

# Order of Applying Federal Tax Deposits

## Notice 98-14

### PURPOSE

This notice provides an interim procedure that taxpayers may use to request abatement of the failure-to-deposit penalty imposed by § 6656 of the Internal Revenue Code when the manner in which the Internal Revenue Service applies deposits, as set forth in Rev. Proc. 90-58, 1990-2 C.B. 642, produces multiple failure-to-deposit penalties as a result of a single failure to deposit.

### BACKGROUND

Section 6656 provides that in the case of any failure by any person to deposit (as required by the Code or regulations) on the date prescribed therefor any amount of tax in a government depository, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty equal to the applicable percentage of the amount of the underpayment. The penalty ranges from 2 to 15 percent depending upon the lateness of the deposit.

Rev. Proc. 90-58, effective for deposit liability periods beginning after March 31, 1991, provides that deposits will be applied in date-made order against deposit liabilities in due-date order. Thus, a deposit will be applied first to satisfy the oldest past due underdeposits within the same return period. Other credits to the taxpayer's account, such as an overpayment from the previous return period, will be similarly applied.

Rev. Proc. 90-58 was issued as a result of changes made to the failure-to-deposit penalty under § 6656 by the Revenue Reconciliation Act of 1989, Pub. L. No. 101-239, 1990-1 C.B. 210, under which the penalty changed from a flat-rate 10 percent penalty to a time-sensitive penalty.

The rationale underlying Rev. Proc. 90-58 is that it is generally in the best interests of depositors that strive to be compliant to have the oldest deposit liability

in the return period satisfied first, thus preventing the penalty rate on that underdeposit from escalating. However, if a depositor inadvertently misses a deposit early in a return period but makes all succeeding deposits on a timely basis, the result can be multiple failure-to-deposit penalties.

### INTERIM RELIEF PROCEDURE

Any taxpayer that receives multiple failure-to-deposit penalty notices as a result of a single failure to deposit, may call the toll-free number shown on the penalty notice. The Service will, if it deems appropriate, reduce the multiple penalty to the penalty amount due on the missed deposit with respect to return periods beginning after December 31, 1997.

### COMMENTS INVITED

The Service intends to provide more specific published guidance on this matter, and requests comments on the methodology this guidance should set forth. Comments should be submitted by April 30, 1998 to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, Attn: CC:DOM:CORP:R (IT&A Branch 4), Room 5226. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: Courier's Desk, Internal Revenue Service, 1111 Constitution Ave, NW, Washington, DC, Attn: CC:DOM:CORP:R (IT&A Branch 4), Room 5226. Alternatively, taxpayers may submit comments electronically at

**[http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html)**

(the Service's internet site). All comments submitted will be available for public inspection and copying.

### DRAFTING INFORMATION

The principal author of this notice is Vincent G. Surabian of the Office of the Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Mr. Surabian at (202) 622-4940 (not a toll-free call).