of FTD due dates.

By way of background, section 6302 governs the mode or time of collection. The due dates for federal tax deposit obligations generally are established by legislative regulations promulgated pursuant to the authority of section 6302(a). There are numerous Treasury regulations promulgated pursuant to the authority provided in section 6302 that govern a wide array of disparate topics. Indeed, there are different employment taxes and collection of income tax at the source regulation sections (Part 31) governing FICA and withheld income taxes, FUTA taxes, nonpayroll payments, and other employment taxes, and each of which have differing regimes under which the due dates are calculated. You have not identified a particular type of tax (or associated FTD obligation). Therefore we cannot engage in a detailed analysis of a specific regulatory regime. However, for illustration purposes, we will focus our analysis on current Federal Insurance Contributions Act (FICA) deposit obligations addressed in Treasury regulation section 301.6302-1.

There are different deposit rules even under the current FICA deposit regime, generally based upon the aggregate amount of employment taxes reported during look-back period. Generally, the rules contain exceptions for non-banking days. Accordingly, non-banking days are excepted from the calculation of FTD due dates. Banks are open on the day after Thanksgiving in California, and thus, it cannot be considered a non-banking day. This determination is made independently from any consideration of state holidays.

Revenue Ruling 66-230, 1966-2 C.B. 494 does not import an analysis of state holidays into this calculation. First, the ruling by its terms is obsolete, because the cited regulation under investigation no longer exists and the cited deposit method ("semi-monthly") no longer exists. Second, the ruling does not hold that state holidays would be excepted from the calculation of FTD due dates. Instead, it opined on the definition of the term "banking days" by excluding certain local banking holidays (e.g., holidays observed by authorized commercial banks).

Accordingly, the ruling is inapposite to the question of whether state holidays are excludable.

Section 7503 allows the taxpayer to extend a due date to account for a "legal holiday." For this purpose, it defines the term "legal holiday" to include a

legal holiday in the District of Columbia and, in certain cases, also some Statewide legal holidays. The day after Thanksgiving is not a statewide legal holiday in California under the California Government Code, notwithstanding whether it is a judicial holiday for other purposes, nor is it a legal holiday in the District of Columbia.