



DEPOSITING AND REPORTING WITHHELD TAXES

CHAPTER 8
(2016)



EMPLOYER IDENTIFICATION NUMBER (EIN)

- 9 digit number (00-0000000) used to identify employer to the IRS and SSA and ensure correct credit to the correct employer account
- Apply on-line, by phone (foreign only), or completing Form SS-4, Application for *Employer Identification Number* and mailing or faxing it
- Can be applied for by a 3rd party but employer must sign Form SS-4 and authorization
- Only 1 EIN per responsible party a day...
- Individual applying must be an authorized designee
- Application must be made no later than 7 days after the first payment of wages



MAKING TAX DEPOSITS

- Employment taxes handled different than other taxes
- Employment taxes must be deposited electronically through the Electronic Federal Tax Payment System (EFTPS) (unless amounts are small and paid with the return, e.g. annual FUTA liability of less than \$500)
- Merger, consolidation and reincorporation – use TIN of surviving corp, if new corp apply for new ID



PAYROLL TAX DEPOSIT RULES

- 2 depositor statuses; monthly or semiweekly (exception if over 100k or more or <250k)
 - Determined by liabilities during a “look back period” – 12 month period running from July 1 of the second previous year through June 30 of previous year
 - 2016 look back period is July 1, 2014 through June 30, 2015
 - \$50,000 or less in tax liability – monthly (see example pg 8-6)
 - Exceeds \$50,000 – semi-weekly



PAYROLL TAX DEPOSIT RULES

- Small employers with annual liabilities less than \$1,000 file Form 944, *Employer's Annual Federal Tax Return*; *taxes are paid with return*
 - Look back period the second year preceding the current calendar year
 - Look back for 2016 is 2014 regardless of whether the employer filed Form 941 or 944 during 2014.



PAYROLL TAX DEPOSIT RULES (cont.)

- Non-payroll tax withholding treated separately with similar deposit rules (see list pg 8-7)
- New employer are monthly unless they trigger the one day rule or they accumulate more than \$50,000 during the look back period
- Agricultural employers may have 2 different rules (farm and nonfarm employees)
- Monthly depositors - due the 15th of following month
- Semiweekly –
 - Wed, Thur, Fri due by following Wed
 - Sat, Sun, Mon & Tue. due by following Friday
- One day rule – impact on monthly depositors



PAYROLL TAX DEPOSIT RULES (cont.)

- Semiweekly periods bridging two quarters = separate deposits (don't combine them!)
- “De minimis” deposit rules – less than \$2,500 can be deposited with Form 941
- Small employers filing Form 944 can pay with return unless annual liability exceeds \$1,000
- Saturday, Sunday and Holidays – due next banking day
- “Safe harbor” shortfall rules – no more than \$100 or 2% of amount due. Must be made up by “make up” date
 - Monthly due by due date of quarterly return
 - Semiweekly due by the first Wed or Fri occurring on or after the 15th of the month or if earlier due date of quarterly return



HOW TO DEPOSIT PAYROLL TAXES

- Must be made with financial institution authorized by the federal government (Treasury Financial Agent (TFA))
 - Employer assigned based on the location of their principal financial institution
- Must be paid electronically through Electronic Federal Tax Payment System (EFTPS)
- Enroll by completing Form 9779, Business Enrollment Form for EFTPS, or online (separate for each EIN)
- Within 15 days will receive Form 9787, Business Confirmation/Update Form, instruction booklet
- PIN will be sent separately



HOW TO DEPOSIT PAYROLL TAXES (cont.)

- New employers will be pre-enrolled
- EFTPS payment options:
 - EFTPS – Direct (ACH Direct) – Employer accesses EFTPS directly to report its tax deposit information and instructs EFTPS to move funds to the Treasury
 - Request must be made at least one banking day before due date by 8:00 PM Eastern Time
 - EFTPS – Credit (ACH Credit) – made through a financial institution. Employer directs its Financial Institution (FI) to send the funds to Treasury
 - Make sure FI offers the service and their required deadlines
 - Same day payment (2:00PM) via Fed Wire



HOW TO DEPOSIT PAYROLL TAXES (cont.)

