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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 31****[TD 8959]****RIN 1545-AY21****Interest-Free Adjustments With Respect to Underpayments of Employment Taxes****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to interest-free adjustments with respect to underpayments of employment taxes. These final regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The final regulations affect employers that are the subject of IRS examinations involving determinations by the IRS that workers are employees for purposes of subtitle C or that the employers are not entitled to relief from employment taxes under section 530 of the Revenue Act of 1978.

**DATES:** *Effective Date:* These regulations are effective August 1, 2001.

*Applicability Date:* These regulations are applicable with respect to notices of determination issued on or after March 19, 2001. Interest will be computed under the rule in this regulation on any claims for refund of interest pending on January 17, 2001. No inference is intended that the rule set forth in these final regulations is not current law.

**FURTHER INFORMATION CONTACT:** Lynne Camillo (202) 622-6040 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains an amendment to the Employment Tax Regulations (26 CFR part 31) under section 6205. On January 17, 2001, the IRS published in the **Federal Register** (66 FR 3956) a notice of proposed rulemaking (REG-110374-00) under section 6205 of the Internal Revenue Code relating to interest-free adjustments of employment tax underpayments. The notice proposed to amend § 31.6205-1 of the employment tax regulations.

No written comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held. Accordingly, the

proposed regulations are adopted as final regulations.

Section 6205 allows employers that have paid less than the correct amount of employment taxes to make adjustments without interest, provided the error is reported and the taxes are paid by the last day for filing the return for the quarter in which the error was ascertained. However, no interest-free adjustments are permitted pursuant to section 6205 after receipt of notice and demand for payment thereof based upon an assessment. § 31.6205-1(a)(6).

The Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788), effective August 5, 1997, created new section 7436 of the Internal Revenue Code (Code), which provides the Tax Court with jurisdiction to review determinations by the IRS that workers are employees for purposes of subtitle C, or that the employer is not entitled to relief from employment taxes under section 530. Section 7436 resulted in a change in the way employment tax examinations involving worker classification and section 530 issues are conducted insofar as notice and demand for payment of an employment tax underpayment based upon an assessment cannot be made until after the taxpayer under examination receives notice of the IRS's determination and has been given an opportunity to file a petition in the Tax Court contesting such determination.

**Explanation of Provisions**

This document contains an amendment to the regulations under section 6205. The amendment clarifies the period for adjustments of employment tax underpayments without interest under section 6205 following the expansion of Tax Court review to certain employment tax determinations.

As a general rule, under section 6601, all taxpayers who fail to pay the full amount of a tax due under the Code must pay interest at the applicable rate on the unpaid amount from the last date prescribed for payment of the tax until the date the tax is paid. However, section 6205 allows employers that have paid less than the correct amount of certain employment taxes<sup>1</sup> with respect to any payment of wages or compensation to make adjustments to returns without interest pursuant to the

regulations. The employment tax regulations under section 6205 generally allow employers to make adjustments to returns without interest until the last day for filing the return for the quarter in which the error was ascertained. An error is ascertained when the employer has sufficient knowledge of the error to be able to correct it. § 31.6205-1(a)(4). Section 31.6205-1(a)(6) provides that no interest-free adjustments can be made after receipt of a statement of notice and demand for payment based upon an assessment.

In Revenue Ruling 75-464 (1975-2 C.B. 474), the IRS further clarified the time for adjustments under section 6205. The ruling clarifies that employers can still make interest-free adjustments where the underpayment is discovered during an audit or examination (i.e., where the employer has not independently ascertained the underpayment). The ruling sets forth situations illustrating when an error is ascertained with respect to returns under audit by the IRS. Under the facts in the revenue ruling, an error is ascertained when the employer signs an "Agreement to Adjustment and Collection of Additional Tax", Form 2504, either at the examination level or the appeals level, when the taxpayer pays the full amount due so as to file a refund claim (if paid prior to notice and demand), or at the conclusion of internal IRS appeal rights if no agreement is reached. Under the factual situations in Revenue Ruling 75-464, the employment taxes can be paid free of interest at the time the employer signs Agreement Form 2504 or at the time it pays the tax preparatory to filing a claim to contest the liability in court, after having exhausted all appeal rights within the IRS, provided the payment is made before the taxpayer receives notice and demand for payment.

The Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788), created new section 7436 of the Code which provides the Tax Court with jurisdiction to review determinations by the IRS that workers are employees for purposes of subtitle C of the Code, or that the organization for which services are performed is not entitled to relief from employment taxes under section 530. Section 7436(a) requires that the determination involve an actual controversy and that it be made as part of an examination. Subsequent to enactment of section 7436 of the Code, the IRS created a standard notice, the "Notice of Determination Concerning Worker Classification Under Section 7436" (notice of determination) to serve as the "determination" that is a prerequisite to invoking the Tax Court's

<sup>1</sup> Section 6205 applies to underpayments of taxes under the Federal Insurance Contributions Act (FICA), the Railroad Retirement Tax Act (RRTA), and income tax withholding. Section 6205 does not apply to underpayments of taxes under Federal Unemployment Tax Act (FUTA), as such underpayments are not subject to interest under section 6601(i).

jurisdiction under section 7436. Notice 98-43 (1998-33 I.R.B. 13).

Section 7436(d)(1) provides that the suspension of the limitations period for assessment in section 6503(a) applies in the same manner as if a notice of deficiency had been issued. Thus, pursuant to section 6503(a), the mailing of the notice of determination by certified or registered mail will suspend the statute of limitations for assessment of taxes attributable to the worker classification and section 530 issues. Generally, the statute of limitations for assessment of taxes attributable to the worker classification and section 530 issues is suspended for the 90-day period during which the taxpayer can begin a suit in Tax Court, plus an additional 60 days thereafter. Moreover, if the taxpayer does file a timely petition in the Tax Court, the statute of limitations for assessment of taxes attributable to the worker classification and section 530 issues is suspended under section 6503(a) during the Tax Court proceedings, and for sixty days after the Tax Court decision becomes final.

Current IRS guidance provides for interest-free adjustments under section 6205 prior to assessment and notice and demand. Because of the prohibition on assessment for cases pending in the Tax Court, this creates a potential for inconsistent application of interest depending upon whether an employer files a claim in the Tax Court or in another court of Federal jurisdiction. The legislative history of section 7436 shows no intent to create an advantage for taxpayers who choose to litigate their cases in Tax Court as opposed to another court of Federal jurisdiction. H.R. No. 105-148, 105th Cong., 1st Sess., at 639-640 (1997). Taxpayers who choose to petition the Tax Court under section 7436 still have the benefit of all of the inherent advantages of litigating in the Tax Court, including the ability to obtain judicial review without prior payment of the additional tax the IRS has determined to be due.

Judicial and administrative precedents provide that an error is ascertained for purposes of section 6205 (ending the period for interest-free adjustments) when the taxpayer has exhausted all internal appeal rights with the IRS. *Eastern Investment Corp. v. United States*, 49 F. 3d 651 (10th Cir. 1995); Rev. Rul. 75-464 (1975-2 C.B. 474). In the context of refund litigation, where a taxpayer whose erroneous underpayment of employment taxes is discovered during an examination pays only the required divisible portion of employment tax prior to filing a claim for refund in order to satisfy the

jurisdictional requirements for filing suit in district court, interest continues to accrue on the unpaid portion of employment tax from the date upon which the tax is assessed after the taxpayer has exhausted all appeal rights within the IRS until the date such tax is paid. See *Eastern Investment Corp.*, *supra* (rejecting taxpayer's argument that the error could not have been "ascertained" until a decision was made by the court and the liability was no longer being contested). Moreover, in Tax Court deficiency proceedings that do not involve employment taxes, unless the taxpayer makes a deposit to stop the running of interest, interest continues to accrue on the deficiency during the course of the Tax Court proceeding. Rev. Rul. 56-501 (1956-2 C.B. 954).

