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USCIS Says Form I-9 Can Be Used After June 30 Expiration Date

U.S. Citizenship and Immigration Services (USCIS) has announced that the Form I-9, *Employment Eligibility Verification* (revised 2-2-09), continues to be valid for use beyond June 30, 2009, the expiration date stated on the form [USCIS Update 6-26-09; www.uscis.gov/files/article/update_employ_eligible_i9.pdf]. *Note:* The form is currently available on the APA website (see www.americanpayroll.org/members/Forms-Pubs/#non).

USCIS has requested that the Office of Management and Budget (OMB) approve continued use of the current Form I-9. While this request is pending, the current Form I-9 (revised 2-2-09) will not expire. USCIS will update Form I-9 when the extension is approved. Employers will be able to use either the Form I-9 with the new revision date or the Form I-9 with the 2-2-09 revision date. ■

Reminder: Federal Minimum Wage Goes to \$7.25 Per Hour on July 24

The Fair Minimum Wage Act of 2007 increases the federal minimum wage in three stages (see *The Payroll Source*®, p. 2-35). The third increase – to \$7.25 an hour from the current \$6.55 an hour – takes effect July 24, 2009.

Note: When the minimum wage rises to \$7.25, the tip credit will rise to \$5.12 (\$7.25 - \$2.13). The minimum cash wage for tipped employees remains unchanged.

State minimum wage rates

Many states are affected by the federal increase because their minimum wage is either tied to changes in the federal rate or lower than the federal rate.

State rates higher than the federal rate. Thirteen states are not affected by the third increase in the federal minimum wage because their minimum wage rates will exceed \$7.25 an hour on July 24, 2009: California – \$8.00; Colorado – \$7.28; Connecticut – \$8.00 (\$8.25, effective January 1, 2010); Illinois – \$8.00 (\$8.25, effective July 1, 2010); Massachusetts – \$8.00;

Michigan – \$7.40; Nevada – \$7.55 (\$6.55 if employer provides health benefits); New Mexico – \$7.50; Ohio – \$7.30 (\$7.25 for small employers); Oregon – \$8.40; Rhode Island – \$7.40; Vermont – \$8.06; and Washington – \$8.55.

In the District of Columbia, the minimum wage will increase to \$8.25 an hour on July 24, 2009, since the law provides that the rate is \$7.00 or the federal minimum wage plus \$1, whichever amount is greater.

State rates the same as the federal rate. Twenty-six states will have the same minimum wage rate as the federal rate on July 24, 2009: Alaska (\$7.75 an hour, effective January 1, 2010), Arizona, Delaware, Hawaii, Idaho, Indiana, Iowa, Kentucky, Maine (\$7.50 an hour, effective October 1, 2009), Maryland, Missouri, Montana (\$4.00 for small employers), Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin.

These states follow the federal rate or provide for the same increase on the same date.

State rates lower than the federal rate. Six states and Puerto Rico will have lower minimum wage rates than the federal rate on July 24, 2009: Arkansas – \$6.25; Florida – \$7.21; Georgia – \$5.15; Kansas – \$2.65 (\$7.25, effective January 1, 2010); Minnesota – \$6.15 (large employers), \$5.25 (small employers); Puerto Rico – \$5.08; and Wyoming – \$5.15.

When state law requirements are less favorable to an employee than the requirements in the federal Fair Labor Standards Act (FLSA), they apply only to those employees who are not covered by the FLSA. Employees who are covered by the FLSA must be paid at the higher federal rate. However, employees not covered by the FLSA may not be covered by the state minimum wage law either because certain employers or employees may be exempt.

No state minimum wage law. Five states do not have minimum wage laws: Alabama, Louisiana, Mississippi, South Carolina, and Tennessee. Therefore, all employees in these states covered by the FLSA who are not otherwise exempt must be paid at least the applicable federal minimum wage for all hours worked.

Note: For detailed information on state minimum wage rates, see *APA's Guide to State Payroll Laws*, Table 1.1.

Creditor garnishments

The increase in the federal minimum wage will significantly affect the calculation of the amount that can be garnished to repay a debt. Creditor garnishments are governed by both federal and state laws. For example, the Consumer Credit Protection Act (CCPA) states that the maximum amount of an employee's "disposable earnings" that can be garnished to repay a debt is the lesser of:

- 25 % of the employee's disposable earnings for the week; or
- the amount by which the employee's disposable earnings for the week exceed 30 times the federal minimum hourly rate then in effect.

The garnishment limits in the CCPA preempt state laws to the extent the state laws allow greater amounts to be garnished. But state law applies if the maximum amount subject to garnishment is lower than the federal maximum or if the state does not allow creditor garnishments at all.