- Holidays – due date is a holiday initiate payment one day before the holiday
- Proving payment:
 - Decrease in account balance
 - Amount and date of transfer and
 - U.S. Government as the payee
- No refunds of overpayments will be made through EFTPS. Use current process of filing Form 843, Claim for Refund and Request for Abatement, and Form 941-X supporting statement
- If waiting for the refund would become a ‘hardship’
 - File Form 911, Application for Taxpayer Assistance Order
- Keep accurate records



PENALTIES

- Failure to Deposit Timely:
 - 2% of under deposited amount if deposited within 5 days of due date
 - 5% if 6-15 days
 - 10% more than 15 days after due date or made within 10 days of IRS notice or made to an unauthorized institution or directly to the IRS. Also applies to paper filing if required to file electronically
 - 15% if not paid within 10 days of receiving IRS notice
 - If using a payroll service, liability remains on the employer



PENALTIES (cont.)

- How Penalties are applied:
 - IRS is required to apply deposits to the most recent period within the tax period to which the deposit relates
 - Enacted by Congress to reduce the change of facing multiple failure-to-deposit penalties under the previous system
 - Rules apply to Forms 940, 941, 943 and 1042
 - See page 8-20 for examples



PENALTIES (cont.)

- Failure to Withhold Penalty (know as Trust Fund Recovery Penalty)
 - 100% of liability is the penalty (yikes)
 - Responsible party (must have acted willfully..)
 - Cannot be imposed without first being notified by IRS at least 60 days in advance
 - Liability may be shared
- Criminal penalties
 - In addition to the 100% penalty , if willful, fine up to \$10k plus imprisonment for up to 5 years

Failure-to-Deposit Penalty Was Properly Assessed for Failure to Use EFTPS

A U.S. District Court has ruled that a business that deposited withheld federal income taxes in full and on time but not via the Electronic Federal Tax Payment System (EFTPS) was properly assessed a failure-to-deposit penalty under IRC §6656(a) [*Commonwealth Bank and Trust Co. v. U.S.*, No. 3:13-CV-01204-CRS (WD Ky., 7-7-14)].

Background

Commonwealth Bank and Trust Co. acted as a fiduciary of various pension plans, individual retirement accounts, and employee benefit plans for which it was responsible for withholding federal income taxes. The IRS furnished deposit forms to the company, and Commonwealth erroneously used those forms to deposit withheld income taxes for tax years 2004 through 2010, when its tax obligation was in excess of \$200,000, rather than using EFTPS. As a result, the IRS assessed \$252,842.87 in failure-to-deposit penalties.

Commonwealth paid the assessment and sued the IRS for a refund, contending that there was no failure to deposit and no underpayment because it paid the amounts due in full and on time, and merely failed to follow the proper procedures for doing so.

WHAT THE LAW SAYS – IRC §6656(a) provides that, “In the case of any failure by any person to deposit (*as required by this title or by regulations of the Secretary under this title*) on the

date prescribed therefor any amount of tax imposed ... there shall be imposed upon such person a penalty ... (emphasis added).”

26 C.F.R. §31.6302-1(h)(2)(ii) requires that taxpayers depositing more than \$200,000 of taxes “must use electronic funds transfer...to make all deposits of those taxes.”

Court agrees with the IRS

Ruling in favor of the IRS, the court cited decisions of other courts that have considered and rejected Commonwealth’s argument because it is inconsistent with the plain language and purpose of §6656. The parenthetical language of §6656(a) makes clear that “the deposit itself must satisfy the requirements of the [Internal Revenue] Code and applicable Treasury regulations.”

The court also said that the Taxpayer Relief Act of 1997 (Pub. L. No. 105-34), which included a provision that no penalties for failure to use EFTPS should be imposed before July 1, 1998, implicitly expressed Congressional intent that such penalties should be imposed after that date.

Here, there was no dispute that Commonwealth’s tax obligation exceeded \$200,000. Accordingly, the company was required to deposit taxes via EFTPS. Because it failed to do so, it was properly assessed a failure-to-deposit penalty. ■



EMPLOYMENT TAX RETURNS

- Form 941 – *Employer's Quarterly Federal Tax Return*
- Exempt from filing Form 941
 - Seasonal employers
 - Those withholding non-payroll taxes
 - Employers of domestic workers
 - Agricultural employers
 - Employers with employment tax liabilities of \$1,000 or less



MERGERS/ACQUISITIONS OR BUSINESS REORGANIZATION

- Impact on tax filings
 - Successor employer
 - Predecessor employer
 - Surviving entity
- Filing Forms 941, 940, W-2 and Schedule D
- Surviving corp. files Schedule D after filing Forms W-2
- Acquired corp. should file Schedule D with final Form 941 return



MERGERS/ACQUISITIONS OR BUSINESS REORGANIZATION (cont.)

