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## IRS Issues Publication 15-T With Revised 2009 Federal Income Tax Withholding Tables

On March 3, the IRS issued Publication 15-T, *New Wage Withholding and Advance Earned Income Credit Payment Tables (For Wages Paid Through December 2009)*. The publication includes new federal income tax withholding (percentage method and wage-bracket method) tables, as well as revised advance earned income credit (EIC) payment tables. The percentage method tables are included in this issue of PAYROLL CURRENTLY on pages 9 and 10.

Publication 15-T should be used by employers in conjunction with the information in Publications 15, Circular E (*Employer's Tax Guide*), 15-A, (*Employer's Supplemental Tax Guide*), and 51 (*Agricultural Employer's Tax Guide*). It includes updated tables that should be used in lieu of the corresponding tables in those publications. *Note:* For calculating income tax withholding on pensions, the new withholding tables also apply.

The new tables have been developed to implement changes to the tax law made by the American Recovery and Reinvestment Act of 2009 (see PAYROLL CURRENTLY, Issue No. 4, Vol. 17). The IRS asks that employers begin using these tables in lieu of the applicable previously published tables as soon as possible, **but no later than April 1, 2009**. Publication 15-T is available on the APA website at [www.americanpayroll.org/members/Forms-Pubs/#annual](http://www.americanpayroll.org/members/Forms-Pubs/#annual).

### Form W-4

Employers should make the notice on page 73 of Publication 15-T available to employees so that they will be aware of how the new law affects their withholding. A copy of Form W-4, *Employee's Withholding Allowance Certificate*, is included on pages 71 and 72. However, the IRS advises that employees do not need to fill out a new Form W-4. The new

tables have been developed to apply for withholding for all employees and to take into account all current tax provisions. *Note:* The 2009 Form W-4 and the *Tables for Withholding on Distributions of Indian Gaming Profits to Tribal Members* (Pub. 15-A, p. 58) are not being revised.

### Withholding income taxes on the wages of nonresident alien employees

The amount to add to a nonresident alien employee's wages for the purpose of calculating income tax withholding has been increased.

Payroll Period	Add Additional
Weekly	\$ 138.00
Biweekly	276.00
Semimonthly	299.00
Monthly	598.00
Quarterly	1,795.00
Semiannually	3,590.00
Annually	7,180.00
Daily or Miscellaneous	27.60

The amount to be withheld is determined by applying the income tax withholding tables to the amount of wages paid plus the additional chart amount. The amounts added under the chart are added to wages solely for the purpose of calculating income tax withholding on the wages of the nonresident alien employee. The chart amounts should not be included in any box on the employee's Form W-2, and do not increase the income tax liability of the employee. Also, the chart amounts do not increase the social security, Medicare, or Federal Unemployment Tax Act (FUTA) tax liability of the employer or the employee. *Note:* This procedure applies only to nonresident alien employees who have wages subject to income tax withholding.

### Transportation fringe benefits

Effective March 2009, the monthly exclusion for combined commuter highway vehicle transportation (vanpool) and transit passes increases to \$230 through December 2009. This increase is based on a change in the tax law made by the American Recovery and Reinvestment Act of 2009.

### Tax tables

**Percentage method tables.** The wage amounts shown in the percentage method income tax withholding tables are net wages after the deduction for total withholding allowances. The withholding allowance amounts by payroll period have not changed. See the 2009 allowance table prepared by the APA at [www.americanpayroll.org/members/Forms-Pubs/#allow](http://www.americanpayroll.org/members/Forms-Pubs/#allow). When using the percentage method of withholding, the tax for the

pay period may be rounded to the nearest dollar. If rounding is used, it must be used consistently.

**Wage bracket tables.** The wage-bracket tables are based on gross wages and do not require the deduction for total withholding allowances.

**Advance EIC table.** The wage-bracket and percentage method tables for determining advance EIC amounts are based on gross wages and do not require the deduction for withholding allowances. Advance EIC payments apply only to employees eligible for advance payments of the credit. Eligibility requirements are shown on Form W-5 (*Earned Income Credit Advance Payment Certificate*), which the employee gives to the employer. ■

## Overview of Obama Administration's First Budget Offers Few Details

On February 26, the Obama Administration released an overview of its proposed fiscal year 2010 federal budget [[www.whitehouse.gov/omb/assets/fy2010\\_new\\_era/A\\_New\\_Era\\_of\\_Responsibility2.pdf](http://www.whitehouse.gov/omb/assets/fy2010_new_era/A_New_Era_of_Responsibility2.pdf)]. Further details will be provided in a follow-up document expected in April. Even in preliminary summary form, however, it is clear that the budget contains several proposals of interest to payroll professionals.

### Make ARRA \$400 tax credit permanent

The budget proposes to make the Making Work Pay tax credit permanent. Created by the American Recovery and Reinvestment Act of 2009 (ARRA; see *PAYROLL CURRENTLY, Issue No. 4, Vol. 17*), this is a refundable \$400 income tax credit (\$800 for joint filers). It is phased out for those who earn \$75,000-\$95,000 (\$150,000-\$190,000 for joint filers).

### Let EGTRRA tax cuts expire for high earners

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA; Pub. L. No. 107-16), which revised the individual income tax rate structure and reduced income tax rates, included a sunset provision. The Obama budget would allow the "high-income tax provisions" to expire at the end of 2010 "when they are scheduled to expire." The 36% and 39.6% pre-EGTRRA rates for those earning over \$250,000 (married) or \$200,000 (single) would be reinstated.

### Eliminate advance EIC

The budget would expand the earned income credit (EIC) but eliminate the advance EIC. Office of Management and Budget Director Peter Orszag said that the Obama administration "strongly supports encouraging work among low- and middle-income families. A big part of this involves the EIC, which has been a very successful intervention to encourage work." The advance EIC, on the other hand, is used by under 1% of those who claim the EIC and "is subject to very high error rates" ([www.whitehouse.gov/the\\_press\\_office/Press-Briefing-by-OMB-Director-Peter-Orszag-and-CEA-Chair-Christina-Romer](http://www.whitehouse.gov/the_press_office/Press-Briefing-by-OMB-Director-Peter-Orszag-and-CEA-Chair-Christina-Romer)).

