



The Payroll  
Compliance  
Publication  
Of The  
American  
Payroll  
Association

# PAYROLL CURRENTLY

Volume 18

Issue # 1

January 8, 2010

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## Senate Approves Health Insurance Reform Bill

On December 24, the U.S. Senate voted 60-39 in favor of H.R. 3590, the Patient Protection and Affordable Care Act. The House approved a different bill, known as the Affordable Health Care for America Act, on November 7 (see [PAYROLL CURRENTLY, Issue No. 22, Vol. 17](#)). The different versions of the legislation must now be reconciled and approved by both houses before a final bill can be presented to President Obama for his signature. Like the earlier House bill, the Senate bill has several provisions of interest to payroll professionals.

### **W-2 reporting of cost of employer-provided health coverage**

Under the Senate bill, employers would have to report the total cost of employer-provided health coverage on employees' Forms W-2, effective for tax years beginning after 2010. This requirement does not apply to the amount of salary reduction contributions to a health Flexible Spending Arrangement (FSA) under a cafeteria plan or to amounts contributed to an Archer Medical Savings Account (MSA) or Health Savings Account (HSA).

### **Medicare tax increase on high earners**

Further, the Senate bill would increase the Medicare tax rate from 1.45% to 2.35% on wages earned over \$200,000 for single filers and \$250,000 for joint filers. Because employers will not know the wages of an employee's spouse, they are directed to withhold the increased amount from all workers with wages exceeding \$200,000. Overwithholding and underwithholding for joint filers would be reconciled when they file their tax returns. Employers would not have to match the increased Medicare tax amounts withheld from employees' wages. Self-employed individuals would also be subject to the Medicare tax increase if they meet the income thresholds, and would not be allowed to deduct the additional tax as a business expense. This provision would be effective for taxable years after December 31, 2012.

### **Change in definition of 'medical expenses'**

The bill would conform the definition of "medical expense" for purposes of health FSAs, Health Reimbursement Arrangements (HRAs), HSAs, and Archer MSAs to the definition used in determining the itemized deduction

for medical expenses. This would mean that only the cost of medicine prescribed by a doctor and insulin could be reimbursed through a health FSA or HRA or on a tax-free basis through an HSA or Archer MSA. This would change the current rule allowing such reimbursements for nonprescription drugs if the plan provides for it. This change would take effect for tax years beginning after 2010.

#### **Reduced health FSA deferral limits**

The bill would limit salary reductions by an employee into a health FSA to \$2,500 (indexed for inflation in subsequent years). It would not limit the exclusion for health coverage offered through an HRA. This provision would take effect for tax years beginning after 2010.

#### **Higher penalty for non-medical HSA reimbursements**

The Senate bill would increase the additional tax on distributions from an HSA that are not used for medical expenses from 10% to 20% of the distributed amount. The increase would take effect for distributions made after 2010.

#### **Expanded information reporting on Form 1099-MISC**

The Senate bill (like the House bill) would modify the general information reporting requirements regarding services provided to a trade or business by eliminating the exception for payments to corporations. It would also expand the class of payments for which information reporting is required to include gross proceeds for both property and services. The current regulatory exception for payments to exempt organizations would not be affected. The changes would take effect for payments made beginning in 2012.

#### **Simpler cafeteria plan nondiscrimination rules for small employers**

For tax years beginning after 2010, the Senate bill would provide for a “simple” safe harbor from the nondiscrimination requirements for cafeteria plans for an eligible small employer (generally 100 or fewer employees). The safe harbor would also apply to the nondiscrimination requirements for specified qualified benefits offered under a cafeteria plan, including group-term life insurance, coverage under a self-insured group health plan, and benefits under a dependent care assistance program. The safe harbor would require that a cafeteria plan satisfy minimum eligibility

and participation requirements and minimum employer contribution requirements.

#### **Expansion of adoption assistance programs**

For taxable years beginning in 2010, the bill would increase the maximum amount of the income exclusion for employer-provided adoption assistance to \$13,170 (currently \$12,170) and adjust it for inflation after 2010. The bill would also extend the income exclusion through December 31, 2011 from the current expiration date of December 31, 2010.

#### **Excise tax on high-cost health coverage**

For tax years beginning after 2012, health insurers would be subject to an excise tax of 40% on the cost of health coverage in excess of \$8,500 for individuals and \$23,000 for families, with these amounts indexed for inflation in later years. The thresholds would be higher for those in certain high-risk professions, such as firefighting, law enforcement, construction, and mining. Employers would have to provide information to the IRS and insurers about the amounts subject to the excise tax. Some transition relief would be provided in states where health insurance is most costly.

#### **Automatic enrollment in health care plans**

The bill would amend the FLSA to require employers with at least 200 employees to automatically enroll new hires in one of the health insurance plans it offers and to continue the enrollment of current employees. Employees must be provided with adequate notice and the opportunity to opt out. This provision would not supersede state law unless it would prevent the employer from instituting an automatic enrollment program.