- Successor hire predecessor's employees – 2 procedures; standard and alternate
 - Standard Procedure
 - Each file Form 941 for the quarter of acquisition reporting only what they paid/withheld
 - If predecessor goes out of business, it must file a “final” Form 941, under this procedure, no schedule D required
 - Each entity files Forms W-2
 - Alternate Procedure
 - Both agree that predecessor will not have to report wages/taxes for EEs hired by the successor on Form W2



FILING FORM 941

- Usually due by the last day of the first month following the quarter
 - Automatic extension until the 10th of the following month if deposits are made on time
 - Saturdays, Sundays, and holidays – due date is next business day
 - Postmark – certified or registered mail recommended
 - Designated PDSs
 - DHL Worldwide Express
 - Federal Express
 - UPS




FILING FORM 941

- Filed with IRS office assigned to the employers region
- Line by line instruction for Form 941, pages 8-35 to 8-38 (Form on pages 8-41 to 8-42)
- Schedule B (page 8-43)
- Form 945 *“Annual Return of Withheld Federal Income Tax”* (non payroll)
- Forms 941PR (Puerto Rico) and 941SS (American Samoa, Guam, Northern Mariana Islands, and Virgin Islands)
- Form 943 – *“Employer’s Annual Federal Tax Return for Agricultural Employees”* and Form 943-A *“Agricultural Employer’s Record of Federal Tax Liability”* (similar to Schedule B)



MAKING CORRECTION

- Form 941-X
- Errors discovered before Form 941 is filed – no biggy 😊
- FIT, SS or M/C taxes (under/over) discovered after filing Form 941
 - Under - timely if filed with return in the quarter it was discovered and payment is made timely (even if not collected from EE)
 - Over – over withholding does not need to be reported if repaid to EE
 - For SS and M/C, affidavit and receipt required
 - For FIT, repay before end of year or send to IRS
- Form 843, “*Claim for Refund and Request for Abatement*” - 3 year statute of limitation



Just an FYI - Special Procedure for retroactive 'excess transit benefits' for 2015

- Retroactive, nontaxable transit went from \$130 to \$250 a month...thanks for that...
- Special procedure allowed ER to correct taxable wages and FICA for all 4 quarters of 2012 on Q4 941, instead of 4 941Xs.
 - Had to refund over-withheld FICA to EEs
 - Did not require statements from EEs that they hadn't already gotten a refund



LATE REPORTING AND PAYING OF TAXES

- Penalty for late filing of returns – 0.5% of tax shown on return (reduced by timely deposit/credits) for each month or fraction of month up to max of 25%. 15% up to 75% if due to fraud...
- Failure to pay employment taxes - 0.5% of unpaid tax for each month or fraction of month up to 25%
- Additional .5% for amount on IRS notice if not paid within 21 calendar days of demand (10 business days if \$200K+) up to 25%
- If due to negligence 20% of amount due as a result of the negligence. If fraud 75%
- Reasonable cause or undue hardship
- Interest – federal short term rate plus 3%



LATE REPORTING AND PAYING OF TAXES


■ Criminal penalties

- Willful failure to file, pay or keep records – fine up to 25K (100K for corp) and/or one year imprisonment
- Willful delivery of fraudulent tax returns, fine up to 10K (50K for corp) and/or one year imprisonment
- Willful evasion to pay taxes – 100k (500k corp) and/or 5 years imprisonment
- Knowingly signing fraudulent forms – 100K (500K corp) and/or 3 years of imprisonment




FORM W-2

- Required anytime taxable compensation is paid even if not in cash subject to withholding. If not subject to withholding required if over \$600
- Mergers – standard or alternate procedures, Schedule D with Form 941
- Undeliverable forms – 4 years retention
- Reissue statement (unless electronic)
- “Void” or “Corrected”




FROM W-2 (cont.)

