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Thank you for bringing this matter to our attention. Your initial inquiry was whether certain training materials were correct in stating that “[a]n employer CANNOT claim an adjustment for [Income Tax Withholding] and additional Medicare taxes after the close of the calendar year for the employee.” The training materials cite to § 31.6413(a)-2(c)(2).

In answering your question, it became clear that there is wide-spread confusion concerning the actions an employer must take by calendar year end and what actions are permitted after the calendar year end. The confusion is due in large part to the imprecise use of terms, including “claim” and “adjustment.” Of note, it is misleading to use the phrase “claim an adjustment” given that the claim process and the adjustment process are different.

The X forms (e.g., Form 941-X, Adjusted Employer’s QUARTERLY Federal Tax Return or Claim for Refund) are used by employers to make overpayment and underpayment adjustments to employment taxes or to claim refunds of overpaid employment taxes.

An employer cannot file a “claim” for income taxes except for administrative errors - in which the amount reported on Form 941, line 3 (Federal income tax withheld from wages, tips, and other compensation), does not agree with the amount the employer withheld. See §31.6414-1. But, the employer can file an “adjusted return” if the error is discovered in the same calendar year employer paid the wages and if the employer also repaid or reimbursed the employees in the same year. See §§31.6413(a)-2(c)(2)(i) and 31.6413(a)-1(b).

Similarly, an employer cannot file a “claim” for Additional Medicare Tax except for administrative errors – in which the amount reported on Form 941, line 5d (Taxable wages & tips subject to Additional Medicare Tax withholding), does not agree with the amount the employer withheld. See §31.6402(a)–2(a)(iii). But, the employer can file an “adjusted return” if the error is discovered in the same calendar year employer paid the wages and if the employer also repaid or reimbursed the employees in the same year. See §§31.6413(a)–1(a)(2)(ii) and 31.6413(a)–2(a)(1).

Rev. Rul. 2009-39 specifically addresses the situation in which there is an overpayment of income tax withholding (ITW) and the error is ascertained in the same year the wages were paid (i.e., before the calendar year end.)

Situation 2: Employer S timely filed its 2011 third quarter Form 941 on October 10, 2011, and timely paid all employment tax reported on the return. On December 2, 2011, Employer S ascertains that it overwithheld and overpaid ITW in the third quarter of 2011 and reported the overpayment on its 2011 third quarter Form 941. Employer S repays the overcollected amounts to its affected employees on December 29, 2011. Employer S files Form 941-X on January 6, 2012, to correct the overpayment using the adjustment process.

Because Employer S repaid its employees the amount of the overcollection of ITW in the same year that the wages were paid, Employer S may correct the overpayment of ITW using the adjustment process even though the adjusted return is filed in a year after the wages were paid. Employer S may not use the refund claim process to correct the error because the ITW was actually withheld from the employees’ wages.

As indicated in Situation 2, the employer is NOT required to file Form 941-X using the adjustment process by the end of the calendar year. However, the discovery of the error and the repayment/reimbursement must occur by the end of the calendar year.

Note: Additional Medicare Tax went into effect in 2013. Because Rev. Rul. 2009-39 was written in 2009, please keep in mind that there is no discussion of the rules for Additional Medicare Tax (which are different than the rules for social security and Medicare taxes).

Whether an employer may file a Form 941-X under the adjustment process after the calendar year end is dependent upon whether the employer discovered the withholding error and repaid or reimbursed the employee prior to the end of the calendar year.

We will continue to identify and revise training materials, publications, IRMs and other products with a view towards clarifying the inaccurate statements.