#### **Other new reporting requirements**

Under the bill, employers that provide the minimum health coverage required by the bill would have to provide new information returns to the IRS and statements to employees detailing who is covered, the coverage provided, whether the coverage is provided through a Health Benefit Exchange or is subject to a cost-sharing reduction, the portion required to be paid by the employer, and other information required by the Treasury Secretary. These requirements would apply to calendar years beginning after 2013. ■

## IRS Releases 2010 Circular E

The 2010 Circular E, *Employer's Tax Guide* (Pub. 15), has been released by the IRS. It is available on the APA website at [www.americanpayroll.org/members/Forms-Pubs/#pubs](http://www.americanpayroll.org/members/Forms-Pubs/#pubs).

Circular E addresses the needs of small business employers and provides the basic employment tax information needed by all employers. There are no major changes to Circular E this year, but several “What’s New” items are highlighted:

- **Social security and Medicare tax for 2010.** Do not withhold social security tax after an employee reaches \$106,800 in social security wages, which remains unchanged from 2009. (There is no limit on the amount of wages subject to Medicare tax.) Social security and Medicare taxes apply to the wages of household workers you pay \$1,700 or more in cash. Social security and Medicare taxes apply to election workers who are paid \$1,500 or more (see *PAYROLL CURRENTLY*, Issue No. 20, Vol. 17).

- **Employers can choose to file Forms 941 instead of Form 944 for 2010.** Beginning with tax year 2010, employers

that would otherwise be required to file Form 944 can notify the IRS if they want to file quarterly Form 941 instead of annual Form 944 (see *PAYROLL CURRENTLY*, Issue No. 22, Vol. 17).

- **Verifying social security numbers.** Starting in fall 2009, the Social Security Administration (SSA) is no longer manually verifying social security numbers (SSNs) over the telephone (see *PAYROLL CURRENTLY*, Issue No. 19, Vol. 17). SSA now offers an automated telephone service, Telephone Number Employer Verification (TNEV), that lets employers and authorized reporting agents verify up to 10 employee names and SSNs.

- **Withholding income taxes on the wages of nonresident alien employees.** A new procedure applies to figure the amount of income tax to withhold from the wages of nonresident alien employees for wages paid in 2010 (see *PAYROLL CURRENTLY*, Issue No. 24, Vol. 17).

- **Optional additional withholding adjustment for pensions.** An optional procedure and additional withholding tables are provided for figuring the amount of income tax to

withhold from pension payments (see [PAYROLL CURRENTLY, Issue No. 23, Vol. 17](#)).

- **COBRA premium assistance credit.** The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5; see [PAYROLL CURRENTLY, Issue No. 4, Vol. 17](#)) allows a credit against employment taxes for providing COBRA premium assistance for certain involuntarily terminated employees once the employees' reduced share of the premiums has been paid.

- **Credit card payments.** You can pay the balance due shown on Form 940 (*Employer's Annual Federal Unemployment (FUTA) Tax Return*), Form 941 (*Employer's Quarterly Federal Tax Return*), Form 943 (*Employer's Annual Federal Tax Return for Agricultural Employees*), Form 944 (*Employer's Annual Federal Tax Return*), and Form 945 (*Annual Return of Withheld Federal Income Tax*) by credit card. Do not use a credit card to make federal tax deposits. Note that a convenience fee will be charged by the service provider based on the amount you are paying.

- **Ordering employer tax products.** To order 2009 and 2010 tax products and information returns, select "Online Ordering for Information Returns and Employer Returns" at [www.irs.gov/businesses](http://www.irs.gov/businesses). You may also order employer tax products and information returns by calling 1-800-829-3676.

Instead of ordering paper Forms W-2 and W-3, consider filing them electronically using the SSA's free e-file service. Visit [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer), select "Electronically File Your W-2s," and provide registration information. You

will be able to create and file "fill-in" versions of Forms W-2 with SSA and can print completed copies of Forms W-2 for filing with state and local governments, distribution to your employees, and for your records. Form W-3 will be created for you based on your Forms W-2.

#### IRS issues corrected publication

The IRS has posted a note on its website [[www.irs.gov/formspubs/article/0,,id=109875,00.html](http://www.irs.gov/formspubs/article/0,,id=109875,00.html) (1-5-10)] advising taxpayers that Publication 15 (Circular E), *Employer's Tax Guide* (2010) has been reissued. Anyone who downloaded the publication before January 1, 2010, is advised that it has been modified.

- **Page 4.** Under "Employer Responsibilities," page number references have been updated.

- **Pages 41-60.** The heading under the number of allowances in the Wage Bracket Method Income Tax Withholding tables has been corrected to read "The amount of income taxes to be withheld--." (Previously, the heading read "The amount of income, social security, and Medicare taxes to be withheld--.")

- **Page 70.** In Table 3, two amounts have been changed. Under the heading "Over--," the fifth amount down has been changed to \$3,654 (previously, the amount was shown as "\$3,642"); under the heading "But not over--," the fourth amount down has been changed to \$3,654 (previously, the amount was shown as "\$3.654").