### Restructure federal wage reporting process

The budget proposes to restructure the federal wage

reporting process "to increase the frequency with which wages are reported to the Social Security Administration. Currently, wages are reported to the federal government once a year. Increasing the timeliness of wage reporting would enhance tax administration [and] improve program integrity for a range of programs... The administration will work with the states so that the overall reporting burden on employers is not increased."

### Mandate opt-out pension plans

The administration's budget includes a proposal whereby employees will be automatically enrolled in workplace pension plans – and will be allowed to opt out if they choose. Employers that do not currently offer a retirement plan will be required to enroll their employees in a direct deposit IRA account that is compatible with existing direct deposit payroll systems.

### Modify Saver's Credit

The budget proposes to expand the Saver's Credit by providing a 50% match for the first \$1,000 of retirement savings for families that earn less than \$65,000. The credit would be fully refundable. *Note:* The credit is equal to a specified percentage of certain employee contributions to an employer-sponsored retirement plan or an IRA.

### Limit federal workers' pay increases

Under the President's budget proposal, federal civilian workers' 2010 pay increases would be limited to 2%.

### Expand E-Verify program

The budget would provide \$110 million to continue expansion of E-Verify, the electronic employment eligibility verification program run by U.S. Citizenship and Immigration Services.

### Increase Wage and Hour resources

The budget proposes to increase enforcement resources for the Department of Labor's Wage and Hour Division. ■

## IRS Releases Form 941 for 2009

The IRS has released Form 941, *Employer's Quarterly Federal Income Tax Return*, for tax year 2009, together with Schedule B (Form 941). Form 941, Schedule B, and their instructions are available on the APA website at [www.americanpayroll.org/members/Forms-Pubs/#tax](http://www.americanpayroll.org/members/Forms-Pubs/#tax). Form 941 includes several revisions necessitated by the use of new Form 941-X (*Adjusted Employer's*

*Quarterly Federal Tax Return or Claim for Refund*) and enactment of the American Recovery and Reinvestment Act of 2009.

### Correcting a previously filed Form 941

- Section 7 has been retitled "CURRENT QUARTER'S ADJUSTMENTS" and Lines 7d-g have been eliminated because Form 941c has been eliminated and the adjustments shown on

those lines are no longer reported on Form 941. If you discover an error on a previously filed Form 941, make the correction using Form 941-X. Form 941-X is an amended return and is filed separately from Form 941.

- Line 11 (Total deposits for this quarter) has been revised to include “overpayment applied from Form 941-X or Form 944-X.”

✉ **IMPORTANT NOTE** – Five days after releasing the 2009 *Instructions for Form 941*, the IRS released them again – corrected to reflect the new procedures for making tax adjustments. The corrected instructions are on the APA website at the address given above.

#### **COBRA premium assistance payments credit**

- New Lines 12a and 12b have been added for “COBRA premium assistance payments” and “Number of individuals provided COBRA premium assistance reported on line 12a,” respectively. Employers that make COBRA premium assistance payments for assistance eligible individuals are allowed a credit for the payments on Form 941.

- “Add Lines 11 and 12a” on new Line 13.
- Line 12 is now Line 14; Line 13 is now Line 15.
- On page 2, Lines 14-17 are now Lines 16-19.

#### **Reminders**

- **Social security wage base for 2009.** Do not withhold social security tax after an employee reaches \$106,800 in social security wages. (There is no limit on the amount of wages subject to Medicare tax.)

- **Paid preparers.** Paid preparers must complete and sign the paid preparer’s section of Form 941 with a manual signature on paper returns, unless the preparer is an employee of the employer named on the return or is a Reporting Agent that has not provided legal advice to the employer.

- **Credit card payments.** Employers can pay the balance due shown on Form 941 by credit card. However, **do not** use a

credit card to make federal tax deposits.

- **Electronic funds withdrawal (EFW).** If you file Form 941 electronically, you can e-file and e-pay (electronic funds withdrawal) the balance due in a single step using tax preparation software or through a tax professional. However, **do not** use EFW to make federal tax deposits. Note that a fee may be charged to file electronically. Go to [www.irs.gov](http://www.irs.gov) and click on the “Online Services” link for more information on paying taxes using EFW.

- **Annual employment tax filing for small employers.** Certain very small employers (those with an annual employment tax liability of \$1,000 or less) must file Form 944, *Employer’s Annual Federal Tax Return*, rather than Form 941 to report their employment taxes. The IRS will notify employers that must file the form in February of each year.

- **Telephone help.** You can call the IRS toll-free at 800-829-4933, Monday through Friday from 7 a.m. to 10 p.m. local time (Alaska and Hawaii follow Pacific time), to order tax deposit coupons (Form 8109) and for answers to your questions about completing Form 941, tax deposit rules, or obtaining an employer identification number (EIN).

#### **Schedule B**

**Change in reporting prior period adjustments.** Prior period adjustments previously reported on Lines 7d-g of Form 941 and Form 941-SS are no longer reported on Schedule B (Form 941). Prior period adjustments are now reported on Form 941-X, and are not taken into account when figuring the tax liability for the current quarter. When you file Schedule B (Form 941) with your Form 941 (or Form 941-SS), do not change your tax liability by adjustments reported on any Form 941-X or COBRA assistance payment credits reported on Line 12a.

**Amended Schedule B.** If you have been assessed a failure-to-deposit (FTD) penalty, you may be able to file an amended Schedule B (Form 941). ■

## **IRS Issues COBRA Premium Subsidy Q&As for Employers**

The IRS has issued a press release [IR-2009-15, 2-26-09; [www.irs.gov/newsroom/article/0,,id=204709,00.html](http://www.irs.gov/newsroom/article/0,,id=204709,00.html)] and a set of questions and answers for employers [[www.irs.gov/newsroom/article/0,,id=204708,00.html](http://www.irs.gov/newsroom/article/0,,id=204708,00.html)] on the new COBRA premium subsidies under the American Recovery and Reinvestment Act of 2009 (ARRA; see **PAYROLL CURRENTLY, Issue No. 4, Vol. 17**).