In employment tax examinations that do not involve worker classification or section 530 issues, the taxpayer has exhausted all internal appeal rights by the time a notice and demand for payment thereof based upon an assessment is received. Similarly, in employment tax examinations involving worker classification or section 530 issues, the taxpayer has already had the benefit of all of the same internal appeal rights by the time a notice of determination is received.

These final regulations provide that, in employment tax examinations involving worker classification or section 530 issues, as in other types of employment tax examinations, the error is ascertained for purposes of section 6205 when the employer has exhausted all internal appeals within the IRS. The fact that notice and demand for payment based upon an assessment cannot be made in cases involving worker classification and section 530 issues until the suspension of the statute of limitations is lifted, following issuance of a notice of determination, does not result in an extension of the period during which interest-free adjustments can be made under section 6205. Accordingly, in order to clarify that the error is ascertained for purposes of section 6205 once a taxpayer has exhausted all internal appeal rights with the IRS, the existing regulations are hereby modified by prohibiting interest-free adjustments after receipt of the notice of determination.

However, if, prior to receipt of a notice of determination, a taxpayer makes a remittance which is equal to the amount of the proposed liability, the IRS considers the remittance a payment and assesses it. Rev. Proc. 84-58 (1984-2 C.B. 501). In such a situation, no notice of determination would be sent to the taxpayer. If a taxpayer wants to stop

the running of interest and contest the adjustment in the Tax Court, the taxpayer may make a remittance, designating it in writing as a deposit in the nature of a cash bond. If the taxpayer makes such a deposit, the IRS does not consider the remittance a payment. Id. at § 4.02. The deposit stops the running of interest and, if the taxpayer does not waive the restrictions on assessment, the IRS will send the taxpayer a notice of determination, thus permitting the taxpayer the option of Tax Court review.

In order to provide a mechanism for taxpayers to make a remittance to stop the accrual of interest, yet still receive a notice of determination and retain the right to petition the Tax Court, these final regulations further modify the existing regulations to provide that, prior to receipt of a notice of determination, the taxpayer may, in lieu of making a payment, make a cash bond deposit which 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.

### Special Analyses

It has been determined that this final regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of this final regulation is Lynne Camillo, Office of the Assistant Chief Counsel (Exempt Organizations/Employment Tax/Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping

requirements, Social Security, Unemployment compensation.

### Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

### PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

**Paragraph 1.** The authority for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*.

**Par. 2.** In § 31.6205–1, paragraph (a)(6) is revised to read as follows:

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

(a) \* \* \*

(6) No underpayment shall be reported pursuant to this section after the earlier of the following—

(i) Receipt from the Director of notice and demand for payment thereof based upon an assessment; or

(ii) Receipt from the Director of a Notice of Determination Concerning Worker Classification Under Section 7436 (Notice of Determination). (Prior to receipt of a Notice of Determination, the taxpayer may, in lieu of making a payment, make a cash bond deposit which 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).

\* \* \* \* \*

**Robert E. Wenzel,**  
Deputy Commissioner of Internal Revenue.

Approved: July 20, 2001.

**Mark A. Weinberger,**  
Assistant Secretary of the Treasury.

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### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[OPP–301150; FRL–6792–2]

RIN 2070–AB78

#### Carfentrazone-ethyl; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for combined residues of carfentrazone-ethyl and its metabolite in or on hop, dried cones.

This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on hops. This regulation establishes a maximum permissible level for residues of carfentrazone-ethyl in this food commodity. The tolerance will expire and is revoked on June 30, 2003.

**DATES:** This regulation is effective August 1, 2001. Objections and requests for hearings, identified by docket control number OPP–301150 must be received by EPA on or before October 1, 2001.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301150 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; and e-mail address: madden.barbara@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action

to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

###### B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select “Laws and Regulations,” “Regulations and Proposed Rules,” and then look up the entry for this document under the “**Federal Register—Environmental Documents.**” You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html), a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301150. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

##### II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(1)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the herbicide carfentrazone-ethyl, ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate and carfentrazone-ethyl chloropropionic acid (alpha,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-