The corrected version of Publication 15 is available on the APA website at the address given above. ■

## IRS Issues 2010 Forms W-2 and W-3 and Instructions

The IRS has issued the 2010 Form W-2, *Wage and Tax Statement*, and Form W-3, *Transmittal of Wage and Tax Statements* (see *The Payroll Source*®, starting at p. 8-64). These forms, essentially unchanged from last year, along with the *2010 Instructions for Forms W-2 and W-3*, are posted on the APA website at [www.americanpayroll.org/members/Forms-Pubs/#tax](http://www.americanpayroll.org/members/Forms-Pubs/#tax). Items to note include:

- **Undeliverable Forms W-2.** Keep for four years any employee copies of Forms W-2 that you tried to but could not deliver. However, if the undelivered W-2 can be produced electronically through April 15th of the fourth year after the year of issue, you do not need to keep undeliverable employee copies. Do not send undeliverable Forms W-2 to the Social Security Administration (SSA).

- **Military differential pay.** Employers paying their employees while they are on active duty for more than 30 days in the U.S. uniformed services should treat these payments as wages subject to income tax withholding. The payments are not subject to social security and Medicare taxes, however.

- **Reporting for nonqualified deferred compensation plans.** You are not required to complete Box 12 with Code Y (deferrals under nonqualified plans subject to §409A) (see Notice 2008-115; [www.irs.gov/irb/2008-52\\_IRB/ar10.html](http://www.irs.gov/irb/2008-52_IRB/ar10.html)).

- **Electronic payee statements.** If your employees give their consent, you may be able to furnish Copies B, C, and 2 of Forms W-2 to them electronically. See Pub. 15-A for additional information ([www.americanpayroll.org/members/Forms-Pubs/#annual](http://www.americanpayroll.org/members/Forms-Pubs/#annual)).

- **Online filing of Forms W-2 and W-3.** You may

file Forms W-2 and W-3 electronically by visiting the SSA website at [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer) and selecting "Business Services Online." Once registered, you can upload electronic wage files or use the SSA's "Create Forms W-2 Online" to send electronic information to the SSA.

- **Extended due date for electronic filers.** If you file your 2010 Forms W-2 with the SSA electronically, the due date is extended to March 31, 2011.

- **Substitute forms.** If you are not using the official IRS form to furnish Form W-2 to employees or to file with the SSA, you may use an acceptable substitute that complies with the rules in Pub. 1141, *General Rules and Specifications for Substitute Forms W-2 and W-3*. Pub. 1141, which is revised annually, is a revenue procedure that explains the requirements for format and content of substitute Forms W-2 and W-3.

- **Distributions from governmental §457(b) plans of state and local agencies.** Generally, report distributions from §457(b) plans of state and local agencies on Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc.*, not Form W-2. See Notice 2003-20 for details ([www.irs.gov/pub/irs-irbs/irb03-19.pdf](http://www.irs.gov/pub/irs-irbs/irb03-19.pdf)).

- **Earned income credit (EIC) notice.** Employers must notify employees who have no income tax withheld that they may be able to claim an income tax refund because of the EIC. Do this by using the official IRS Form W-2 with the EIC notice on the back of Copy B or a substitute Form W-2 with the same statement. Give your employees Notice 797, *Possible Federal Tax Refund Due to the Earned Income*

Credit (EIC), or your own statement that contains the same wording if (a) you use a substitute Form W-2 that does not contain the EIC notice, (b) you are not required to furnish

Form W-2, or (c) you do not furnish a timely Form W-2 to your employees. ■

## IRS Reminds Providers Not to File Before Receiving Forms W-2

The IRS has issued a reminder that an “Authorized IRS e-file Provider” is prohibited from submitting electronic returns to the IRS prior to the receipt of all Forms W-2 (*Wage and Tax Statement*), W-2G (*Certain Gambling Winnings*), and 1099-R (*Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc.*) from the taxpayer.

If the taxpayer is unable to secure and provide a correct Form W-2, W-2G, or 1099-R, the return may be electronically

filed after Form 4852 (*Substitute for Form W-2*) is properly completed. This is the only time information from pay stubs or leave and earning statements (LES) is allowed.

For further information, see chapters 3 and 6 of Publication 1345, *Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns* [QuickAlerts, December 2009; [www.irs.gov/taxpros/providers/article/0,,id=217114,00.html](http://www.irs.gov/taxpros/providers/article/0,,id=217114,00.html)]. ■

## IRS Releases Tax Calendars for 2010

The IRS has issued Publication 509, *Tax Calendars for 2010*. This publication includes important due dates for all types of businesses as well as for individuals. By using the calendars, taxpayers do not have to figure the dates themselves or adjust for Saturdays, Sundays, or legal holidays. The “Employer’s Tax Calendar” section of Publication 509 covers various dates of interest to employers, including the due dates both for filing returns and for making deposits of the following taxes throughout the year:

- Income tax withheld from employees’ wages or from

nonpayroll amounts paid out.

- Social security and Medicare (FICA) taxes withheld from employees’ wages and the social security and Medicare taxes an employer must pay.
- Federal unemployment (FUTA) tax an employer must pay.

*Note:* The Employer’s Tax Calendar should be used in conjunction with Publication 15, Circular E, *Employer’s Tax Guide*, which provides the rules governing when deposits must be made. ■

## IRS Releases 2010 Form W-5

The IRS has released the 2010 Form W-5, *Earned Income Credit Advance Payment Certificate*. This form, along with two pages of instructions, is available on the APA website at [www.americanpayroll.org/members/Forms-Pubs/#tax](http://www.americanpayroll.org/members/Forms-Pubs/#tax).