Under ARRA, certain individuals who are eligible for COBRA continuation health coverage, or similar coverage under state law, may receive a subsidy for 65% of the premium. These individuals are required to pay only 35% of the premium. The employer may recover the subsidy provided to assistance-eligible individuals by taking the subsidy amount as a credit against its employment tax deposits on its quarterly employment tax return. The employer may take the credit against its employment taxes only after it has received the 35% premium payment from the individual.

#### **Effective dates**

**Q. When does the law become effective?**

A. ARRA became effective on the date of enactment, February 17, 2009. However, under a transition rule, the regular premium amount may continue to be paid for up to two months after enactment (e.g., for March and April), and the subsidy can be provided retroactively.

**Q. How long will this change be in effect?**

A. For assistance eligible individuals, the qualifying event

must occur on or before December 31, 2009, and the COBRA subsidy may apply for up to nine months.

#### **The subsidy requirement: applicability**

**Q. Is the employer required to provide the COBRA subsidy?**

A. The subsidy requirement applies to group health plans that are subject to the federal COBRA continuation coverage requirements or to similar requirements under state law. If you are an employer with such a plan and you receive a 35% payment from an assistance eligible individual, you are required to make the remaining 65% payment.

**Q. Do the subsidy requirements apply if the employer’s group health plan is self-insured?**

A. Yes, the subsidy requirements apply to all plans subject to the COBRA requirements, including self-insured plans. In that case, the employer must provide the COBRA coverage if the assistance eligible individual pays 35% of the otherwise required premium. The remaining 65% is treated as a payment of payroll taxes by the employer maintaining the plan.

#### **Who gets the credit**

**Q. When more than one entity may be responsible for receiving COBRA premiums, who should claim the credit?**

A. Under ARRA, the person to whom the reimbursement is payable is (1) the multiemployer group health plan, (2) the employer maintaining a group health plan subject to federal

COBRA continuation coverage requirements or that is self-insured, or (3) the insurer providing coverage under a plan not included in (1) or (2). Only this person is eligible to offset its payroll taxes by the amount of the subsidy.

#### How to claim the credit

**Q. How will an employer be reimbursed for the COBRA subsidy that it has provided to eligible individuals?**

A. The COBRA subsidy amount is reimbursed by being claimed as a credit on Form 941, *Employer's Quarterly Federal Tax Return*. The form has been revised to allow for this credit.

**Q. Is the IRS considering any other form changes (e.g., 941-X)?**

A. Yes. All appropriate forms are being revised.

**Q. What other information relating to the COBRA subsidy must be submitted with Form 941?**

A. No additional information relating to the COBRA subsidy is to be submitted with Form 941. However, those claiming the credit must maintain supporting documentation for the credit claimed, including:

- information on the receipt, including dates and amounts, of the assistance eligible individuals' 35% share of the premium;
- in the case of an insured plan, a copy of an invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium;
- in the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the assistance eligible individuals;
- attestation of involuntary termination, including the date of the involuntary termination (which must be during the period from September 1, 2008, to December 31, 2009), for each covered employee whose involuntary termination is the basis for eligibility for the subsidy;
- proof of each assistance eligible individual's eligibility for COBRA coverage at any time during the period from September 1, 2008, to December 31, 2009, and election of COBRA coverage;
- a record of the social security numbers of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for one individual or for two or more individuals; and
- other documents necessary to verify the correct amount of reimbursement.

**Q. Will the due date for the first quarter Form 941 be extended?**

A. No, the due date for the first quarter Form 941 is not being extended.

**Q. Can an employer decide only to claim the credit at the end of the quarter rather than reducing its tax deposits during the quarter?**

A. Yes. The employer can decide either to offset its payroll tax deposits or claim the subsidy as an overpayment at the end of the quarter.

**Q. The employer paid the bill and took the credit for**

**March. In April, the employer finds out that the employee did not continue his/her coverage (i.e., did not pay the 35%). The credit element must be allowed to be a negative, which would increase the deposit due.**

A. The premium subsidy and the related credit for the employer apply only after the individual has paid his or her 35% of the premium, so this situation should not occur.

#### Form 941, Lines 12a and 12b

**Q. How does an employer claim the credit for the COBRA subsidy?**

A. The credit is claimed on Line 12a of the 2009 Form 941 ([www.americanpayroll.org/members/Forms-Pubs/#tax](http://www.americanpayroll.org/members/Forms-Pubs/#tax)). In addition, the Form 941 filer must include the number of individuals provided COBRA premium assistance on Line 12b.

**Q. What will happen if Line 12a ends up being larger than Line 10 on a 941 return? Will this result in a net negative of taxes for a company?**

A. If Line 12a is larger than Line 10, Line 13 would also be larger than Line 10, resulting in an overpayment that could be applied to the next return or requested as a refund.

**Q. Would the number of beneficiaries need to be reported each quarter, whether or not there was a tax credit amount to apply?**

A. Line 12b of Form 941 must indicate the number of individuals who received the total COBRA subsidy reported on Line 12a. If there is no tax credit amount because no subsidy was provided, then the entry on Line 12b would be zero.

#### Assistance eligible individuals

**Q. Who is eligible for the COBRA premium subsidy?**

A. An assistance eligible individual can be any COBRA-qualified beneficiary associated with the related covered employee, such as a dependent child of an employee who is covered immediately prior to the qualifying event. The qualifying event, for purposes of eligibility for the subsidy, is involuntary termination of the covered employee's employment that occurs during the period beginning September 1, 2008, and ending December 31, 2009. The individual must also be eligible for COBRA coverage, or similar state coverage, during this period.