Note: For detailed information on state garnishment limits, see *APA's Guide to State Payroll Laws*, Table 7.1.

AMOUNT SUBJECT TO GARNISHMENT, EFFECTIVE JULY 24, 2009			
Weekly	Biweekly	Semimonthly	Monthly
Disposable earnings are \$217.50 or less: NONE	Disposable earnings are \$435.00 or less: NONE	Disposable earnings are \$471.25 or less: NONE	Disposable earnings are \$942.50 or less: NONE
Disposable earnings are more than \$217.50 but less than \$290.00: AMOUNT ABOVE \$217.50	Disposable earnings are more than \$435.00 but less than \$580.00: AMOUNT ABOVE \$435.00	Disposable earnings are more than \$471.25 but less than \$628.33: AMOUNT ABOVE \$471.25	Disposable earnings are more than \$942.50 but less than \$1,256.67: AMOUNT ABOVE \$942.50
Disposable earnings are \$290.00 or more: MAXIMUM 25%	Disposable earnings are \$580.00 or more: MAXIMUM 25%	Disposable earnings are \$628.33 or more: MAXIMUM 25%	Disposable earnings are \$1,256.67 or more: MAXIMUM 25%

DHS Announces Intent to Implement Federal Contractor Rule, Abandon No-Match Rule

On July 8, Department of Homeland Security (DHS) Secretary Janet Napolitano announced:

- the Administration's support for a regulation that will award federal contracts only to employers that use E-Verify to check employee work authorization; and
- the Department's intention to rescind the No-Match Rule, which has never been implemented and has been blocked by court order, "in favor of the more modern and effective E-Verify system" [DHS Press Release, 7-8-09; www.dhs.gov/news/releases/pr_1247063976814.shtm].

E-Verify

E-Verify, which compares information from Form I-9, *Employment Eligibility Verification*, against federal government databases to verify workers' employment eligibility, is a free web-based system operated by DHS in partnership with the Social Security Administration (SSA).

Federal Contractor Rule

The Federal Contractor Rule extends mandatory use of the E-Verify system to covered federal contractors and subcontractors, including those who receive American Recovery and Reinvestment Act (ARRA) funds. The Administration will

push ahead with full implementation of the rule, which will apply to federal solicitations and contract awards government-wide starting September 8, 2009 (see **PAYROLL CURRENTLY**, Issue No. 12, Vol. 17).

No-Match Rule

The No-Match Rule, which dates from 2007, was blocked by court order shortly after it was issued and has never taken effect. That rule established procedures that employers could follow to avoid a finding that they knowingly employed unauthorized workers if they receive SSA no-match letters or notices from DHS that call into question work eligibility information provided by employees (see **PAYROLL CURRENTLY**, Issue Nos. 17 and 22, Vol. 15). DHS explains that these notices most often inform an employer many months or even a year later that an employee's name and social security number provided for a W-2 earnings report do not match SSA records – often due to typographical errors or unreported name changes, and asserts that E-Verify "addresses data inaccuracies that can result in no-match letters in a more timely manner and provides a more robust tool for identifying unauthorized individuals and combating illegal employment." ■

IRS Provides Tips for Proper Employment Tax Treatment of Part-Time or Seasonal Workers

For many businesses, summer traditionally brings an influx of part-time or seasonal workers into the workforce. Generally, workers are either employees or independent contractors based on the facts and circumstances of the relationship between the business and the worker. The IRS reminds employers that for federal income tax withholding, social security, Medicare, and federal unemployment tax purposes, neither the number of hours worked nor the amount earned alone determines the status of an individual

as an independent contractor or employee. For example, an individual can be an employee even though the individual works for one hour a week or one day a year. Furthermore, part-time or seasonal workers who are employees are subject to the same tax withholding rules that apply to other employees [www.irs.gov/businesses/small/article/0,,id=209570,00.html].

For more information, including seasonal employer tips for filing Form 941, *Employer's Quarterly Federal Tax Return*, see www.irs.gov/businesses/small/article/0,,id=101033,00.html. ■

IRS Reissues Instructions for Form 941-X

The IRS has posted a note on its website [www.irs.gov/formspubs/article/0,,id=109875,00.html (7-8-09)] advising taxpayers that the *Instructions for Form 941-X* have been reissued. Anyone who downloaded the instructions before July 7 is alerted that they have been modified.

On page 1 under "Background," the end of the third paragraph that begins "If you have comments" has been changed from "on Form 941" to "on page 10."

On page 8 under the instructions for Line 17a, a new paragraph has been added at the end.