### Advance Earned Income Credit

Eligible employees who want to receive advance payments of the earned income credit (see *The Payroll Source*®, beginning at p. 6-43) must submit a completed Form W-5 to their employer. Employees who received advance payments of the EIC in 2009 must submit the 2010 Form W-5 to their employer before the first wage payment of 2010 in order to continue receiving the payments.

### Credit amount

For 2010, employees are eligible to receive advance EIC payments only if they meet all four of these conditions:

- have a valid social security number (the employee’s

spouse also must have a valid social security number if they expect to file a joint return for 2010);

- expect to have a qualifying child;
- expect that their 2010 earned income and adjusted gross income will each be less than \$35,535 (\$40,545, if they expect to file a joint return in 2010); and
- expect to be able to claim the EIC for 2010.

The total of advance EIC payments for the year cannot exceed \$1,830. For most people, adjusted gross income includes tax-exempt interest and certain nontaxable pensions, annuities, and IRA distributions (for further details, see Publication 596, *Earned Income Credit*). Workfare payments (certain cash public assistance payments) are not included in earned income. For most people, “investment income” is the total of their taxable interest, ordinary dividends, capital gain distributions, and tax-exempt interest. ■

## COBRA Premium Subsidy Extended

On December 19, President Obama signed into law the Department of Defense (DOD) Appropriations Act, 2010 (Pub. L. No. 111-118), which includes provisions extending the COBRA premium subsidy that was enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA; see *PAYROLL CURRENTLY, Issue No. 4, Vol. 17*).

Under ARRA, individuals are eligible for the 65% COBRA premium subsidy for up to nine months if they lose group

health plan coverage because of an employee’s involuntary termination of employment between September 1, 2008, and December 31, 2009, elect COBRA coverage, and pay 35% of the full COBRA monthly premium.

The DOD Appropriations Act makes three important changes:

1. It extends the deadline for the involuntary termination of employment to February 28, 2010;

2. It clarifies that eligibility for the subsidy is based on the date of the qualifying event (i.e., employment termination), not the date the individual becomes eligible for COBRA continuation coverage; and

3. It extends the maximum eligibility period from nine to 15 months, both for those who became or become eligible by December 31, 2009, and for those who become eligible by February 28, 2010.

The DOD Appropriations Act also includes transitional provisions protecting those individuals whose eligibility for the premium subsidy expired before the extension (e.g., individuals whose period of eligibility began on March 1 and ended on November 30) and requiring group health plan administrators to notify them of their retroactive eligibility for the subsidy.

Individuals whose eligibility for the premium subsidy expired before December 19 and would be extended by the DOD Appropriations Act changes can maintain their eligibility by paying 35% of the full COBRA premium by February 17, 2010 (60 days after the enactment date of the changes), or, if later, 30 days after being notified of the changes by their group health plan administrator. An individual who pays the full COBRA premium for the period after their original subsidy eligibility expired is entitled to a refund of 65% of the amount they paid, or the overpayment can be applied to future premium payments.

For any individual who was eligible for the COBRA premium subsidy on or after October 31, 2009, or who loses group health plan coverage because of an employee's involuntary termination of employment on or after that date, the group health plan administrator involved must provide

notification to the individual of the DOD Appropriations Act changes by February 17, 2010. If the termination occurs after December 19, 2009, the additional notification language must be included as part of the regular COBRA continuation coverage notification provided to the individual. In addition, for assistance eligible individuals who did not timely pay their COBRA premium once their eligibility for the subsidy expired or who paid the full COBRA premium for such periods, the group health plan administrator must provide such individuals with an additional notification containing information on the DOD Appropriations Act changes, including the right to make retroactive premium payments, within 60 days after the expiration of their original eligibility period.

For employers, the extensions of COBRA premium subsidy eligibility mean that they will be filing Forms 941 (*Employer's Quarterly Federal Tax Return*) claiming the employment tax credit for the 65% subsidy past IRS's originally expected end-point of the fourth quarter of 2010. In fact, because eligibility for the COBRA subsidy depends on the date of the employee's termination rather than the individual's COBRA eligibility date, it is impossible to say how long employers will be claiming the credit. For example, if an employee is involuntarily terminated on January 31, 2010, but has a severance agreement under which the employer continues to cover the employee under the employer's health insurance plan for two years, the employee is not eligible for COBRA benefits until February 1, 2012. If the employee then elects COBRA continuation coverage, the employee would be eligible for the COBRA premium subsidy for 15 months, through May 31, 2013. ■

## IRS Issues Guidance Illustrating Rules for Correcting Employment Tax Reporting Errors Using New 'X' Series Forms: Part I

The IRS has issued guidance illustrating the interest-free adjustment and claim for refund processes under final regulations that changed employment tax adjustment procedures in connection with the development of new "X" forms – e.g., Form 941-X (see [PAYROLL CURRENTLY, Issue No. 15, Vol. 16](#)). The revenue ruling applies the final regulations to a variety of situations to show how the new processes operate [Rev. Rul. 2009-39, 12-10-09; [www.irs.gov/pub/irs-drop/rr-09-39.pdf](http://www.irs.gov/pub/irs-drop/rr-09-39.pdf)]. This issue of PAYROLL CURRENTLY presents four situations. The next issue will present four more situations.