- Multiple Forms W-2
 - Multiple states
 - System limitation
 - More than 4 items in Box 12
 - Last minute 3rd party sick pay
 - Etc.
- When and where to file
 - File with SSA by last day of Jan (change from prior year)
 - Due to EE by Jan 31 of following year (states may differ)
 - Ex-employee – 30 days if requested



FROM W-2 (cont.)

- Electronic forms to employees
 - Web or email attachment
 - EE consent required
 - Withdraw consent any time with 30 days written notice
 - Must be available by January 31 and remain until October 15 of following year. Includes W2C
 - Notice to EEs by mail, email or in person by January 31 of following year with access/print instructions with the statement “IMPORTANT TAX RETURN DOCUMENT AVAILABLE” in caps. If email, must be in subject line



FROM W-2 (cont.)

- Employers ceasing business
 - File final returns by end of month following the end of the quarter they cease doing business; including Forms W-2
 - Monthly filers due by 15th of the calendar month following the month they cease doing business, W-2s by end of month
- Box by Box instructions – page 8-78 onward; Form W-3 – box by box instructions pg 8-91 onward



RECONCILIATION PROCESS

- Each payroll
- Quarterly – also balance to preliminary W2
- Annually
- IRS and SSA do speak to each other (believe it or not 😊)
- SSA notice if Form 941 amounts are greater, IRS notice if W-2 Forms are greater



FORMS W-2C AND W-3C

- Only items that need correcting should be included
- Form W-3C must be included even if one W-2C
- Electronic filing required if 250 or more
- File with SSA
- Undelivered forms – 4 year retention



FORM 1099

- Multiple types – 1099-MISC, 1099-R, 1099-G etc.
- Filed with IRS not SSA. Include Form 1096
- Reportable payments
- \$600 limit
- Attorney fees, if not reported on W-2, reported on 1099-MISC Box 14
- No TIN then subject to backup withholding
- Due by January 31 of following year
- Separate Form 1096 with each type of Form 1099
- Pension and retirement plan distributions
- Electronic delivery similar to W2 requirements



FORMS 1099- FAILURE TO FILE

- **General penalties *increased in 2016***
 - \$50 (prev \$30) per return for failure to file or provide correct information, max \$532k (prev \$250k) per year (\$186k (prev \$75k) for small employers)
 - \$100 (prev \$60) if not correct in more than 30 days after due date but before 8/1, max \$1,596,500 (prev \$500k) (\$532k (prev \$200k) for small ER)
 - \$260 (prev \$100) per return if not correct by 8/1, max \$3.193m (prev \$1.5m) (\$1.064m (prev \$500k) for small ER)
- **Penalties increase for willful failure**
- **No penalty for errors due to reasonable cause**
- **IRS focuses on employers with most egregious mismatch rates**



FAILURE TO PROVIDE INFORMATION STATEMENTS TO EEs

- W-2 or 1099 not provided on time or with correct information
 - Same as failure to file penalties
 - Only one penalty assessed per statement even if both apply
 - No penalty for inconsequential errors or for reasonable cause
 - New safe harbor provisions beginning for 2016 forms – less than \$100 wages; \$25 taxes; but not applicable if payee requests



ELECTRONIC REPORTING REQUIREMENTS FOR W-2

- 250 statement, not EEs
- Hardship waivers – Form 8508, Request for “*Waiver From Filing Information Returns Electronically*”
- Automatic extension of 30 days – Form 8809, “*Application of Time to File Information Returns*” sent by due date
- Penalties
- Internet – must register
 - Report wages to SSA, view errors, request extension, acknowledge resubmission and view name and SSN mismatches
 - Enter W2 information on line (up to 20)



ELECTRONIC REPORTING REQUIREMENTS FOR FORMS 1099

- 250 or more of any single type of 1099
- First time approval required – complete Form 4419 “*Application for Filing Returns Electronically*”



EFILE FORMS 940, 941, 944 AND 941X

- Points out errors
- Instant acknowledgement
- Integrated payment options
- Electronic signature
- On line application to participate after registering for e-services on the IRS website
- Requires
 - PIN registration
 - Reporting agent registration – Form 8655
 - Submit test file
- Not considered filed until receipt of acknowledgement as accepted
- State requirements – page 8-124 onward