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# PAYROLL CURRENTLY

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## APA Members Report Erroneous IRS Notices for 'Missing' Schedule B

If you are a paper filer and you received a notice from the IRS saying they didn't get your Schedule B, but you are certain you sent it with your Form 941, you are not alone. Several APA members recently received IRS Notice CP 207, *Proposed FTD Penalty and Request for Correct Information*, for fourth quarter 2008, first quarter 2009, and/or second quarter 2009.

The APA has brought this matter to the IRS's attention, and the IRS is now working to discover the root of the problem. Meanwhile, an employer in receipt of a CP 207 is advised that it must respond to the notice and must submit its Schedule B, *Report of Tax Liability for Semiweekly Schedule Depositors*, even if it already did so with the original filing of its Form 941, *Employer's Quarterly Federal Tax Return*.

### Tell APA if this happened to you

If you received what seems to you to be an erroneous Notice CP 207, please send the below items to Scott Mezistrano, CPP, APA Senior Manager of Government Relations, at [smezistrano@americanpayroll.org](mailto:smezistrano@americanpayroll.org). Doing so will help the IRS research the problem, establish a pattern, and perhaps avoid the problem in the future.

- A list of the affected EINs and the calendar quarters for which each received the IRS notice,
- Any information about the software used to print your Schedule B, and
- Your name, phone number, and e-mail address (so the IRS can contact you to gather more information, if necessary).

### Why is the CP 207 important?

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. The complete text of Notice CP 207 is available at [www.irs.gov/individuals/article/0,,id=125202,00.html](http://www.irs.gov/individuals/article/0,,id=125202,00.html).

### The IRS is working on the problem

The IRS has told APA that the problem with the "missing" forms may be that they don't meet the substitute form specifications in Publication 4436, *General Rules and Specifications for Substitute Form 941 and Schedule B (Form 941)* ([www.irs.gov/pub/irs-pdf/p4436.pdf](http://www.irs.gov/pub/irs-pdf/p4436.pdf)). In that case, the IRS's scanning equipment might not capture the data correctly.

The IRS has found that, of the employers whose complaints have been passed on by the APA, some are using the same tax-form software. However, the IRS feels that if there were a problem with that software, which it knows to be very popular, then this problem would be much more widespread than is indicated by the number of Notices CP 207 that have been issued.

The IRS has advised APA that it is working on the problem and, in case it should occur again, is developing a better process to handle the situation. Instead of automatically sending a CP 207 to an employer, the IRS plans to review this type of case internally first. The new process is currently scheduled to take effect in 2011.

### How to explain this to clients

In response to a payroll service provider who was concerned about restoring the confidence of clients that received this notice in successive quarters, the IRS advised that a client could be told to call the IRS at 800-829-1040. ■

## IRS Receptive to Recommendations of APA Government Affairs Task Force

The Federal Tax Forms and Publications Subcommittee of the APA Government Affairs Task Force (GATF) has submitted 27 pages of recommendations to the IRS toward the goal of making their products easier to understand and administer.

The IRS was very receptive to our recommendations, because we have the perspective of the audience they are trying to reach. Look for a report on their written responses, which are expected soon, in a future edition of "Inside Washington."

### Recommendations come from you

The suggestions were written by APA members who serve on the Federal Tax Forms and Publications Subcommittee of the GATF. This subcommittee is chaired by Nora Daly, CPP, Senior Product Manager, U.S. Legislation, Oracle USA. Read all our recommendations at [www.americanpayroll.org/government/government-019](http://www.americanpayroll.org/government/government-019).

We're always looking for new ideas, and your input is

welcome. To make a recommendation:

1. Identify the form, form instruction, or publication.
2. Specify the line number, box number, page, or section.
3. Explain the current problem (what burden, confusion, or noncompliance does it create?).
4. Recommend a solution to the problem (e.g., adding or removing a line on a form, revising the text of a form's instructions or of a publication).
5. Explain the benefit of the solution to the government, employers, and/or individual taxpayers.
6. Send to [smezistrano@americanpayroll.org](mailto:smezistrano@americanpayroll.org).

Remember that this committee does not seek to change the law or regulations, but the publications that explain those rules, or the forms/instructions through which those rules are implemented.

#### **Earlier issuance of Forms W-4 and W-5**

Last year, we implored the IRS to issue Notice 1036, *Early Release Copies of New Wage Withholding and Advance Earned Income Credit Payment Tables*, earlier in 2008 than they did in 2007. The release date seemed to be creeping later into the fall each year until some employers were not getting it in time to reprogram their systems before the first payroll of the new year. We succeeded in getting IRS to issue Notice 1036 in November 2008, compared with December in 2007, because we agreed that employers don't need advance copies of the wage bracket tables, so long as they have the percentage method tables.