On page 8 under the instructions for Line 18:

- The text "if your Form 941-X is filed timely" has been added at the end of the third sentence in the first bullet.
- Under "Amount you owe," the following paragraphs have been added after the first paragraph:

If you owe tax and are filing a timely Form 941-X, do not file an amended Schedule B (Form 941) unless you were assessed an FTD penalty caused by an incorrect, incomplete, or missing Schedule B (Form 941). Do not include the tax increase reported on Form 941-X on any amended Schedule B (Form 941) you file.

If you owe tax and are filing a late Form 941-X, that is, after the due date for Form 941 for the quarter in which you discovered the error, you must file an amended Schedule B (Form 941) with the Form 941-X. Otherwise, the IRS may assess an "averaged" FTD penalty.

- Also under "Amount you owe," the heading "*Payment methods*" has been added at the beginning of the last paragraph.

The corrected version of the instructions is available on the APA website at www.americanpayroll.org/members/Forms-Pubs/#tax. ■

Report Says SSA's Reconciliation Process With the IRS Could Be Improved

The Social Security Administration's Office of the Inspector General has issued a report on *SSA's Wage Reconciliation Process With the IRS* [Audit Report A-03-08-18069, June 2009; www.ssa.gov/oig/ADOBEPDF/A-03-08-18069.pdf]. The report looks at the effectiveness of the SSA-IRS reconciliation process in correcting SSA's earnings records and concludes that "the effectiveness of SSA's reconciliation process could be improved."

Background

SSA seeks to ensure that reports of social security and Medicare (FICA) wages are received timely and are accurately recorded. To help accomplish this, SSA and IRS records are compared annually in a process known as the Annual Wage Reporting (AWR) reconciliation.

Employers are required to report quarterly to the IRS the total wages paid on Form 941, *Employer's Quarterly Federal Tax Return*. Employers are also required to report wages annually to the SSA via Forms W-2, *Wage and Tax Statement*, and W-3, *Transmittal of Wage and Tax Statements*.

SSA's system identifies those employers whose (1) totals match, (2) IRS totals exceed SSA totals, and (3) SSA totals exceed IRS totals. If the FICA wages reported to both agencies agree, no action is necessary. If the wages differ, both agencies must resolve the differences.

SSA reconciliation cases

When more wages are reported to the IRS than to the SSA, employees' wages may not be credited correctly to SSA's records. SSA examines these cases and attempts to resolve the differences without contacting the employer. When an effort to resolve a discrepancy is unsuccessful or a resolution is not possible without employer assistance, the reconciliation system generates notices

and questionnaires that are mailed to the employer requesting additional information that could help resolve the discrepancy.

Tax year 2005 results

OIG determined that for tax year 2005, SSA could not resolve the reconciliation difference for 248,000 (49%) of the 508,000 employers that reported less wages to SSA than to the IRS. This occurred mainly because either SSA's reconciliation notices did not reach the intended employers or employers did not respond to them.

The 248,000 employers underreported to SSA approximately \$31 billion in FICA wages and tips and \$38 billion in Medicare wages, which could affect their employees' rights to future benefits or the benefit amount:

- About 155,000 of the 248,000 employers did not report any wages to SSA but had reported wages to the IRS. OIG estimates that about 464,000 employees could be impacted by the missing wages.

- About 93,000 employers reported wages to both agencies but reported less wages to SSA. OIG determined that 2,081 employers had underreported 59% of the FICA wages. OIG estimates that the underreporting could potentially impact 951,000 employees who would not earn four quarters of coverage for tax year 2005.

Employer Identification File

SSA uses the address information provided by the IRS when mailing reconciliation notices to employers. The address information is recorded in SSA's Employer Identification File (EIF), and the EIF serves as the main source for obtaining address information for employers. OIG found that employers' current addresses are not always included in the EIF. This may explain

why SSA did not receive responses from the employers whose notices were returned as undeliverable. It may also explain why many of the employers did not respond to the reconciliation notices. Moreover, when there is no response from employers within 120 days of the initial notice, the reconciliation system generates a second notice and sends it to the same address that appeared on the EIF although the initial notices were returned because of invalid addresses.

Internal wage adjustments

OIG found that SSA did not always inform employers about internal adjustments it made to employers' wages, which led to the imbalance of social security and Medicare wages reported to SSA and the IRS. SSA added, deleted, or changed the FICA wage amounts on Forms W-2 for about 32,000 employers, which contributed to about 17,000 employers reporting less in FICA wages to the SSA and about 15,000 employers reporting less to the IRS. An affected employer may not be able to resolve a reconciliation imbalance if SSA does not make the employer aware of internal adjustments. This may help to explain the fact that, of the employers that did not resolve their reconciliation discrepancies with SSA, a majority either did not respond to

SSA's reconciliation notices or did respond, but provided wage information that did not resolve the discrepancy.