### **An underpayment of FICA tax and income tax withholding (ITW) when the error is not ascertained in the year the wages were paid**

Warren's Auto Body, Inc. timely filed its 2009 fourth quarter Form 941 on January 10, 2010, and timely paid all employment tax reported on the return. On February 9, 2010, Warren's ascertains that it underwithheld and underpaid FICA tax and ITW for its employees' wages in the fourth quarter of 2009.

Warren's must correct the underpayment of FICA tax on a Form 941-X using the adjustment process. Warren's must file Form 941-X by the due date of Form 941 for the return period in which it ascertained the error (i.e., April

30, 2010) and pay the amount owed by the time it files Form 941-X. If Warren's files Form 941-X by April 30, 2010, but does not pay by the time it files, interest will accrue from the date Form 941-X is filed until payment is made. If payment is not made until after receipt of a notice and demand for payment, Warren's is entitled to an interest-free adjustment for the period up to the date the Form 941-X is filed, but interest accrues from the date the Form 941-X is filed until payment is made.

Warren's may not use the interest-free adjustment process outside an employment tax examination to correct the underpayment of ITW, because the error was not ascertained in the same year the wages were paid to the employees.

### **An overpayment of ITW when the error is ascertained in the same year the wages were paid**

Sam's Tax Service Co. timely filed its 2011 third quarter Form 941 on October 10, 2011, and timely paid all employment tax reported on the return. On December 2, 2011, Sam's ascertains that it overwithheld and overpaid ITW in the third quarter of 2011 and reported the overpayment on its third quarter Form 941. Sam's repays the overcollected amounts to its affected employees on December 29, 2011. Sam's files Form 941-X on January

6, 2012, to correct the overpayment using the adjustment process.

Because Sam's repaid its employees in the same year the wages were paid, Sam's may correct the overpayment of ITW using the adjustment process even though the adjusted return is filed in the year after the wages were paid. Sam's may not use the refund claim process to correct the error because the ITW was actually withheld from the employees' wages. Since Sam's filed Form 941-X on or before January 15, 2015, it is a timely adjustment under the 90-day rule.

*Note:* Under Treas. Reg. §31.6413(a)-2(d)(2), no overpayment adjustment may be made if the overpayment relates to a return period for which the period of limitations on credit or refund under IRC §6511 will expire within 90 days of filing the adjusted return. The purpose of the 90-day rule is to give the IRS sufficient time to process the request for an overpayment adjustment.

### **Both an overpayment and an underpayment of FICA tax for the same tax period**

Tammy's Trash Removal, Inc. timely filed its 2006 fourth quarter Form 941 on January 19, 2007, and timely paid all employment tax reported on the return. On December 1, 2009, Tammy's ascertains that it underpaid FICA tax with respect to wages of Employees Alyssa, Bernice, and Caren and overwithheld and overpaid FICA tax with respect to wages of Employee David on its 2006 fourth quarter Form 941. Tammy's reimbursed David in the amount of the overcollection promptly after ascertaining the overpayment.

The underpaid FICA tax with respect to the wages of Alyssa, Bernice, and Caren must be corrected on Form 941-X using the adjustment process. To correct the overpaid FICA tax with respect to the wages of David, Tammy's may choose between the adjustment and refund claim processes because the error was ascertained more than 90 days before the expiration of the period of limitations on credit or refund, and because Tammy's reimbursed David in the amount of the overcollection. If Tammy's obtained David's consent to the filing of a refund claim instead of reimbursing the overcollected FICA tax, Tammy's would have to use the refund claim process to correct the overpayment since the consent option is not available for the adjustment process.

In order for Tammy's to correct the overpayment using the adjustment process, the adjusted return must be filed on or before January 15, 2010 (i.e., 90 days before the expiration of the period of limitations on credit or refund); otherwise, after January 15, 2010, only the refund claim process will be available to correct the overpayment. To be timely, a refund claim must be filed on or before April 15, 2010 (i.e., the last day of the period of limitations on credit or refund).

If Tammy's chooses to correct the overpayment using the adjustment process, it can file one Form 941-X correcting both the underpayment and the overpayment. However, because an overpayment adjustment may be made only if the adjusted return is filed within 90 days of the expiration of the period of limitations on credit or refund, Tammy's may correct both the overpayment and underpayment on one Form 941-X only if it files by January

15, 2010. When both an overpayment and underpayment are corrected on the same Form 941-X, the amounts will be combined and may result in either a credit or a balance due.

If Tammy's chooses to correct the overpayment using the refund claim process, or it is unable to file Form 941-X by January 15, 2010, it must file two separate Forms 941-X – one to correct the overpayment using the refund claim process, and one to correct the underpayment using the adjustment process. A refund claim and an adjustment may not be made on the same Form 941-X.

Tammy's must file the Form 941-X reporting the underpayment by January 31, 2010, and pay any amount due by the date the Form 941-X is filed. If Tammy's files the Form 941-X reporting the underpayment by January 31, 2010, and pays the amount due with that Form 941-X, the amount will be deemed to have been timely deposited. If Tammy's does not pay the amount due with that Form 941-X, interest will accrue from the date the Form 941-X is filed until the time of payment.