This year, we asked whether any similar shortcuts can be found for Forms W-4 and W-5, which also have been coming out later and later. Employees in some companies cannot complete a W-5 in time for the first payroll of the new year and miss out on a portion of the advance payment of the Earned Income Credit to which they are entitled.

#### **Validity of a fill-in form saved to a hard drive**

If an employer completes a fill-in form on the IRS website, saves it to a computer hard drive, and prints, signs, and mails a copy to IRS, will the copy saved on the hard drive (without a signature) serve as a valid copy if the employer is audited?

We discussed with the IRS that the fact that a form is on the hard drive doesn't mean that it is the version of the form that was actually submitted to the IRS, if, in fact, any form was submitted to the IRS. On the other hand, having a paper copy of a signed form doesn't prove that it is the version of the form sent to the IRS either.

We suggested that the instructions for this and all other fill-in forms at the IRS fill-in forms web page ([www.irs.gov/formspubs/article/0,,id=98121,00.html](http://www.irs.gov/formspubs/article/0,,id=98121,00.html)) should address this question.

#### **NQDC – taxation and reporting of distributions after death**

If an employee was entitled to distributions of nonqualified deferred compensation (NQDC), but he is deceased and the payments are being made to his beneficiary, what are the taxation and reporting requirements? Employers would be inclined to report them like wages paid to deceased employees' beneficiaries, since NQDC distributions to living employees, just like wages, are reported on Form W-2 in Box 1. They would also be taxed for FICA if they haven't been taken into account for that purpose in an earlier year. If the employee is deceased, they would then logically be reported to the beneficiary on

Form 1099-MISC. However:

- The W-2 instructions (page 11) say to report such distributions on Form 1099-R.
- The 1099-R instructions (page 1) say that such distributions are no longer reported on 1099-R, but on 1099-MISC.
- The 1099-MISC instructions (page 1, first column, and page 3, first column) discuss reporting of "death benefits" paid by a nonqualified plan, but they do not specifically mention "distributions" from a nonqualified plan.
- If the statement on the 1099-R instructions is correct, then the statement in the W-2 instructions is wrong and should be corrected, and the 1099-MISC instructions should be expanded to cover "distributions."

#### **NQDC – including gain or loss when reporting as FICA wages**

When reporting deferrals under nonqualified deferred compensation plans as social security and Medicare wages in a year subsequent to the year in which the services were performed (because there was a risk of forfeiture during the year the services were performed), the reported amount of the deferral should be adjusted by any gain or loss.

However, we said, the discussion of Box 3 in the Form W-2 instructions (page 10, second column, third paragraph) makes it sound as though the reporting adjustment for gain or loss should take place even if the deferrals are reported in the year in which the related services are performed (no risk of forfeiture). In addition, the discussion of Box 11 (page 11, second column, second paragraph) references "gains" but not "losses." We recommended:

- In the discussion of Box 3, remove "(plus earnings)" from the first sentence. Add a second sentence: "If reporting these amounts in a subsequent year (due to lapse of risk of forfeiture), the amount must be adjusted by any gain or loss."
- In the discussion of Box 11, change the parenthetical language to "(plus earnings or less losses)."

#### **Correct EIC amounts to print on the back of W-2, Copy B**

The Earned Income Credit maximum amount for eligibility and phase-out for married couples changed due to the American Recovery and Reinvestment Act (see the bottom of the page at [www.irs.gov/individuals/article/0,,id=150513,00.html](http://www.irs.gov/individuals/article/0,,id=150513,00.html).) However, the IRS has not changed the notice to employees on the back of copy B of its official Form W-2, presumably because it had already printed its forms and didn't want the online version to differ. Will employers, forms suppliers, and software developers that create their own forms be in compliance if they change the amounts on the back of Copy B to reflect the new amounts under ARRA?

#### **Printing Forms 1099 (Copy A) on plain white paper**

To prepare forms for submission to the IRS, businesses have to purchase pre-printed Forms 1099 and 1096 each year and deal with form-alignment issues. They may not print the forms as black ink on white paper, due to the requirement for red drop-out ink (see first paragraph under "2.1.4 Printing" at page 11 of [www.irs.gov/pub/irs-pdf/p1179.pdf](http://www.irs.gov/pub/irs-pdf/p1179.pdf)).

The IRS should allow these forms to be printed as black ink on white paper. This process has been successfully in place for Forms W-2 and W-3 for many years. (Note that employers using black ink must submit a sample to SSA for prior approval; see pages 3-4 at [www.irs.gov/pub/irs-pdf/p1141.pdf](http://www.irs.gov/pub/irs-pdf/p1141.pdf).) ■