OIG recommendations

Employer addresses. OIG recommended that SSA continue to work with the IRS to obtain current address information for employers. It recommended that SSA consider capturing the addresses of employers that submit paper wage reports on Form W-3. And it recommended that SSA compare the employer address that appears on Form W-3 to the address that appears on the SSA's EIF for the employer and, if they are not the same, use the Form W-3 address to mail the second notice to employers.

Electronic reconciliation notices. OIG recommended that SSA evaluate the feasibility of notifying employers electronically about reconciliation discrepancies to help minimize the number of reconciliation notices that are returned as undeliverable and the number of non-responses.

More communication with employers. OIG recommended that SSA establish a process to inform employers about internal wage adjustments that will affect an employer's reconciliation balance. ■

ICE Announces Employment Eligibility Verification Audit of 652 Businesses

On July 1, U.S. Immigration and Customs Enforcement (ICE) issued Notices of Inspection (NOIs) to 652 businesses nationwide – which is more than the 503 NOIs ICE issued during all of fiscal year 2008 [www.ice.gov/pi/nr/0907/090701_washington.htm].

NOIs alert business owners that ICE will be inspecting their hiring records to determine whether or not they are complying with employment eligibility verification laws and regulations. The businesses receiving an NOI on July 1 for a Form I-9 (*Employment Eligibility Verification*) audit were selected for inspection as a result

of leads and information obtained through other investigative means. Their names and locations were not released.

"ICE is committed to establishing a meaningful I-9 inspection program to promote compliance with the law. This nationwide effort is a first step in ICE's long-term strategy to address and deter illegal employment," said Department of Homeland Security Assistant Secretary for ICE John Morton. Under this new strategy, ICE is focusing its resources on auditing and investigating employers suspected of "cultivating illegal workplaces" by knowingly employing illegal workers. ■

IRS Issues Electronic Filing Requirements for Forms 1098, 1099, 3921, 3922, 5498, 8935, and W-2G

The IRS has published the requirements for filing Forms 1098, 1099, 3921, 3922, 5498, 8935, and W-2G electronically through the IRS FIRE (Filing Information Returns Electronically) system. The revenue procedure must be used for current (2009) and prior year information returns filed beginning January 1, 2010, and postmarked by December 1, 2010 [Rev. Proc. 2009-30, 2009-27 IRB 27; www.irs.gov/pub/irs-irbs/irb09-27.pdf]. Changes for tax year 2009 are as follows:

Important notices

- IRS/ECC-MTB (Internal Revenue Service, Enterprise Computing Center – Martinsburg) offers an Internet connection at <http://fire.irs.gov> for electronic filing. The FIRE system will be down from 2 p.m. ET, December 22, 2009, through January 4, 2010, for upgrading. It will not be operational during this time for submissions. In addition, the FIRE system may be down every Wednesday from 3 a.m. to 5 a.m. ET for maintenance.

- The FIRE system does not provide fill-in forms for information returns.

- Form 4419 (*Application for Filing Information Returns Electronically (FIRE)*) is subject to review before the approval to transmit electronically is granted to a first-time filer and may require additional documentation at the request of the IRS. If a determination is made concerning the validity of the documents transmitted electronically, IRS has the authority to revoke the Transmitter Control Code (TCC) and terminate the

release of the files.

General changes

- Three new forms have been added – Form 3921 (*Exercise of a Qualified Incentive Stock Option Under Section 442(b)*), Form 3922 (*Transfer of Stock Acquired Through an Employee Stock Plan Under Section 423(c)*), and Form 8935 (*Airline Payments Report*).

- Form 1099-R renamed Distribution Code E to Distributions Under Employee Plans Compliance System (EPCS). Formerly, the code was named Excess Annual Additions Under Section 415/Certain Excess Amounts Under Section 403(b) Plans.

- See Part A, Section 8 for changes in correction procedures. Incorrect TIN, payee name and/or address now requires a two-step correction.

- Technical security standards have been added to Part B, Section 7.06 for the FIRE system.

- Stricter edits to Combined Federal State Filing processing have been put in place that could cause files to be rejected if not properly coded under the guidelines of Part A, Section 10. Test files are recommended for all filers in the program.

- Form 4419, Box 3 must contain an Employer Identification Number (EIN). The IRS will no longer issue Transmitter Control Codes (TCC) to a social security number.

Programming changes

All forms

- Payment Year, Field Positions 2-5 (Transmitter "T" Record,

Payer “A” Record, Payee “B” Record), must be incremented to update the four-digit report year (2008 to 2009), unless reporting prior year data.

- In the Payee “B” Record, two amount fields – Payment Amount F (positions 223-234) and Payment Amount G (positions 235-246) – have been added.