The overpayment corrected on the separate Form 941-X using the refund claim process will be refunded, plus any interest that applies, unless Tammy's owes other taxes, penalties, or interest. An employer may not designate an overpayment from one Form 941-X to pay an amount due on a separate Form 941-X.

### **An underpayment of FICA tax and ITW resulting from a failure to file an employment tax return because the employer failed to treat any workers as employees**

On February 6, 2012, Julio, a sole proprietor, ascertains that he should have treated his bookkeeper as an employee, rather than as an independent contractor, for employment tax purposes. The bookkeeper worked each week for Julio since March 2011. Because Julio did not have any other employees, he never filed any Forms 941 and never withheld or paid employment tax.

Julio may correct the underpayment of FICA tax for each quarter in 2011 using the adjustment process because he failed to file the returns for 2011 due to his failure to treat any individuals as employees. However, because the error was not ascertained in the same year the wages were paid, Julio may correct the underpayment of ITW using the adjustment process for each quarter in 2011 only if IRC §3509 applies to determine the FICA tax and ITW liability.

To make the adjustment for each quarter in 2011, Julio must file a Form 941 and a Form 941-X for each quarter in 2011. Julio must file these returns by April 30, 2012, and pay the amount owed by the time he files the returns. If Julio files by April 30, 2012, but does not pay by the time he files, interest will accrue from the date Form 941-X is filed until payment is made. Because Julio ascertained the error prior to filing the return for the first quarter of 2012, there is no adjustment to be made for that quarter; however, Julio must file his 2012 first quarter Form 941 and report and pay the correct amounts of FICA tax and ITW for that quarter and must file Forms 941 for any future quarters in which he pays wages to the bookkeeper or other employees. ■

## Specifications Issued for Private Printing of Forms 1042-S, 1096, 1098, 1099, 5498, 8935, and W-2G

In Rev. Proc. 2009-49 [2009-51 IRB 879; [www.irs.gov/pub/irs-irbs/irb09-51.pdf](http://www.irs.gov/pub/irs-irbs/irb09-51.pdf)], the IRS has published updated requirements for preparing acceptable paper substitutes for Forms 1042-S, 1096, 1098, 1099, 5498, 8935, and W-2G. Substitute forms must conform to the official IRS form or the specifications in the revenue procedure to be acceptable. Rev. Proc. 2009-49 supersedes Rev. Proc. 2008-36 (2008-33 IRB 340).

The following changes have been made to the revenue procedure this year:

- **New title for Publication 1179.** The title of the publication that is reprinted from this revenue procedure has changed to reflect the addition of specifications and procedures for Form 8935, *Airline Payments Report*.

- **New title for the 1099 General Instructions for 2009.** The title of the 1099, etc., General Instructions has been changed to *General Instructions for Forms 1099, 1098, 3921, 3922, 5498, and W-2G* 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 (see [PAYROLL CURRENTLY, Issue No. 5, Vol. 17](#)). *Note:* Final regulations for reporting Form 3921 and 3922 were issued on November 17, 2009 (see [PAYROLL CURRENTLY, Issue No. 23, Vol. 17](#)), even though the forms themselves are not yet available.

- **Form 1099-C.** The form has been revised, moving “Debt description” from Box 5 to an enlarged Box 4. Box 5 now contains two checkboxes to indicate whether the borrower was personally liable for repayment of the debt. Also, the “Creditor’s phone number,” a central phone number for debtors to use to contact a person having knowledge of a canceled debt, is now required information in the Creditor’s information box.

- **Form 1099-G.** There is a new Box 9 for reporting

market gain associated with the repayment of Commodity Credit Corporation (CCC) loans.

- **Form 1099-R.** Distribution Code U for distributions under IRC §404(k) has been added to the list of codes.

- **Form 5498.** The form has been enlarged and reformatted to fit two to a page instead of three to a page to provide additional boxes for reporting information formerly reported in the blank box next to Box 10. Instructions have been added for new Boxes 12a through 15b. The words “presidentially declared disaster areas” have been changed to “federally declared disaster areas.”

- **Logos, slogans, and advertising.** The prohibition against including slogans, advertising, and logos on information returns and payee copies reporting amounts paid during the 2010 calendar year that was announced in Rev. Proc. 2008-36 (see [PAYROLL CURRENTLY, Issue No. 17, Vol. 16](#)) is postponed to the 2011 calendar year to provide further advance notice. The IRS has determined, with some exceptions, that logos, slogans, and advertising will not be allowed on Forms 1096 or Copy A of Forms 1098, 1099, 5498, W-2G, 1042-S, 8935, or any payee copies reporting amounts paid during the 2011 calendar year and thereafter.

- **Updated Section 5.3.3.** Section 5.3.3 has been updated to reflect information about the new *IRS Tax Products DVD* (Publication 1796).

- **Reminder: where paper filers should file.** All information returns filed on paper are now filed with only two IRS Centers: Austin, TX, and Kansas City, MO.

- **Reminder: magnetic media is no longer accepted.** After December 1, 2008, electronic filing is the only acceptable method for filing returns with the Enterprise Computing Center – Martinsburg (ECC-MTB).

