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IRS Corrects Cause of Erroneous Notices for 'Missing' Schedule B

The IRS is establishing internal procedures to prevent erroneous notices of "missing" Schedules B, and these new methods will be in place in time for the processing of third quarter 2009 Forms 941, according to Shelley Dockstader, a senior tax analyst in IRS's Communications, Liaison, and Disclosure Division.

Meanwhile, employers that received these notices in error must reply to the IRS by signing the notice and returning it with a copy of Schedule B, Dockstader explained. Anyone who received notices relating to multiple employer identification numbers must sign and return each notice (as opposed to preparing a list of the EINs), along with the relevant Schedules B. IRS apologizes for the inconvenience, she added.

APA prompted IRS's focus on the problem

The IRS received documentation of the widespread nature of this problem from the American Payroll Association, in the form of lists of EINs and the calendar quarters for which those EINs received IRS Notice CP 207, *Proposed FTD Penalty and Request for Correct Information*, despite the fact that they had submitted Schedule B, *Report of Tax Liability for Semiweekly Schedule Depositors*, with Form 941, *Employer's Quarterly Federal Tax Return*.

Note: After learning of the problem, the APA requested that members who had received an erroneous CP 207 send their EIN and affected quarter to APA's government relations office (see "Inside Washington" for September). Now that the problem is

solved, members no longer need to send this information.

Between the data provided by APA members and the explanation from the IRS, it was determined that thousands of employers received mistaken notices for fourth quarter 2008, first quarter 2009, and second quarter 2009. However, this was not due to a problem with any payroll service provider or tax software, the IRS asserts.

IRS responded swiftly

The IRS was developing a new process to prevent these mistaken notices, and that process had been scheduled to take effect in 2011. After learning of the scope of this problem and the burden it was causing, however, the Service reallocated resources so it could be implemented this year. Among other things, the new process includes an internal review before a CP 207 is automatically sent to an employer.

CP 207

The IRS sends a CP 207 to propose a federal tax deposit penalty because it can't determine if the employer's deposits were on time and in sufficient amounts. The IRS can't make the determination because, according to the CP 207, the "Record of Federal Tax Liability section [in this case, Schedule B] of the recipient's tax return was missing, incomplete, illegible, or showed a tax liability that didn't equal the taxes shown on the return." The CP 207 requests another Schedule B so the IRS can finish processing the tax return. ■

SSA: No Immediate Plans to Send No-Match Letters

The Social Security Administration has no immediate plans to resume sending no-match letters to employers. "We will work quickly to make a decision after resolution of the pending litigation," announced Sam Foster, Director of the Office of Earnings and Program Integrity Policy within SSA's Office of Income Security Programs.

No-match letters inform employers about Forms W-2 they have submitted with names and social security numbers that do not correspond to SSA records.

The APA regularly asks the SSA about this, and we have been particularly interested ever since the Department of Homeland Security announced its intention in July to rescind its No-Match Rule (see PAYROLL CURRENTLY, Issue Nos. 14 and 16, Vol. 17). That rule had prompted a lawsuit which resulted in a preliminary injunction in 2007, preventing DHS from implementing it and SSA from sending its letters (see PAYROLL CURRENTLY, Issue No. 22, Vol. 15). We wondered whether the ebb of the rule would allow the flow of the letters.

Find your no-matches online

Meanwhile, you can learn about and correct your no-matches

on SSA's Business Services Online (BSO) website. "We offer a free online service called *View Name and Social Security Number Errors*, which allows employers to view and correct their no-matches," Foster told APA. "This service, available through our BSO to employers that submit electronic wage reports, lets employers view all no-matches a day to a few weeks after submitting the wage report." He compared that to the months it normally took to issue no-match letters. "Through the service, employers can also create and submit a corrected wage report," Foster concluded.

View Name and Social Security Number Errors is listed in BSO's Suite of Services at www.ssa.gov/bsa/services.htm. To use this feature, you'll have to request an activation code, just as you would in order to verify names and SSNs via BSO. More information on activation codes is available in the BSO Handbook at www.ssa.gov/employer/bsobnew.htm#access.

SSA still sends certain letters

Meanwhile, the SSA does send letters to individuals when a W-2 is received with their SSN but someone else's name. This allows the individual to investigate whether identity theft is taking place.

The SSA also sends letters to employers that have submitted W-2s with SSNs that belong to either a deceased person or someone the SSA assumes is too young to be employed. Those SSNs can also be prime targets for identity theft, because the person to whom it was actually assigned (or their survivors or parents, as applicable) is probably not using it or watching for activity associated with it.