**Q. Will the COBRA premium subsidy be taxable income to the individual?**

A. The premium subsidy is not included in the individual's income. However, there is a phase-out of eligibility for the subsidy, which will increase some high-income individuals' tax liability if they receive the subsidy. The phase-out impacts individuals whose modified adjusted gross income (AGI) exceeds \$125,000 (\$250,000 for joint returns). Tax liability is increased to achieve repayment of a portion of the subsidy for those taxpayers whose modified AGI is between \$125,000 and \$145,000 (\$250,000 and \$290,000 for joint returns). If a taxpayer's modified AGI exceeds \$145,000 (\$290,000 for joint returns), the full amount of the subsidy must be repaid as an additional tax. There is no additional tax for individuals with modified AGI less than these income levels. ■

## Spring Ahead to Daylight Saving Time

Daylight Saving Time (DST) will begin on Sunday, March 8, at 2 a.m., when clocks are set ahead one hour. A shift worker on duty at that time will work an hour less than usual. If you pay the worker for a full shift of eight hours rather than seven, you do not need to count the extra hour as an hour worked for overtime purposes and do not need to include the

extra pay when calculating the employee's regular rate of pay for the workweek (see *The Payroll Source*®, p. 2-51 for further information).

DST is not observed in the states of Arizona (other than inside the Navajo Nation) and Hawaii, and in the U.S. territories of American Samoa, Guam, Puerto Rico, and the Virgin Islands. ■

## IRS Issues Final Regulations on Automatic 401(k) Enrollment

The IRS has issued final regulations implementing the automatic enrollment and contribution provisions of the Pension Protection Act of 2006 (PPA 2006; Pub. L. No. 109-280; see *PAYROLL CURRENTLY*, Issue No. 17, Vol. 14) applicable to §401(k) plans as well as arrangements under §403(b) and §457(b) [74 F.R. 8200, 2-24-09; <http://edocket.access.gpo.gov/2009/pdf/E9-3716.pdf>].

An automatic contribution arrangement is a default election that applies in the absence of an affirmative election by an eligible employee. The employee is treated as having made an election to have a specified contribution made on his or her behalf under the plan. PPA 2006 included several provisions to make it easier to adopt these arrangements.

The regulations address the special nondiscrimination safe harbor for certain qualified automatic contribution arrangements and the ability of an employee who has been automatically enrolled under an eligible automatic contribution arrangement to opt out of the arrangement and instead request a distribution of the contributions made during the first 90 days of the arrangement.

### Qualified Automatic Contribution Arrangement (QACA)

PPA 2006 added new IRC sections 401(k)(13) and 401(m)(12), which provide a safe harbor with respect to discrimination testing under the ADP and ACP tests for cash or deferred arrangements (CODAs) that provide for automatic contributions at a specified level and meet certain notice and other requirements. An arrangement that satisfies these requirements is referred to as a Qualified Automatic Contribution Arrangement (QACA).

Implementing these sections, the regulations provide that the plan provision implementing the QACA for an existing qualified CODA must be adopted before the first day of the plan year and remain in effect for an entire 12-month plan year.

In addition, a plan may limit the amount of elective contributions that may be made by an eligible employee under a QACA, provided that each non-highly compensated employee who is an eligible employee generally is permitted to make elective contributions in an amount that is at least sufficient to receive the maximum amount of matching contributions available under the plan for the plan year, and the employee is permitted to elect any lesser amount of elective contributions.

**Minimum percentage requirement.** In order to be a QACA, a plan must provide a specified schedule of automatic contributions (called qualified percentages) for each eligible employee, beginning with an initial minimum qualified percentage of 3% of compensation. This minimum qualified percentage begins when the employee first participates in the arrangement that is intended to be a QACA and ends on the last day of the following plan year. Thus, this initial period for a participant could last as long as two full plan years.

After this initial period, the minimum qualified percentage increases by 1% for each of the next three plan years, and then is 6% for all plan years thereafter. Note that these are merely minimum qualified percentages and that a QACA could provide for higher percentages. However, the qualified percentage can never exceed 10% of compensation.

*Note:* The final regulations clarify that the minimum percentage for the initial period is based on when the employee first has contributions made pursuant to a default election under the QACA. Thus, if an employee makes an affirmative election

before the default contribution would have begun, then the initial period does not begin for the employee. The minimum percentages are increased for plan years after the initial period.

Under the final regulations, automatic enrollment applies for periods during which the affirmative election is not in effect. Accordingly, a plan could specifically provide that an affirmative election expires and, thus, require an employee to make a new affirmative election if he or she wants the prior rate of elective contribution to continue. In the absence of a second affirmative election, the employee will be automatically enrolled at the plan's default percentage.

**Uniformity requirement.** The qualified percentage must be applied uniformly to all eligible employees. The regulations provide that a plan does not fail this uniformity requirement where the percentage varies because:

- Of the number of years an eligible employee has participated in the automatic contribution arrangement intended to be a QACA;
- The rate of elective contributions in effect on the effective date of the default percentage under the QACA is not reduced; or
- The amount of elective contributions is limited so as not to exceed statutory limits on compensation, deferrals, or overall contributions.

In addition, an arrangement would not fail the uniformity requirement where an employee is not automatically enrolled during the six-month period following a hardship distribution when elective contributions must be suspended.

The final regulations expand the exception to the uniformity requirement that allows variance based on the number of years since the date the employee first had contributions made pursuant to a default election under an arrangement that is intended to be a QACA. Under the final regulations, the default percentage may also vary based on the portions of years since that date.

**Default election vs. affirmative election.** Under the regulations, the default election ceases to apply to any eligible employee if the employee makes an affirmative election that remains in effect to not have any elective contributions made on his or her behalf or to have elective contributions made in a specified percentage of compensation on his or her behalf. Thus, an employee can make an affirmative election to contribute at a certain level and have that election apply for all subsequent plan years. Similarly, an employee can make an affirmative election to have no elective contributions made on his or her behalf.

Under the regulations, an election means an affirmative election that remains in effect to have the employer make elective contributions on his or her behalf (in a specified amount or percentage of compensation) or to not have the employer make elective contributions on his or her behalf. Generally, this requires that the employee complete an election form and choose an amount or percentage (including zero) of his or her compensation to be deferred.

**Safe harbor notice and the timing requirement.** Each eligible employee under a QACA must receive a safe harbor notice within a reasonable period before each plan year. The employee must be given a reasonable period of time after receipt of the notice and before the first elective contribution is to be made to make an election with respect to contributions

and investments.