- In the End of Payer “C” Record and the State Totals “K” Record, two amount fields – Control Total F (positions 268-285) and Control Total G (positions 286-303) – have been added.

Form 3921

- In the Payer “A” Record, Type of Return code “N” (position 27) and Amount Code Indicators “3” for Exercise price per share and “4” for Fair market value of share on exercise date (positions 28-41) have been added.

- In the Payee “B” Record, additions include Date Option Granted (positions 547-554) and Date Option Exercised (positions 555-562), both formatted as YYYYMMDD; Number of Shares Transferred (positions 563-570), formatted as right justify and zero fill; and Other than Transferor Information (positions 575-614), formatted as right justify and blank fill.

Form 3922

- In the Payer “A” Record, Type of Return code “Z” (position 27) and Amount Code Indicators “3” for Fair market value per share on grant date, “4” for Fair market value per share on

exercise date, and “5” for Exercise price per share (positions 28-41) have been added.

- In the Payee “B” Record, additions include Date Option Granted to Transferor (positions 547-554), Date Option Exercised by Transferor (positions 555-562), and Date Legal Title Transferred by Transferor (positions 571-578), all formatted as YYYYMMDD; and Number of Shares Transferred (positions 563-570), formatted as right justify and zero fill.

Form 1099-R

- In the Payee “B” Record, Distribution Code “U” (positions 545-546) has been added for Distribution from an ESOP under Section 404(k). Note that Code “U” can be paired with Code “B.”

Form 5498

- In the Payer “A” Record, additions include Amount Code Indicators “B” for RMD amount, “C” for Postponed contribution, “D” for Repayments, and “E” for Other contributions (positions 28-41).

- In the Payee “B” Record, positions 552-555 are changed to Year of Postponed Contribution, formatted as YYYY; positions 556-557 are changed to Postponed Contribution Code; positions 558-559 are changed to Repayment Code; positions 560-561 are changed to Bankruptcy Code; and positions 562-569 are changed to RMD Date. ■

USCIS Requests Comments on E-Verify Program Designated Agent Process

U.S. Citizenship and Immigration Services (USCIS) has requested comments on the E-Verify Program Designated Agent Process under which a participating employer may choose to outsource submission of employment eligibility verification queries for newly hired employees to a Designated Agent [74 F.R. 29711, 6-23-09; <http://edocket.access.gpo.gov/2009/pdf/E9-14641.pdf>].

Comments or suggestions for improving the Designated Agent process are invited. All comments must be received by August 24, 2009. Send comments by e-mail to DAsupport@dhs.gov and include “DA Re-Engineering Comment” in the subject line of your e-mail. Please also include information on whether you access E-Verify directly, or whether you have developed and used a web services interface to access the program.

Background

E-Verify is a free employment eligibility confirmation system operated jointly by the Department of Homeland Security (DHS)

and the Social Security Administration (SSA). It allows participating employers to electronically confirm the employment eligibility of newly hired employees.

An E-Verify Designated Agent is a liaison between E-Verify and employers that choose to outsource submission of employment eligibility verification queries for newly hired employees. E-Verify Designated Agents conduct the verification process for other employers or clients. An E-Verify Designated Agent must register online and sign a Memorandum of Understanding (MOU) with DHS and SSA. Once the MOU is approved, the E-Verify Designated Agent can begin registering employers and clients that have designated it to perform their verification services.

The program design for Designated Agents has changed very little over the past several years. Accordingly, USCIS plans to review the Designated Agent process to assess how Designated Agents provide this service to their clients. ■

A New Way to Spell Compliance: I-A-T

by Dee Nelson, CPP, Payroll Manager for Koniag Development Corporation

Attention ACH users—check with your ODFI and RDFI to make sure your IATs are compliant with OFAC, OK?

My apologies if acronym-ese is not your second language, but doesn't it seem like we are applying an increasing number of alphabetical shortcuts to the ever-challenging tasks of processing payroll? The newest player in the game is none other than the Office of Foreign Assets Control (OFAC). But what do they have to do with your biweekly payroll processing? Quite a bit, actually.

ACH/IAT rules

One of OFAC's duties is to impose controls on financial transactions both to and from “blocked” entities, including freezing assets and prohibiting many of the financial services routinely provided by wholesale banks to their corporate customers, opening accounts, processing payments, providing letters of credit, and transferring securities. Because the list of “blocked” entities identified by OFAC numbers in the thousands, for many banks

with high transaction volumes it is not economical to manually screen transactions for compliance.

Beginning in September 2009, certain ACH (Automated Clearing House) entries must be originated using a new Standard Entry Class Code – IAT (International ACH Transaction) – in order to comply with OFAC-administered U.S. sanctions and policies regarding cross-border payments. The purpose of the new regulations is to ensure that any cross-border payments are legal.

