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**From:** [REDACTED]  
**Sent:** Tuesday, May 16, 2017 1:16:57 PM  
**To:** [REDACTED]  
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**Subject:** Interest-free adjustments & Form 2504-AD

In response to your question – *when is the last day full payment must be made before interest free no longer applies?* - here is the relevant text on interest-free adjustments applicable when Form 2504-AD is submitted:

An error is ascertained when the employer has sufficient knowledge of the error to be able to correct it. Such knowledge may be obtained in the course of an examination. In an agreed case, this is when the employer submits one of the Form 2504 series agreements.

**Rev. Rul. 2009-39**, 2009-52, I.R.B 951, [www.irs.gov/irb/2009-52\\_IRB/ar14.html](http://www.irs.gov/irb/2009-52_IRB/ar14.html) provides:

Section 31.6205-1(a)(7) provides that agreement forms, such as Form 2504, "Agreement and Collection of Additional Tax and Acceptance of Overassessment (Excise or Employment Tax)," which are used in the context of an examination or appeals process, constitute adjusted returns.

Section 31.6205-1(c) provides similar rules for correcting underpayments of ITW. However, an interest-free adjustment of ITW may only be made if the error is ascertained within the same calendar year that the wages to the employee were paid, unless: (1) the underpayment is attributable to an administrative error, (2) section 3509 (a relief provision to reduce employment tax liability in certain worker misclassification situations) applies to determine the amount of the underpayment, or (3) the adjustment is reported on a Form 2504, Form 2504-WC, "Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment in Worker Classification Cases (Employment Tax)," **or other agreement forms prescribed by the IRS (such as, Form 2504-AD**, "Excise or Employment Tax-Offer of Agreement to Assessment and Collection of Additional Tax and Offer of Acceptance of Overassessment," and Form 2504-S, "Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Including Section 530 Statement)").

**§ 31.6205-1 Adjustments of underpayments**

(a) In general.

(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.**

Thus, Forms 2504, 2504-WC, 2504-AD, and 2504-S constitute adjusted returns.

If one of the exceptions listed in paragraphs (a)(2) and (a)(6) of § 31.6205–1 is **not** applicable, submitting one of the Forms 2504 at the close of an examination or Appeals conference (and prior to the issuance of a notice and demand for payment) fulfills the requirements for correcting a return for purposes of the interest-free adjustment provisions of IRC 6205 and the regulations.

**§ 31.6205–1 Adjustments of underpayments.**

(a) In general. . . .

(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. . . .

(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 De-termination 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. . . .

**Full payment of the tax must be made at the time the signed agreement is submitted in order to receive complete interest-free treatment.**

**§ 31.6205–1 Adjustments of underpayments.**

**(b) Federal Insurance Contributions Act and Railroad Retirement Tax Act.**

(2) Error ascertained after return is filed.

(i) . . . 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).

**(c) Income tax required to be withheld from wages-**

(2) Error ascertained after return is filed. . . .

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).

**Rev. Rul. 2009-39**, 2009-52, I.R.B 951, [www.irs.gov/irb/2009-52\\_IRB/ar14.html](http://www.irs.gov/irb/2009-52_IRB/ar14.html) sets out examples for interest-free when Form 2504 is submitted:

**Situation 8:** In 2010, in the course of an employment tax examination, IRS determines that Employer Y underpaid FICA tax and ITW with respect to wages of its employees on its 2008 fourth quarter Form 941. Employer Y signs Form 2504 to agree to the assessment and submits it to the examiner, during the employment tax examination.

The determination by the IRS that Employer Y underpaid FICA tax and ITW on its 2008 fourth quarter Form 941 is treated as an error ascertained at the time Employer Y submits the signed Form 2504. Submitting a signed Form 2504 satisfies the requirement that an adjusted return be filed; therefore, Employer Y is entitled to an interest-free adjustment.

While the error was not ascertained in the same year that the wages were paid to the employees, the interest-free adjustment applies to both the FICA tax and ITW because the adjustment is reported on a signed Form 2504. In order for the adjustment to be entirely interest-free, Employer Y must pay the amount due when it submits the signed Form 2504. Otherwise, interest will accrue from the date Employer Y submits the signed Form 2504. Because an adjusted return (i.e., Form 2504) was filed, even if payment is not made until after receipt of notice and demand, Employer Y is nevertheless entitled to interest-free treatment up to the date Employer Y submits the signed Form 2504; however, interest will accrue from the date the signed Form 2504 is submitted until the date of payment.

**Situation 9:** The same facts exist as in situation (8), except that Employer Y does not agree with the examiner's determination and exercises its appeal rights. No agreement is reached in Appeals. An Appeals closing letter, dated November 3, 2010, is sent to Employer Y informing Employer Y that it will receive notice and demand for payment of tax and interest owed and that it has the right to contest the Appeals' determination in the U.S. District Court or the U.S. Court of Federal Claims if it files a refund claim and later sues for a refund. The determination by Appeals that Employer Y underpaid FICA tax and ITW on its 2008 fourth quarter Form 941 is treated as an error ascertained on November 3, 2010, the date of the Appeals closing letter. Because Employer Y does not submit a signed Form 2504, an adjusted return has not been filed. As a result, no interest-free adjustment has been made, and Employer Y owes the amount due plus interest accrued from the due date of the return for which the underpayment was made (i.e., January 31, 2009, the due date of the return for the 2008 fourth quarter Form 941). **However, if Employer Y submits a signed Form 2504 by the due date of the return for the return period in which the error was ascertained (i.e., January 31, 2011) and before receipt of notice and demand for payment, Employer Y is entitled to an interest-free adjustment.** Submitting a signed Form 2504 will not prevent Employer Y from filing a refund claim to make it possible to contest its liability in the U.S. District Court or the U.S. Court of Federal Claims.

If Employer Y does not submit a signed Form 2504 by January 31, 2011, but pays the amount due prior to receiving notice and demand, Employer Y has not made an interest-free adjustment, and Employer Y will owe interest accrued from the due date of the return for which the underpayment was made (i.e., from January 31, 2009).

If the taxpayer submits a signed Form 2504-AD but does not pay the tax at that time so that notice and demand for payment is issued, the taxpayer is still entitled to an interest-free adjustment, but **interest will be due from the date the Form 2504-AD was submitted until full payment is made.**