The regulations apply a deemed timing rule to determine whether this timing requirement is satisfied. Under the deemed timing rule, the timing requirement is satisfied if at least 30 days (and no more than 90 days) before the beginning of each plan year, the notice is given to each eligible employee for the plan year. But see note below.

In the case of an employee who does not receive notice within this period because he or she becomes eligible after the 90th day before the beginning of the plan year, the timing requirement is deemed to be satisfied if the notice is provided no more than 90 days before the employee becomes eligible (and no later than the date the employee becomes eligible). This would apply, for example, to all eligible employees for the first plan year under a newly established plan that provides for elective contributions, and to the first plan year in which an employee becomes eligible under an existing plan that provides for elective contributions.

In the case of a plan with immediate eligibility when an employee is hired, the deemed timing rule is satisfied if the employee is provided the notice on the first day of employment.

*Note:* The final regulations provide that if it is not practicable for the notice to be provided on or before the date specified in the plan that an employee becomes eligible, the notice will nonetheless be treated as provided timely if it is provided as soon as practicable after that date and the employee is permitted to elect to defer from all types of compensation that may be deferred under the plan earned beginning on that date. Thus, an employer is required to provide the notice to the employee prior to the pay date for the payroll period that includes the date the employee becomes eligible.

The final regulations provide that the default election must be effective no earlier than a reasonable period of time after receipt of the notice (in order to provide the employee with a reasonable period of time to make an affirmative election). However, the default election must be effective no later than the earlier of the pay date for the second payroll period that begins after the date the notice is provided or the first pay date that occurs at least 30 days after the notice is provided.

Notwithstanding any delay in when the first default contribution is made, nonelective contributions that are based on a full year's contributions and the rate of matching contributions that varies based on compensation must be based on the safe harbor compensation earned since the participant was first eligible under the plan.

#### **Eligible Automatic Contribution Arrangement (EACA)**

PPA 2006 also added new IRC section 414(w), which provides limited relief from distribution restrictions for an Eligible Automatic Contribution Arrangement (EACA) – a non-safe harbor arrangement.

***Non-universal eligible automatic contribution arrangements.*** The final regulations provide that the employees who must be subject to the automatic enrollment provisions under an EACA are only those employees who are specified in the plan as being covered employees under the EACA. Thus, automatic enrollment under an EACA need not apply to all employees eligible to make a deferral election under the applicable plan, but only to those employees who are covered by the EACA.

The plan document must specify the employees who are covered under the EACA and must state whether an employee

who makes an affirmative election remains covered under the EACA. The notice regarding an employee's rights and obligations under the arrangement need only be provided to those employees who are covered employees under the EACA as set forth in the plan. Thus, if a plan provides that an employee who makes an affirmative election is no longer a covered employee under the EACA, then the employee is not required to receive the notice after he or she makes an affirmative election.

***Withdrawal election.*** An election to withdraw contributions that were made under an EACA must be made within 90 days of the "first elective contribution with respect to the employee under the arrangement." The regulations define the arrangement for this purpose as the EACA, and provide that the 90-day window for making the withdrawal election begins on the date on which the compensation that is subject to the election would otherwise have been included in gross income. In addition, the regulations provide that the effective date of the election cannot be after the earlier of: (1) the pay date for the second payroll period beginning after the election is made, or (2) the first pay date that occurs at least 30 days after the election is made. Of course, a plan may permit an earlier effective date.

Note that under the final regulations, a plan is permitted to set an earlier deadline to withdraw default elective contributions. However, if a plan offers a permissible withdrawal for covered employees, the election period for the covered employees must be at least 30 days.

The final regulations clarify that the permissible withdrawal distribution should be made in accordance with the plan's ordinary timing procedures for processing distributions and making distributions. Further, the plan cannot charge a higher fee for a distribution under §414(w) than would apply to any other distributions of cash.

***Distributions.*** The regulations provide that the distribution is generally the account balance attributable to the default elective contributions, adjusted for gains and losses.

The distribution may be reduced by any generally applicable fees. However, the plan may not charge a different fee for this distribution than would apply to other distributions. Also, if the default elective contributions are not maintained in a separate account, the amount of the allocable gains and losses will be determined under rules similar to those applicable to the distribution of excess contributions.

The amount withdrawn is includible in gross income in the year in which it is distributed, except that amounts that are distributions of designated Roth contributions are not included in an employee's gross income a second time. This amount must be reported on Form 1099-R (*Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*). And the regulations include these withdrawals in the list of distributions that are not eligible for rollover.

Any employer matching contribution with respect to the default elective contribution distributed must be forfeited. The regulations provide that the forfeited contribution must remain in the plan and be treated in the same manner under the plan terms as any other forfeiture under the plan.

***Default elective contributions.*** An EACA must provide that the default elective contribution is a uniform percentage of compensation. To address the possibility that a plan may contain more than one EACA, the final regulations provide that this requirement is applied by aggregating all automatic contribution arrangements within the plan that are intended

to be EACAs. Note, however, that a plan is permitted to provide for separate EACAs for different groups of collectively bargained employees or different employers in a multiple employer plan with a different default percentage for each EACA. Such a plan could not have different default percentages apply to different groups of employees that are in the same plan after application of the disaggregation rules.

The final regulations provide that for purposes of determining the date of the first default elective contribution, a plan is permitted to treat an employee who for an entire plan year did not have default elective contributions made under the EACA as if the employee had not had such contributions for any prior plan year as well. This is consistent with the rule applicable to QACAs.

The regulations provide that the permitted differences in contribution rates provided for a QACA also apply to an EACA.

**Notice requirements.** Notice must be provided to each employee to whom the EACA applies within a “reasonable period” before each plan year. The regulations provide that if an employee becomes eligible in a given year, notice must be given within a “reasonable period” before the employee becomes eligible, and provide a deemed timing rule similar to

the rule applicable to QACAs.

In the case of an employee who becomes eligible after the 90th day before the beginning of the plan year, the timing requirement is deemed to be satisfied if the notice is provided no more than 90 days before the employee becomes eligible for the cash or deferred arrangement (and no later than the date the employee becomes eligible).