Certain ACH entries (after September 18, 2009) will be considered part of a payment transaction that involves a financial agency's office not located within the territorial jurisdiction of the United States. It will become the originator's obligation to understand the legal domicile of its payment recipients and to inquire as to whether they hold accounts in U.S. banks or with offshore financial institutions. The originator must provide the relevant information to the U.S. bank in order to facilitate

the origination of properly formatted IAT entries to its offshore recipients.

According to NACHA – The Electronic Payments Association, an IAT entry is a debit or credit entry that is part of a payment transaction involving a financial agency's office that is not located in the territorial jurisdiction of the United States. Originators of an IAT entry will be responsible for ensuring that international ACH transactions are properly identified using the IAT Standard Entry Class Code.

Originators will need to conduct a thorough examination of all receiver relationships to identify those transactions resulting in the transfer of funds to or from these agencies. For purposes of this definition, according to NACHA, a financial agency means an entity that is authorized by applicable law to accept deposits or is in the business of issuing money orders or transferring funds. An office of a financial agency is involved in the payment transaction if it:

- holds an account that is credited or debited as part of the payment transaction;
- receives payment directly from a person or makes payment directly to a person as part of the payment transaction; or
- serves as an intermediary in the settlement of any part of the payment transaction.

EXAMPLE

A U.S.-based company with U.S. resident employees is a subsidiary of a multinational corporation (the parent company). The parent company has centralized many of the global treasury, human resources, and data processing functions of its global subsidiaries (including the U.S. subsidiary) at its headquarters in Europe.

On a biweekly basis, the U.S. subsidiary sends changes to employee records to the central office. Also on a biweekly basis, it sends a file regarding payroll for the U.S. employees in a single file to its bank in the United States. Funding for the payroll is done through the U.S. subsidiary. The U.S. bank receives the U.S. subsidiary's payroll file from the parent company, and, according to NACHA, makes the following transactions:

- Originates an ACH file to pay U.S. employees on a settlement date, with an offsetting book-entry debit to the U.S. subsidiary's account at its U.S. bank totaling the sum value of all entries.
- Prints and ships to the U.S. subsidiary payroll checks drawn on the subsidiary's U.S. account at its U.S. bank to pay those U.S. employees not on direct deposit.

Is this an IAT transaction? All ACH credits and the single, offsetting debit in this scenario would be domestic transactions and not IATs. This is because the U.S. bank and the RDFIs (Receiving

Depository Financial Institutions) holding the employees' accounts are the only banks involved in the transactions. No financial agencies located outside the territorial jurisdiction of the U.S. are involved in the payment transactions.

Had this transaction been sent from a European bank to the U.S. resident employees' banks in the United States, this transaction would then fall under the new IAT guidelines and require the originator to comply. In order for any transaction to be considered an IAT or international transaction, the monies have to cross borders or be international in nature.

Why IAT is necessary

According to the Federal Reserve, IAT was developed to respond to OFAC's request to align NACHA rules with OFAC compliance obligations, and to make it easier for RDFIs to comply with those obligations. In the current environment, many U.S. financial institutions are receiving international payments that cannot be properly identified. These unidentifiable payments enter the United States through correspondent banking relationships and are often difficult to trace or accurately process as international payments. The new IAT code supports the end of anonymity and promotes traceability of international electronic payments.

IAT deadline looming

September 18, 2009, is the date that ACH operators must begin processing IAT entries. There has been a coordinated effort between both NACHA and ACH operators to increase awareness and readiness for IAT implementation, and there are many online resources that will help in determining if any payroll professional's ACH transactions fall under the new IAT guidelines, including:

- A link on the NACHA website—www.nacha.org/IAT_Industry_information/.
- The 2009 Rules Changes and New Formats for International ACH Transaction (IAT) Entries sections in the 2008 ACH Rules Book.

These changes are not only for payroll-related payments; these new compliance regulations affect any electronic payment that crosses borders. This means that any travel advances, accounts payable invoicing payments, and payroll-related activities could be affected.

To ensure you are compliant with any cross-border payment requirements, it is essential that you speak to your originating financial institution now so that all OFAC requirements will be met when the big day comes.