- **Editorial changes.** Redundancies have been eliminated as much as possible. ■

## IRS Updates Specifications for Paper Substitutes for Forms W-2c and W-3c

Following up on the February 2009 revision of Forms W-2c, *Corrected Wage and Tax Statement*, and W-3c, *Transmittal of Corrected Wage and Tax Statements* (see [PAYROLL CURRENTLY, Issue No. 6, Vol. 17](#)), the IRS has issued a revenue procedure updating the requirements for the private printing of paper substitutes for these forms [Rev. Proc. 2009-48, 2009-51 IRB 864; [www.irs.gov/pub/irs-irbs/irb09-51.pdf](http://www.irs.gov/pub/irs-irbs/irb09-51.pdf)]. A substitute Form W-2c or W-3c must conform to the specifications set out in the revenue procedure to be acceptable to the IRS.

The revenue procedure supersedes Rev. Proc. 2006-19 (2006-13 IRB 677; reprinted as Publication 1223, *General Rules and Specifications for Substitute Forms W-2c and W-3c*). The revenue procedure highlights the following major changes to Publication 1223 since its last revision in 2006:

- **Revised Sections 4 and 5.** Sections 4 and 5 have been revised to add information and to be more consistent with the format of Publication 1141 (*General Rules and Specifications for Substitute Forms W-2 and W-3*).

- **New e-mail address.** The Substitute Forms e-mail

address has changed to [Substituteforms@irs.gov](mailto:Substituteforms@irs.gov) from [\\*taxforms@irs.gov](mailto:*taxforms@irs.gov).

- **Address change.** The room number in the address of the Substitute Forms Unit has changed to Room 6526.

- **Logos, slogans, and advertising.** Forms W-2c and W-3c are subject to annual review and possible change. The IRS has postponed the prohibition against including slogans, advertising, and logos on information returns and employee copies reporting wages paid during the 2010 calendar year that was announced in Rev. Proc. 2008-33 (see [PAYROLL CURRENTLY, Issue No. 15, Vol. 16](#)). The prohibition is now in effect for reporting wages paid in 2011 and thereafter. Do not include logos, slogans, or advertising on any information returns or employee copies filed in 2011 or thereafter, except as provided in Section 6.02. The revenue procedure may be revised to state other requirements of the IRS and Social Security Administration regarding the preparation and use of substitute forms for Form W-2c and Form W-3c at a future date. If you wish to comment about the prohibition against including slogans, advertising, and

logos on information returns and employee copies, send or e-mail your comments to: Internal Revenue Service, Attn: Substitute Forms Program, SE:W:CAR:MP:T:T:SP, IR 6526, 1111 Constitution Ave., NW, Washington, DC 20224, or [Substituteforms@irs.gov](mailto:Substituteforms@irs.gov).

- **SSA publication changes.** A new title and number have been given to SSA Publication MMREF-2. The new number is Publication EFW2C and its title is *Specifications for Filing Forms W-2c Electronically* (see **PAYROLL CURRENTLY, Issue No. 11, Vol. 15**).

- **Social security room number change.** The room

number in the address of the Data Operations Center has changed to Room 348.

- **TDD number change.** The Telecommunication Device for the Deaf (TDD) phone number at the Enterprise Computing Center (ECC) – Martinsburg has changed to 304-579-4827.

- **Revised Section 9.** Section 9 has been revised to reflect changes to IRS Publication 1796 (*IRS Tax Products DVD*).

- **Editorial changes.** Editorial changes have been made to eliminate redundancies. ■

## IRS Cautions Employers That Guidance Permitting Truncation of Payee TINs Applies Only to Paper Filers of Certain Forms

The IRS has posted a note on its website [[www.irs.gov/formspubs/article/0,,id=109875,00.html](http://www.irs.gov/formspubs/article/0,,id=109875,00.html)] (1-5-10) cautioning employers about the limited scope of Notice 2009-93 (see **PAYROLL CURRENTLY, Issue No. 23, Vol. 17**), which allows filers of information returns in the Form 1098 series, Form 1099 series, and Form 5498 series to truncate an individual payee's social security number (SSN), IRS individual taxpayer identification number (ITIN), or IRS adoption taxpayer identification number (ATIN) on paper payee statements for tax years 2009 and 2010.

**What is truncation?** To truncate, replace the first five digits of the nine-digit number with asterisks (\*) or Xs (for example, an SSN 123-45-6789 would appear on the paper payee statement as \*\*\*-\*\*-6789 or XXX-XX-6789).

**When truncation is permitted.** Filers may truncate a payee's identification number on the payee statement (including substitute and composite substitute statements) furnished to the payee in paper form only. Generally, the payee statement is that copy of an information return designated "Copy B" of the form. A "payee" is any person who is required to receive a copy of the information set forth on an

information return by the filer of the return. If a filer truncates an identification number on Copy B, other copies of the form furnished to the payee may also include a truncated number.

**When truncation is not permitted.** A filer may not truncate a payee's identification number on any forms filed by the filer with the IRS or with state or local governments, on any payee statement furnished electronically, or on any payee statement not in the Form 1098, Form 1099, or Form 5498 series. A filer's identification number may not be truncated. A payee's employer identification number may not be truncated. Further, note that Form 1098-C is excluded from the scope of Notice 2009-93 as Copy B is an acknowledgment to a donor and not a payee statement.