Why DHS's rule caused a lawsuit

The SSA last sent no-match letters in 2006. In 2007, DHS issued a final rule that would have required employers receiving no-match letters to perform multiple steps in order to establish

that they did not have "constructive knowledge" that an employee named in a no-match letter was not authorized to work in the United States (see [PAYROLL CURRENTLY, Issue No. 17, Vol. 15](#)).

In 2007, the penalty for knowingly employing an unauthorized worker could go as high as \$11,000. Several unions and business groups were concerned that employers might just fire their no-match employees rather than deal with the procedures in DHS's rule, and they filed a lawsuit against DHS. The court granted a preliminary injunction against DHS's rule and SSA's letters, but no date has ever been set for a trial to determine if the injunction should be permanent. ■

APA Recommends Suspension of Enforcement of Cell Phone Taxation

In response to IRS Notice 2009-46, which presented proposals for simplifying the methods by which employers must value and tax the personal use of cell phones and similar communication devices they provide their employees, the American Payroll Association recommended that the IRS suspend its enforcement efforts in this area.

We also made suggestions regarding the IRS's proposed valuation methods, but pointed out that there are bills in Congress that would eliminate this taxation and that IRS Commissioner Douglas Shulman has encouraged Congress to enact this legislation. "A cell phone is not the rare perk it may have once been, and the incremental cost for each use of a cell phone is not as high or as simply calculated as it used to be. Many cell phones are under calling plans under which an employee's personal use may not create any additional cost. While we recognize that value, not cost, is the driving force in determining the amount to include in wages, the fact that there

is not a marginal cost associated with each personal use makes the valuation of such personal use all the more difficult.

"In today's business world, more and more employers need to be able to reach their employees at any time during business hours (and perhaps during off-hours), and more employees need to be able to communicate with business contacts and access business-related data at any time. The need for such communication often arises when an employee is traveling or at a work location without typical land-line-based telephone service (such as a construction site).

"In addition, no matter the simplified substantiation method that may ultimately be determined, employers and their employees will still have a significant burden in performing the steps required to substantiate business use."

The IRS notice and APA's comments may be found at www.americanpayroll.org/government/. ■

GATF Immigration Subcommittee Recommends Improvements to I-9 Form and Handbook

One of the goals of the Immigration Subcommittee of the APA Government Affairs Task Force is to suggest improvements to the forms, publications, and websites of U.S. Citizenship and Immigration Services. The subcommittee recently made recommendations concerning Form I-9, Publication M-274 (*Handbook for Employers*), the E-Verify Manual, and two sets of Frequently Asked Questions on the USCIS website.

Here are some of the suggestions for the I-9 Form and Handbook.

- **Form I-9 needs a clearer overall appearance.** There is often confusion about which parts are completed by the employer and which by the employee. A better demarcation or perhaps shading of the different sections would be helpful.

- **SSN should be required on all Forms I-9 (Section 1).** Currently, the employee must provide his or her social security number on the I-9 only if the employer uses the E-Verify system. Since the SSN is a unique identifier, it would be helpful to have it recorded on all I-9s, as it is possible to have multiple employees with the same name. Without the SSN, it can be difficult to determine to which worker the I-9 pertains, which can make follow-up tasks (such as reverification, when necessary) more difficult.

- **List B document restriction (Section 2).** It should state that any employee who works at an E-Verify worksite and who submits a List B document must submit one containing the employee's photo.

- **Employment date must be defined on Form I-9 (Section 2).** For nearly all purposes, employers consider the "employment

date" to be the first day the employee performed services for pay, but that is not correct in this context. For I-9 purposes, the employment date is the earlier of the day the form is completed or the day the employee first performed services for pay. For example, the I-9 may be completed by the employee and employer as soon as a job offer is accepted, which may be well before the employee actually starts working. The attestation of the employment date is in the past tense (... the employee began employment on [date] ..."). So, in such an example, it would be improper to use the first day of work as the employment date, because it is impossible to attest to the occurrence of a future event.

- **A location for the E-Verify case verification number.** The case verification number is a unique number given by the E-Verify system to each query. Employers that use E-Verify are required to either record the case verification number on the I-9 or print the Case Details page from the E-Verify system and store it with the I-9. For employers that want to record the number on the I-9, there is no space allotted for this.

- **M-274 needs a friendlier format.** It should be organized in a bullet or checklist format, as opposed to the current long paragraphs, to make it more likely that employers will turn to it and that they will find the information they need.

- **Move M-274 Q/A content into the appropriate sections.** Currently, there is a section of questions and answers at the end of the handbook. It would be better to place each Q/A in the section of the handbook to which it pertains. ■