☞ **APA OFFERS WEBINAR** – To learn more, go to www.americanpayroll.org/course-conf/apa-on-demand and sign up for the APA's On Demand Webinar "International ACH Transactions and Payroll – What's the Connection?" (product code 09516RWN). ■

The New York Metropolitan Commuter Transportation Mobility Tax

Legislation signed by New York Governor David Paterson on May 7, 2009, created the Metropolitan Commuter Transportation Mobility Tax (also known as the MTA payroll tax; see **PAYROLL CURRENTLY, Issue No. 10, Vol. 17**). This employer-paid payroll tax was enacted as part of a bailout plan for the Metropolitan Transportation Authority (MTA), an agency that manages buses, trains, bridges, and tunnels in New York City and surrounding areas. The tax is administered by the New York State Department of Taxation and Finance. Below is a thorough explanation of the new tax so that you can be sure you are withholding and reporting it correctly [N.Y. CL Tax §§800 – 806].

Doing business within the MCTD

Effective March 1, 2009, the tax is imposed on employers (other than public school districts) and self-employed individuals engaging in business within the Metropolitan Commuter

Transportation District (MCTD). Effective September 1, 2009, employers that are public school districts within the MCTD are subject to the tax.

The MCTD is comprised of 12 counties served by the MTA, which include the five counties that make up New York City (Bronx, Kings (Brooklyn), New York (Manhattan), Queens, and Richmond (Staten Island)) and the surrounding counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

Definitions

The terms "employer," "public school district," "payroll expense," and "covered employee" are defined as follows:

- **Employer** – an employer that is required to deduct and withhold New York state income tax from wages paid to employees and has a payroll expense exceeding \$2,500 in any calendar quarter.

- **Public school district** – a New York public school district, not including a special act school district, a Board of Cooperative Educational Services (BOCES), or a charter school.

- **Payroll expense** – the total wages and compensation subject to federal social security and railroad retirement taxes, without taking into consideration the annual wage limit (i.e., social security wages above \$106,800 in 2009 are subject to the MTA payroll tax).

- **Covered employee** – an employee (including a statutory employee) who is employed within the MCTD.

Determining if an employee is a covered employee

An employee is considered to be a covered employee if his or her services are allocated to the MCTD. To determine if an employee's services are allocated to the MCTD, the following tests must be used:

- **First test: localization** – All of an employee's services are allocated to the MCTD if the services are localized there. Services are "localized" if they are performed entirely within the MCTD or are performed both in and out of the MCTD, but those performed outside the MCTD are incidental to the employee's services performed within the MCTD (e.g., the services are temporary or transitory in nature, or consist of isolated transactions).

- **Second test: base of operations** – If an employee's services are not localized in the MCTD, all services are allocated to the MCTD if an employee's base of operations is in the MCTD. This test cannot be applied if the employee has either more than one base or no base of operations. "Base of operations" means the place at which the employee is not continuously located, but from which the employee customarily starts out to perform his or her functions in or out of the MCTD. This is where the employee customarily returns in order to receive instructions from his or her employer, communications from other persons, or to replenish stock and materials, to repair equipment used, or to perform any other function necessary in the exercise of his or her trade or profession.

- **Third test: place of direction and control** – If neither of the two preceding tests results in a clear allocation of services, and (1) direction and control emanates from only the MCTD, and (2) the employee performs some services within the MCTD, then all services are allocated to the MCTD. "Direction and control" mean the place from which the employer directs and controls the activities of the employees. It is not necessarily the location of the principal office, but rather the point from which basic authority over the supervision of services emanates (e.g., the place from which job assignments are made and/or instructions are issued, or the place at which personnel and payroll records are maintained).

- **Fourth test: residence** – If none of the preceding tests results in a clear allocation of services, all of the employee's services are allocated to the MCTD if the employee resides in the MCTD and performs some services in the MCTD.

Tax rate

The tax is imposed at a rate of 0.34% (.0034) of an employer's payroll expense for all covered employees for each calendar quarter.

An employer cannot allocate payroll expenses for covered employees who work in and out of the MCTD for purposes of computing the tax. Thus, if an employee is considered a covered employee, all the payroll expense for that employee is subject to the tax.

No tax credits may be used to reduce the amount of the tax due.

Exemptions

Any exemption from tax specified in any other New York

state law does not apply to this tax. For example, if another law provides that a certain New York public authority is exempt from any tax imposed by New York State or by any political subdivision of the state, that exemption does not apply to this tax.

The following employers are not subject to the tax: a federal agency or instrumentality, the United Nations, and an interstate agency or public corporation created under an agreement or compact with another state or Canada.

Returns and payments

Except for PromptTax filers (see below), the tax must be reported and paid for each calendar quarter by the last day of the month following the end of the quarter as follows:

Quarter	Due Date
January 1 – March 31	April 30
April 1 – June 30	July 31
July 1 – September 30	October 31
October 1 – December 31	January 31

When the due date falls on a Saturday, Sunday, or legal holiday, the employer may report and pay on the next business day. There are no extensions of time allowed for employers to report or pay the tax.

