

§ 404.1275

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§ 404.1275 Adjustment of employee contributions—for wages paid prior to 1987.

The amount of contributions a State deducts from an employee's remuneration for covered services, or any correction of that amount, is a matter between the employee and the State or political subdivision. The State shall show any correction of an employee's contribution on statements it furnishes the employee under § 404.1225 of this part. Where the State issues an employee a Form W-2 and then submits an overpayment adjustment but claims less than the total overpaid amount as a refund or credit, the State shall not correct the previously issued Form W-2 to reflect that adjustment.

[53 FR 32976, Aug. 29, 1988, as amended at 65 FR 16813, Mar. 30, 2000]

§ 404.1276 Reports and payments erroneously made to Internal Revenue Service—transfer of funds—for wages paid prior to 1987.

(a) *General.* In some instances, State or local governmental entities not covered under an agreement make reports and pay contributions to IRS under the Federal Insurance Contributions Act (FICA) procedures applicable to private employers in the mistaken belief that this provides Social Security coverage under section 218 of the Act for their employees. In other instances, entities which are covered under an agreement erroneously report to IRS, or a State or local government employee reports other employees to IRS or reports to IRS as a self-employed individual. Where these reports and payments are erroneously made to IRS, the State may correct the error and obtain coverage under its agreement as described in paragraphs (b) through (f) of this section.

(b) *Political subdivision not included in the State agreement.* We notify the State that if it desires coverage, it may be provided by either a regular modification or an error modification, depending on the circumstances (§§ 404.1215 and 404.1216). In most cases, the State may obtain coverage by a regular modification. If a regular modification cannot be used (e.g., State law does not permit the retroactive effective date which would be desired), the State may

use an error modification. The effective date of either modification depends on the facts of the situation being corrected.

(c) *Political subdivision included in the agreement.* If a political subdivision included in the agreement erroneously makes reports and payments under FICA procedures, the State must correct the reportings for periods not barred by the statute of limitations. If the covered entity reported both under the agreement and under FICA procedures, we notify IRS and make necessary corrections in the earnings records. We also advise the State that the entity which reported under FICA procedures should request a refund of payments erroneously made to IRS.

(d) *State and local government employees erroneously reported as employees of individual or as self-employed—(1) Covered entity.* If employees of a covered entity are erroneously reported as employees of an individual or as self-employed, we advise the State that the individual who made the reports should request a refund from IRS for periods not barred by the statute of limitations. We require the State to file correctional reports and returns for any periods open under the State and local statute of limitations.

(2) *Noncovered entity.* We advise the State that the individual who made the reports should request a refund from IRS for the periods not barred by the statute of limitations. If the State wishes to provide coverage, it must submit a modification as discussed in paragraph (b) of this section. If the State does not wish to provide coverage, we void the reports. Amounts reported for periods barred by the statute of limitations remain on the earnings records.

(e) *Filing wage reports and paying contributions.* Generally, the entity or individual that makes the erroneous reports and payments requests the refund from IRS for periods not barred by the statute of limitations. The State files the necessary reports with SSA and pays any contributions due. The reports shall conform to the coverage provided by the agreement to the extent permitted by the statute of limitations. The due date for these reports depends on whether original reports or

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adjustment reports are involved. Reports and contribution returns for the entire retroactive period of coverage provided by a regular or error modification are due 90 days after the date of execution of the modification. The time limitations for issuing assessments and credits or refunds extend from this due date. Thus, SSA may issue assessments or credits or refunds for periods barred to refund by IRS. The State may request that reports and payments for the IRS barred periods be considered made under the agreement as described in paragraph (f) of this section.

(f) *Use of transfer procedure.* In limited situations, the State may request that reports and payments the State or a political subdivision (but not an individual) erroneously made under FICA procedures and which have been posted to the employee's earnings record be considered made under the State's agreement. We use a transfer procedure to do this. The transfer procedure may be used only where

(1) The periods are open to assessment under the State and local statute of limitations;

(2) The erroneous reports to be transferred are posted to SSA's records;

(3) The periods are barred to refund under the IRS statute of limitations; and

(4) A refund is not obtained from IRS by the reporting entity.

HOW OVERPAYMENTS OF CONTRIBUTIONS ARE CREDITED OR REFUNDED—FOR WAGES PAID PRIOR TO 1987

§ 404.1280 Allowance of credits or refunds—for wages paid prior to 1987.

If a State pays more than the amount of contributions due under an agreement, SSA may allow the State, subject to the time limitations in § 404.1282 and the exceptions to the time limitations in § 404.1283, a credit or refund of the overpayment.

§ 404.1281 Credits or refunds for periods of time during which no liability exists—for wages paid prior to 1987.

If a State pays contributions for any period of time for which contributions are not due, but the State is liable for contributions for another period, we

credit the amount paid against the amount of contributions for which the State is liable. We refund any balance to the State.

§ 404.1282 Time limitations on credits or refunds—for wages paid prior to 1987.

(a) *General.* To get a credit or refund, a State must file a claim for a credit or refund of the overpaid amount with the Commissioner before the applicable time limitation expires. The State's claim for credit or refund is considered filed with the Commissioner when it is delivered or mailed to the Commissioner. Where the time limitation ends on a weekend, legal holiday or Federal nonworkday, we consider a claim timely filed if it is filed on the next Federal workday.

(b) *Time limitation.* Subject to the exceptions in § 404.1283, a State must file a claim for credit or refund of an overpayment before the end of the latest of the following time periods:

(1) 3 years, 3 months, and 15 days after the year in which the wages in question were paid or alleged to have been paid; or

(2) 3 years after the due date of the payment which included the overpayment; or

(3) 2 years after the overpayment was made to the Secretary of the Treasury.

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

§ 404.1283 Exceptions to the time limitations on credits or refunds—for wages paid prior to 1987.

(a)(1) *Extension by agreement.* The applicable time period described in § 404.1282 for filing a claim for credit for, or refund of, an overpayment may, before the expiration of such period, be extended for no more than 6 months by written agreement between the State and the Commissioner. The agreement must involve and identify a known issue or reporting error. It must also identify the periods involved, the time limitation which is being extended and the date to which it is being extended, and the coverage group(s) and position(s) or individual(s) to which the agreement applies. The extension of the period of limitation shall not become effective until the agreement is