

## § 404.1267

school district reports was misplaced. If requested we would not waive interest on this State's late payment of contributions based upon its past record of late payments and because of the circumstances cited.

(e) *Due date is on a weekend, legal holiday or Federal nonworkday.* If the last day of the 30-day periods specified in paragraphs (b) and (d) of this section is on a weekend, legal holiday or Federal nonworkday, the State shall make the required deposit or request for waiver of payment of interest on the next Federal workday.

(Approved by the Office of Management and Budget under control number 0960-0425)

[53 FR 32976, Aug. 29, 1988, as amended at 66 FR 28836, May 25, 2001]

### § 404.1267 Failure to make timely payments—for wages paid prior to 1987.

If a State does not pay its contributions when due, the Commissioner has the authority under section 218(j) of the Act as it read prior to the enactment of Pub. L. 99-509 to deduct the amounts of the unpaid contributions plus interest at the rate prescribed from any amounts certified by her or him to the Secretary of the Treasury for payments to the State under any other provision of the Social Security Act. The Commissioner notifies the Secretary of the Treasury of the amounts deducted and requests that the amount be credited to the Trust Funds. Amounts deducted are considered paid to the State under the other provision of the Social Security Act.

[53 FR 32976, Aug. 29, 1988, as amended at 62 FR 38451, July 18, 1997]

HOW ERRORS IN REPORTS AND CONTRIBUTIONS ARE ADJUSTED—FOR WAGES PAID PRIOR TO 1987

### § 404.1270 Adjustments in general—for wages paid prior to 1987.

States have the opportunity to adjust errors in the payment of contributions. A State but not its political subdivisions is authorized to adjust errors in the underpayment of contributions. Similarly, the State shall file all claims for credits or refunds and SSA makes the credits and refunds only to the State. Generally, we do not refund contributions in cash to a State unless

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the State is not expected to have future liability for contributions under section 218 of the Act.

### § 404.1271 Adjustment of overpayment of contributions—for wages paid prior to 1987.

(a) *General.* If a State pays more than the correct amount of contributions, the State shall adjust the overpayment with the next contribution return filed on which the amount owed equals or exceeds the amount of the overpayment.

(b) *Overpayment due to overreporting of wages—(1) Report to file.* If the overpayment is due to the State's reporting more than the correct amount of wages paid to one or more employees during a reporting period and the overpayment is not adjusted under paragraph (a) of this section, the State shall file a report on the appropriate form showing:

(i) The corrected wage data as prescribed by SSA; and

(ii) The reason why the original reporting was incorrect.

(2) *Refund or credit of overpayment where section 218(e)(2) of the Act not applicable.* If:

(i) The State collected contributions from employees in excess of the amount of taxes that would have been required under section 3101 of the Internal Revenue Code; and

(ii) The State paid to the Secretary of the Treasury those contributions plus a matching amount in excess of the taxes which would have been required from an employer under section 3111 of the Code; and

(iii) The services of the employees in question would have constituted employment under section 3121(b) of the Code; and

(iv) Section 218(e)(2) of the Act as it read prior to the enactment of Pub. L. 99-509 does not apply (see § 404.1256(a)), then the State shall adjust the overpaid contributions under paragraph (b)(1) of this section. With its adjustment the State, where appropriate, shall include on the prescribed form a statement that the employees from whom the excess contributions were collected have not received nor expect to receive a refund of excess contributions under section 6413(c) of the Internal Revenue Code of 1954 (see

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§ 404.1275(b)). Generally, if the State does not include this statement with its adjustment request, we only refund or credit the State for up to one-half of the overpaid amount.

(c) *Refund or credit of overpayment where section 218(e)(2) of the Act applicable*—(1) *General*. If—

(i) The overreporting of the amount of wages paid to one or more employees during a reporting period(s) is due to a computation of contributions under § 404.1256 for a year or years prior to the year in which the agreement or modification providing for the computation is entered into, or

(ii) The overreporting is due to a failure to compute § 404.1256,

the State shall adjust the overpayment under paragraph (b)(1) of this section. An overpayment due to overreported wages which does not result from the computation of contributions or a failure to compute contributions under § 404.1256 shall also be adjusted by the State under paragraph (b)(1) of this section. If the adjustment of the overpayment results in an underreporting of wages for any employee by the State or any political subdivision, the State shall include with the report adjusting the overpayment a report adjusting each underreporting. If the adjustment of the overpayment does not result in an underreporting of wages for any employee by the State or any political subdivision, the State shall include with the report adjusting the overpayment a statement that the adjustment of the overpayment does not result in any underreporting.

(2) *Amount of refund or credit*. If the State collects excess contributions from employees, the State's claim for refund or credit is limited to the overpaid amounts. (See § 404.1275 relating to adjustment of employee contributions.) If—

(i) The State collected the correct amount of contributions from employees based on the amount of wages reported and the Forms W-2 issued to the employees show only the amount of contributions actually collected, but the amount of wages reported is being adjusted downward, or

(ii) The State collects excess contributions from employees but Forms W-2 have not been issued for an amount

of wages which is being adjusted downward, the State may claim a refund or credit for the overpaid amounts. Where the State's claim for refund or credit is for the total overpaid amount, the adjustment report shall include a statement that excess contributions have not been collected from employees, or, where excess contributions have been collected, that Forms W-2 have not been issued and that, when issued, they will show the correct amount of employee contributions.

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[53 FR 32976, Aug. 29, 1988, as amended at 66 FR 28836, May 25, 2001]

### **§ 404.1272 Refund or recomputation of overpayments which are not adjustable—for wages paid prior to 1987.**

(a) *General*. If a State pays more than the correct amount of contributions or interest to the appropriate Federal Reserve bank or branch (see § 404.1262), and no adjustment in the amount of reported wages is necessary, that State may file a claim for refund or recomputation of the overpayment.

(b) *Form of claim*. No special form is required to make a claim for a refund or recomputation. If a credit is taken under § 404.1271, a claim is not required.

(c) *Proof of representative capacity*. If a report or return is made by an authorized official of the State who ceases to act in an official capacity and a claim for a refund is made by a successor official, the successor official must submit with the claim written evidence showing that he or she has the authority to make a claim for and receive a refund of any contributions paid by the former official. The written evidence is not necessary if the successor official has previously filed one or more reports or returns which contain her or his signature and official title.

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