Special rule for 2009. The initial tax report and payment for employers not required to pay withholding tax through the PromptTax program is due by November 2, 2009 (because October 31, 2009, is a Saturday). This initial payment must include the tax due for the period March 1, 2009, through September 30, 2009 (September 1, 2009, through September 30, 2009, for public school districts within the MCTD). There will be no penalty on amounts attributable to the tax period ending September 30, 2009, provided the employer has made the initial payment by November 2, 2009. The payment due for the period October 1, 2009, through December 31, 2009, is due by February 1, 2010 (because January 31, 2010, is a Sunday).

PromptTax filers. Employers, other than public school districts, that are required to enroll in the Electronic Filing and Payment Program for Withholding Tax (PromptTax) for New York State withholding tax purposes (i.e., an employer whose New York State withholding liability for the previous tax year was \$100,000 or more) are required to make payments of the tax on the same dates the withholding tax payments are remitted under the PromptTax program.

Employers voluntarily enrolled in PromptTax are not required to make tax payments on the same date as they make their PromptTax payments, but may choose to do so if they wish. If they choose not to, the employer must pay the tax quarterly as described above.

Special PromptTax rule for 2009. An employer that is required to remit withholding tax payments through the PromptTax program (or an employer that chooses to do so) must submit the initial tax payment for 2009 on the same date its first PromptTax withholding tax payment is due on or after October 31, 2009. This initial payment must include the tax due for the period that begins on March 1, 2009, and ends on the payroll date for which the first PromptTax payment occurring on or after October 31, 2009, is made. There will be no penalty on the amount due with the initial payment provided the employer makes the initial payment by the same date that its first PromptTax withholding tax payment is due on or after October 31, 2009.

The Department has not yet issued forms or instructions for employers to file returns and pay taxes. However, the Commissioner of Taxation and Finance is authorized to require that all returns and payments be made electronically. For more information, visit www.tax.state.ny.us/sbc/mta.htm. ■



STATE AND LOCAL NEWS

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Minnesota

Annual cafeteria plan statements required upon written request. Effective for taxable years beginning 1-1-09 for premiums paid beginning in January 2009, employers must provide, *only upon receiving a written request from an employee*, a statement that shows the amount of health insurance premiums attributable to that employee paid from an IRC §125 cafeteria plan for each month of the taxable year. The purpose of the statement is to facilitate a personal income tax credit for low income employees. The credit is 20% of the health insurance premiums paid from a §125 plan and is allowed only: (1) for premiums paid after an employee has been without health care coverage for at least one year; and (2) only for the first 12 months in which an employee participates in a §125 plan. The statement must include premiums paid in the employee's first 12 months of coverage under the plan, provided that the employee did not have coverage under a health care plan offered by the employer for the 12 months prior to the date the employee began participating in the §125 plan. The statement does not have to be provided at the same time as Form W-2, *Wage and Tax Statement*. An employee may make only one request per taxable year. These changes replace requirements reported in **PAYROLL CURRENTLY, Issue No. 10, Vol. 17** [H.B. 1298, L. 2009].

Mississippi

Procedures for lump sum payments and child support arrearages clarified. Effective 6-30-09 to 7-1-10, the Department of Human Services (DHS) may collect lump sum payments made by an employer to an employee who owes child support arrears. An employer must notify the DHS at least 45 days before making a lump sum payment of more than \$500 to the employee (or as soon as the decision is made to make the payment if that is less than 45 days). The lump sum may not be released until 30 days after the intended date of the payment or until DHS authorization is received, whichever is earlier. The DHS will specify the amount of the lump sum to be withheld. If the lump sum is for severance pay, the amount may not exceed what the employer would have withheld if the severance pay had been paid as the employee's usual earnings [S.B. 2588, L. 2009].

Tennessee

UI taxable wage base increased for 2009. Retroactive to 1-1-09, the unemployment insurance (UI) taxable wage base has increased to \$9,000 from \$7,000 (this updates *The Payroll Source*®, p. 7-23). The Department of Labor and Workforce Development (DLWD) advises employers to report additional taxable wages (those over \$7,000) from previously filed first quarter 2009 premium reports (Form LB-0456) as additional year-to-date taxable wages on line 3 of the second quarter premium report and continue with the \$9,000 taxable wage calculation on each employee's earnings for the remainder of the year. Employers with payroll systems that cannot report additional taxable wages should file an amended premium report for the first quarter [H.B. 2324, L. 2009; DLWD letter, 6-26-09].

Washington

UI taxable wage base will be increased for 2010. Effective 1-1-10, the unemployment insurance (UI) taxable wage base will increase to \$36,800 from \$35,700 (this updates *The Payroll Source*®, p. 7-23) [Employment Security Department, News Release No. 04-048, 6-18-09].

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