The final regulations treat individuals who first become covered under an automatic contribution arrangement as a result of a change in employment status the same as individuals who first become eligible to make a cash or deferred election for purposes of the notice timing requirements.

#### Effective date

The final regulations relating to QACAs apply to plan years beginning on or after January 1, 2008. The final regulations relating to EACAs apply to plan years beginning on or after January 1, 2010.

For plan years that begin in 2008, a plan must operate in accordance with a good faith interpretation of §414(w). A plan that operates in accordance with either the proposed or final regulations will be treated as meeting this test. ■

## IRS Issues Instructions for 2009 Forms 1099, 1098, 3921, 3922, 5498, and W-2G

The IRS has issued the *General Instructions for Forms 1099, 1098, 3921, 3922, 5498, and W-2G* for 2009. The document is available for downloading from the APA website at [www.americanpayroll.org/members/Forms-Pubs/#tax](http://www.americanpayroll.org/members/Forms-Pubs/#tax). Several “what’s new” items are highlighted:

- **New title for General Instructions.** The title of the General Instructions has been changed to reflect the addition of Forms 3921 (*Exercise of an Incentive Stock Option Under Section 422(b)*) and 3922 (*Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)*) beginning in 2009. *Note:* These forms are expected to be issued for reporting years “beginning subsequent to 2008” after final regulations have been published. See [PAYROLL CURRENTLY, Issue No. 15, Vol. 16](#), “IRS Issues Proposed Regulations on Information Reporting Requirements for Statutory Stock Options.”

- **Electronic filing.** E-filers are reminded that using the FIRE (Filing Information Returns Electronically) system requires following the specifications contained in Publication 1220, *Specifications for Filing Forms 1098, 1099, 3921, 3922, 5498, and W-2G Electronically*. Also, the IRS does not provide a fill-in .pdf form option.

- **Where to file.** All information returns filed on paper will be filed with only two IRS processing centers: Austin, TX, and Kansas City, MO.

- **Form 1099-MISC.**

- *Military differential pay.* Payments made after 2008 to former employees while they are on active duty for more than 30 days in the Armed Forces or other uniformed services are not reported on Form 1099-MISC. Report those payments on Form W-2 instead (see [PAYROLL CURRENTLY, Issue No. 11, Vol. 16](#)).

- *Death benefits.* Death benefits from nonqualified deferred compensation plans paid to the estate or beneficiary of a deceased employee are now reported on Form 1099-MISC instead of Form 1099-R. Death benefit payments from

qualified plans continue to be reported on Form 1099-R.

- *Payments to individuals in medical research studies.*

Payments to individuals in medical research studies are reported in Box 3.

- *Box 15a.* Payers are not required to report deferrals under nonqualified deferred compensation plans under IRC §409A in Box 15a (see [PAYROLL CURRENTLY, Issue No. 26, Vol. 16](#)).

- **Form 1099-R.**

- Generally, Box 2a should be left blank when reporting distributions from traditional SEP IRAs. Box 2b, “Taxable amount not determined” should be checked.

- Corrective distributions of excess contributions and excess aggregate contributions are taxable in the year distributed (except for designated Roth contributions).

- Distributions from a nonqualified deferred compensation plan to an estate or beneficiary of a deceased plan participant are no longer reported on Form 1099-R. They should be reported on Form 1099-MISC.

- Qualified distributions from IRAs for charitable purposes may be made through December 31, 2009.

- Distributions of dividends from an employee stock ownership plan (ESOP) under IRC §404(k) to participants or their beneficiaries are to be reported on Form 1099-R. All other distributions from an ESOP must be reported on a separate Form 1099-R.

- Rev. Proc. 2008-24 was issued to address the tax treatment of certain tax-free exchanges of annuity contracts under IRC §§72 and 1035. The interim guidance provided by Notice 2003-51 is superseded.

- The following changes have been made to the Guide to Distribution Codes: (1) For Distribution Code 1, references to the qualified reservist distribution have been made permanent. (2) New Distribution Code U has been added to the table for distributions under IRC §404(k). (3) Distribution Codes B and U are a valid combination. ■



## STATE AND LOCAL NEWS

For more state and local news, subscribe to APA's *PayState Update*, the biweekly newsletter devoted exclusively to state and local payroll compliance. Call 210-224-6406 or visit [www.americanpayroll.org](http://www.americanpayroll.org) for more information.

### California

**Threshold for mandatory electronic filing of unclaimed property reports lowered.** Effective 3-1-09, filing unclaimed property reports on paper will only be acceptable for reporting fewer than 10 properties. Therefore, the Holder Notice Reports filed by life insurance companies by 5-1-09 and the Holder Remit Reports filed by employers between 6-1-09 and 6-15-09 (12-1-09 and 12-15-09 for life insurance companies) must be filed electronically when reporting 10 or more properties. Free reporting software is available on the State Controller's Office website at [www.sco.ca.gov/col/ucp/holder/index.shtml](http://www.sco.ca.gov/col/ucp/holder/index.shtml).

### Louisiana

**New mid-year withholding tables issued.** Effective 7-2-09, the Department of Revenue has issued revised withholding tables to reflect reduced income tax rates in the two highest income tax brackets for tax years beginning on or after 1-1-09 (download at <http://doa.louisiana.gov/osr/lac/lactitle.htm> by clicking on "Title 61"). Although the bracket changes are effective 1-1-09, the 2008 legislation responsible for the tax reduction provided that revised withholding tables would not become effective until after 7-1-09. Employees were advised that they could adjust their withholding for the first half of the year by submitting to their employer a special Form R-1300T, *Employee Withholding Exemption Certificate (L-4)*. Once the revised withholding tables are in effect, the temporary reduction will be discontinued [La. Adm.Code §61:I.1501].

### Massachusetts

**Voluntary compliance program established.** The Department of Revenue (DOR) has established a voluntary compliance program for employers that have failed to file withholding or wage and information returns, or that have misclassified employees as independent contractors on those returns for past taxable periods. The DOR will apply a limited lookback period (seven years) for wage amounts that should have been reported on such returns for tax periods beginning on or after 1-1-08. Amounts due plus interest must be paid in full by 4-30-09 [DOR, Technical Information Release 09-2, 2-9-09].