**Optional note to payee.** For tax year 2009, filers may note on 2009 payee statements that the payee's identification number has been truncated on the payee's copy for their protection, but that the complete identification number has been reported to the IRS as well as to state or local governments. The 2010 forms will include this information. ■

## SSA Alerts Paper W-2 Filers About Errors

The Social Security Administration (SSA) is advising paper W-2 (*Wage and Tax Statement*) filers that it has received numerous paper Forms W-2 where the social security number (SSN) and/or name is not in the proper position, which can delay processing. Paper filers are advised to look closely at their W-2s, especially Copy A, to ensure printing accuracy prior to mailing them to the SSA's Wilkes-Barre Data Operations Center (*W-2 News*, Issue 2009-05; [www.ssa.gov/employer/w2news/](http://www.ssa.gov/employer/w2news/)).

The "Employee's social security number" box on Form W-2 has been moved from Box d to Box a, and the "Control number" box, optionally used by some employers to identify individual Forms W-2, has been moved from Box a to Box d. In addition, the form ID Number "22222" and "Void" boxes have been moved to the top left corner. These changes were made to protect employee SSNs from public disclosure when employers furnish Forms W-2 using a window envelope (see **PAYROLL CURRENTLY, Issue No. 2, Vol. 15**). ■

## IRS Again Delays Effective Date of Guidance on the Use of Smartcards, Debit or Credit Cards to Pay for Transportation Fringes

The IRS has announced that the effective date of Revenue Ruling 2006-57 (see **PAYROLL CURRENTLY, Issue No. 26, Vol. 14**), which offers guidance to employers on the use of smartcards, debit or credit cards, or other electronic media to provide qualified transportation fringes under IRC §132, is delayed to January 1, 2011. The IRS previously postponed the effective date from January 1, 2009, to January 1, 2010 (see

**PAYROLL CURRENTLY, Issue No. 19, Vol. 16**).

The Service has become aware that certain transit systems need additional time to complete the process of adapting their technology to make it compatible with the requirements for vouchers set forth in Revenue Ruling 2006-57 [Notice 2009-95, released 12-14-09; [www.irs.gov/pub/irs-drop/n-09-95.pdf](http://www.irs.gov/pub/irs-drop/n-09-95.pdf)]. ■



## STATE AND LOCAL NEWS

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### Colorado

**Minimum wage decreases.** Effective 1-1-10, the state minimum wage has *decreased* to \$7.24 an hour from \$7.28 an hour (this updates *The Payroll Source*®, p. 2-68). However, employers must pay employees covered by both federal and state minimum wage laws the federal minimum wage of \$7.25 per hour, because it is higher than the state minimum wage. The state tip credit remains \$3.02 an hour (see *The Payroll Source*®, p. 2-69) [Colorado Minimum Wage Order No. 26, 12-09].

### Missouri

**Withholding tables issued.** Effective for wages paid on or after 1-1-10, the Department of Revenue (DOR) has issued wage-bracket and percentage method withholding tables (available at <http://dor.mo.gov/tax/business/withhold>) [DOR, Pub. DOR-4282, *Employer's Tax Guide*, rev. 12-09].

### Ohio

**School district income tax rates and withholding instructions issued.** The Department of Taxation has issued the 2010 school district income tax rates and the withholding instructions. Download both at [www.tax.ohio.gov/divisions/employer\\_withholding/index.stm](http://www.tax.ohio.gov/divisions/employer_withholding/index.stm).

### Oklahoma

**Withholding tables issued.** Effective for wages paid on or after 1-1-10, the Tax Commission (TC) has issued new wage-bracket and percentage method withholding tables [TC, Pub. OW-2, *Oklahoma Income Tax Withholding Tables*, at [www.tax.ok.gov/publicat/09whpkt.pdf](http://www.tax.ok.gov/publicat/09whpkt.pdf)].

### Pennsylvania

**Employer UC contribution surcharge unchanged, additional contribution tax rate increases; employee UC tax rate increases.** For 2010, the surcharge on employer contributions for unemployment compensation (UC) remains 5.8%. This surcharge is factored into an employer's 2010 contribution rate. The employer additional contribution tax for 2010 is increased to 0.65% from 0.25%. This additional tax is added to an employer's assigned tax rate, and is not applicable to new employers and reimbursable employers. Also, for 2010, employees pay a 0.08% tax (was 0.06%) on their total wages (this updates *The Payroll Source*®, p. 7-28). There is no cap on the gross wages for which employee withholding is calculated (i.e., employee withholding is not limited to the \$8,000 taxable wage base for employer contributions).

### Washington

**Seattle employee hours tax repealed.** Effective 1-1-10, the Seattle employee hours tax is eliminated. This tax generated less revenue than expected and was hard for the city to administer and for employers to collect due to the exemptions and the difficulty of tracking employee hours appropriately [Ordinance 123150, L. 2009].

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Payroll Currently (ISSN 1065-6529) is published by the American Payroll Institute, Inc., in cooperation with The American Payroll Association, 660 North Main Avenue, Suite 100, San Antonio, TX 78205-1217; Tel: 210-226-4600; Fax: 210-226-4027. Payroll Currently is designed to provide authoritative information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. © Copyright 2010 American Payroll Institute, Inc. All rights reserved. Printed in the USA.