

Mitigation of failure to deposit penalty

Dear Reader:

You recently inquired about how you might be able to minimize penalties for an insufficient deposit that you just discovered you had made. As you know, the penalty for a failure to timely deposit is a time-sensitive penalty, ranging from 2% to 15% depending on the lateness of the deposit. IRS applies a deposit to the most recently ended deposit period within the specified tax period to which the deposit relates. If you, as an employer, miss or make an insufficient deposit, later deposits may be applied to satisfy the shortfall for the earlier period, if you make these deposits before the end of the deposit period to which they are intended to relate. If you are not aware of how your deposits are being applied, multiple penalties can result as payments that would otherwise be sufficient to satisfy current liabilities are applied to satisfy earlier shortfalls. As a result, inadvertently missing one deposit early in a return period can lead to multiple failure-to-deposit penalties, even where all your succeeding deposits were timely made.

However, an elective provision can be used to mitigate the impact of multiple failure-to-deposit penalties in this situation. Specifically, you, as a depositor, are allowed to designate the period to which a deposit is to be applied. Accordingly, you could reduce the amount of penalty that you have to pay by limiting the failure-to-deposit penalty to the particular missed deposit and eliminating later penalties.

To be effective, a designation of a deposit period under this provision must be within the 90-day period beginning on the date of an IRS notice that a failure to deposit penalty has been imposed for the tax period to which the deposit relates. The designation can be made by calling the toll-free number shown on the notice or by writing to the Accounts Management Unit at IRS.

Do not hesitate to contact me to discuss this mitigation provision if you think it might apply to your particular situation.