### New York

**Online filing and payment of withholding returns and taxes available.** Employers may now file Form NYS-1, *Return of Tax Withheld*, and pay the taxes through the Department of Taxation and Finance's (DOTF) Online Tax Center at [www.tax.state.ny.us/nys/home/online.htm](http://www.tax.state.ny.us/nys/home/online.htm). NYS-1 Web File is not available for PromptTax filers. Other services available at the Online Tax Center are wage reporting upload and NYS-45 Web File (Form NYS-45, *Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return*) [DOTF, Notice, 2-17-09].

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**Tables for Percentage Method of Withholding**  
(For Wages Paid Through December 2009)

**TABLE 1—WEEKLY Payroll Period**

<b>(a) SINGLE person</b> (including head of household)—			<b>(b) MARRIED person</b> —		
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:
Not over \$138 . . . . .		\$0	Not over \$303 . . . . .		\$0
<b>Over—</b>	<b>But not over—</b>	<b>of excess over—</b>	<b>Over—</b>	<b>But not over—</b>	<b>of excess over—</b>
\$138	—\$200 . . . 10%	—\$138	\$303	—\$470 . . . 10%	—\$303
\$200	—\$696 . . . \$6.20 plus 15%	—\$200	\$470	—\$1,455 . . . \$16.70 plus 15%	—\$470
\$696	—\$1,279 . . . \$80.60 plus 25%	—\$696	\$1,455	—\$2,272 . . . \$164.45 plus 25%	—\$1,455
\$1,279	—\$3,338 . . . \$226.35 plus 28%	—\$1,279	\$2,272	—\$4,165 . . . \$368.70 plus 28%	—\$2,272
\$3,338	—\$7,212 . . . \$802.87 plus 33%	—\$3,338	\$4,165	—\$7,321 . . . \$898.74 plus 33%	—\$4,165
\$7,212 . . . . .	\$2,081.29 plus 35%	—\$7,212	\$7,321 . . . . .	\$1,940.22 plus 35%	—\$7,321

**TABLE 2—BIWEEKLY Payroll Period**

<b>(a) SINGLE person</b> (including head of household)—			<b>(b) MARRIED person</b> —		
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:
Not over \$276 . . . . .		\$0	Not over \$606 . . . . .		\$0
<b>Over—</b>	<b>But not over—</b>	<b>of excess over—</b>	<b>Over—</b>	<b>But not over—</b>	<b>of excess over—</b>
\$276	—\$400 . . . 10%	—\$276	\$606	—\$940 . . . 10%	—\$606
\$400	—\$1,392 . . . \$12.40 plus 15%	—\$400	\$940	—\$2,910 . . . \$33.40 plus 15%	—\$940
\$1,392	—\$2,559 . . . \$161.20 plus 25%	—\$1,392	\$2,910	—\$4,543 . . . \$328.90 plus 25%	—\$2,910
\$2,559	—\$6,677 . . . \$452.95 plus 28%	—\$2,559	\$4,543	—\$8,331 . . . \$737.15 plus 28%	—\$4,543
\$6,677	—\$14,423 . . . \$1,605.99 plus 33%	—\$6,677	\$8,331	—\$14,642 . . . \$1,797.79 plus 33%	—\$8,331
\$14,423 . . . . .	\$4,162.17 plus 35%	—\$14,423	\$14,642 . . . . .	\$3,880.42 plus 35%	—\$14,642

**TABLE 3—SEMIMONTHLY Payroll Period**

<b>(a) SINGLE person</b> (including head of household)—			<b>(b) MARRIED person</b> —		
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:
Not over \$299 . . . . .		\$0	Not over \$656 . . . . .		\$0
<b>Over—</b>	<b>But not over—</b>	<b>of excess over—</b>	<b>Over—</b>	<b>But not over—</b>	<b>of excess over—</b>
\$299	—\$433 . . . 10%	—\$299	\$656	—\$1,019 . . . 10%	—\$656
\$433	—\$1,508 . . . \$13.40 plus 15%	—\$433	\$1,019	—\$3,152 . . . \$36.30 plus 15%	—\$1,019
\$1,508	—\$2,772 . . . \$174.65 plus 25%	—\$1,508	\$3,152	—\$4,922 . . . \$356.25 plus 25%	—\$3,152
\$2,772	—\$7,233 . . . \$490.65 plus 28%	—\$2,772	\$4,922	—\$9,025 . . . \$798.75 plus 28%	—\$4,922
\$7,233	—\$15,625 . . . \$1,739.73 plus 33%	—\$7,233	\$9,025	—\$15,863 . . . \$1,947.59 plus 33%	—\$9,025
\$15,625 . . . . .	\$4,509.09 plus 35%	—\$15,625	\$15,863 . . . . .	\$4,204.13 plus 35%	—\$15,863

**TABLE 4—MONTHLY Payroll Period**

<b>(a) SINGLE person</b> (including head of household)—			<b>(b) MARRIED person</b> —		
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:
Not over \$598 . . . . .		\$0	Not over \$1,313 . . . . .		\$0
<b>Over—</b>	<b>But not over—</b>	<b>of excess over—</b>	<b>Over—</b>	<b>But not over—</b>	<b>of excess over—</b>
\$598	—\$867 . . . 10%	—\$598	\$1,313	—\$2,038 . . . 10%	—\$1,313
\$867	—\$3,017 . . . \$26.90 plus 15%	—\$867	\$2,038	—\$6,304 . . . \$72.50 plus 15%	—\$2,038
\$3,017	—\$5,544 . . . \$349.40 plus 25%	—\$3,017	\$6,304	—\$9,844 . . . \$712.40 plus 25%	—\$6,304
\$5,544	—\$14,467 . . . \$981.15 plus 28%	—\$5,544	\$9,844	—\$18,050 . . . \$1,597.40 plus 28%	—\$9,844
\$14,467	—\$31,250 . . . \$3,479.59 plus 33%	—\$14,467	\$18,050	—\$31,725 . . . \$3,895.08 plus 33%	—\$18,050
\$31,250 . . . . .	\$9,017.98 plus 35%	—\$31,250	\$31,725 . . . . .	\$8,407.83 plus 35%	—\$31,725

**Tables for Percentage Method of Withholding (continued)**  
 (For Wages Paid Through December 2009)

**TABLE 5—QUARTERLY Payroll Period**

<b>(a) SINGLE person</b> (including head of household)—			<b>(b) MARRIED person</b> —		
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:
Not over \$1,795 . . . . . \$0			Not over \$3,938 . . . . . \$0		
Over—	But not over—	of excess over—	Over—	But not over—	of excess over—
\$1,795	—\$2,600 . . . 10%	—\$1,795	\$3,938	—\$6,113 . . . 10%	—\$3,938
\$2,600	—\$9,050 . . . \$80.50 plus 15%	—\$2,600	\$6,113	—\$18,913 . . . \$217.50 plus 15%	—\$6,113
\$9,050	—\$16,633 . . . \$1,048.00 plus 25%	—\$9,050	\$18,913	—\$29,533 . . . \$2,137.50 plus 25%	—\$18,913
\$16,633	—\$43,400 . . . \$2,943.75 plus 28%	—\$16,633	\$29,533	—\$54,150 . . . \$4,792.50 plus 28%	—\$29,533
\$43,400	—\$93,750 . . . \$10,438.51 plus 33%	—\$43,400	\$54,150	—\$95,175 . . . \$11,685.26 plus 33%	—\$54,150
\$93,750 . . . . .	\$27,054.01 plus 35%	—\$93,750	\$95,175 . . . . .	\$25,223.51 plus 35%	—\$95,175

**TABLE 6—SEMIANNUAL Payroll Period**

<b>(a) SINGLE person</b> (including head of household)—			<b>(b) MARRIED person</b> —		
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:
Not over \$3,590 . . . . . \$0			Not over \$7,875 . . . . . \$0		
Over—	But not over—	of excess over—	Over—	But not over—	of excess over—
\$3,590	—\$5,200 . . . 10%	—\$3,590	\$7,875	—\$12,225 . . . 10%	—\$7,875
\$5,200	—\$18,100 . . . \$161.00 plus 15%	—\$5,200	\$12,225	—\$37,825 . . . \$435.00 plus 15%	—\$12,225
\$18,100	—\$33,265 . . . \$2,096.00 plus 25%	—\$18,100	\$37,825	—\$59,065 . . . \$4,275.00 plus 25%	—\$37,825
\$33,265	—\$86,800 . . . \$5,887.25 plus 28%	—\$33,265	\$59,065	—\$108,300 . . . \$9,585.00 plus 28%	—\$59,065
\$86,800	—\$187,500 . . . \$20,877.05 plus 33%	—\$86,800	\$108,300	—\$190,350 . . . \$23,370.80 plus 33%	—\$108,300
\$187,500 . . . . .	\$54,108.05 plus 35%	—\$187,500	\$190,350 . . . . .	\$50,447.30 plus 35%	—\$190,350

**TABLE 7—ANNUAL Payroll Period**

<b>(a) SINGLE person</b> (including head of household)—			<b>(b) MARRIED person</b> —		
If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:	If the amount of wages (after subtracting withholding allowances) is:		The amount of income tax to withhold is:
Not over \$7,180 . . . . . \$0			Not over \$15,750 . . . . . \$0		
Over—	But not over—	of excess over—	Over—	But not over—	of excess over—
\$7,180	—\$10,400 . . . 10%	—\$7,180	\$15,750	—\$24,450 . . . 10%	—\$15,750
\$10,400	—\$36,200 . . . \$322.00 plus 15%	—\$10,400	\$24,450	—\$75,650 . . . \$870.00 plus 15%	—\$24,450
\$36,200	—\$66,530 . . . \$4,192.00 plus 25%	—\$36,200	\$75,650	—\$118,130 . . . \$8,550.00 plus 25%	—\$75,650
\$66,530	—\$173,600 . . . \$11,774.50 plus 28%	—\$66,530	\$118,130	—\$216,600 . . . \$19,170.00 plus 28%	—\$118,130
\$173,600	—\$375,000 . . . \$41,754.10 plus 33%	—\$173,600	\$216,600	—\$380,700 . . . \$46,741.60 plus 33%	—\$216,600
\$375,000 . . . . .	\$108,216.10 plus 35%	—\$375,000	\$380,700 . . . . .	\$100,894.60 plus 35%	—\$380,700

**TABLE 8—DAILY or MISCELLANEOUS Payroll Period**

<b>(a) SINGLE person</b> (including head of household)—			<b>(b) MARRIED person</b> —		
If the amount of wages (after subtracting withholding allowances) divided by the number of days in the payroll period is:		The amount of income tax to withhold per day is:	If the amount of wages (after subtracting withholding allowances) divided by the number of days in the payroll period is:		The amount of income tax to withhold per day is:
Not over \$27.60 . . . . . \$0			Not over \$60.60 . . . . . \$0		
Over—	But not over—	of excess over—	Over—	But not over—	of excess over—
\$27.60	—\$40.00 . . . 10%	—\$27.60	\$60.60	—\$94.00 . . . 10%	—\$60.60
\$40.00	—\$139.20 . . . \$1.24 plus 15%	—\$40.00	\$94.00	—\$291.00 . . . \$3.34 plus 15%	—\$94.00
\$139.20	—\$255.90 . . . \$16.12 plus 25%	—\$139.20	\$291.00	—\$454.30 . . . \$32.89 plus 25%	—\$291.00
\$255.90	—\$667.70 . . . \$45.30 plus 28%	—\$255.90	\$454.30	—\$833.10 . . . \$73.72 plus 28%	—\$454.30
\$667.70	—\$1,442.30 . . . \$160.60 plus 33%	—\$667.70	\$833.10	—\$1,464.20 . . . \$179.78 plus 33%	—\$833.10
\$1,442.30 . . . . .	\$416.22 plus 35%	—\$1,442.30	\$1,464.20 . . . . .	\$388.04 plus 35%	—\$1,464.20