



IRS Details New Employer Tax Audit, Stepped Up Tip Compliance

First Comprehensive Employment Tax Compliance Study in 25 Years Will Target 6,000 Employers Over Next Three Years

BY SCOTT MEZISTRANO, CPP

Almost 150 of the nation's payroll professionals participated in APA's Capital Summit on March 11-12 in Washington, D.C., to learn the latest news about current and future payroll rules and regulations.

Among the many presentations during the sixth annual event was an IRS discussion on tax audits and the agency's relationships with payroll. IRS talked about two new high-profile employer audits it has recently been conducting, and how an APA representative on an IRS advisory committee is working to ease the burden for payroll and accounts payable professionals.

NATIONAL RESEARCH PROGRAM: 6,000 EMPLOYER AUDITS
The Employment Tax National Research Program is the

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first comprehensive employment tax compliance study in 25 years, according to John Tuzynski, IRS's Chief of Employment Tax Operations, Small Business/Self-Employed (SB/SE) Division. The 2,000 employers chosen at random for the 2010 audit have already been notified, but another 2,000 employers will be selected in each of 2011 and 2012.

There are two main goals for these 6,000 audits, Tuzynski explained:

1. Measure the employment tax contribution to the tax gap. The last assessment of this was made in the 1980s, and the number has just been adjusted for inflation since that time. In 2001, it was estimated at \$54 billion.
2. Determine current characteristics of compliance and noncompliance so that future audit selections and procedures can be more effective and efficient and waste less time of taxpayers.

The employers selected for audit will receive an initial



“The Capital Summit was informational and intense; a great benefit for the payroll professional.”

— Peg Andrews, Payroll Tax Manager, Fundamental Administrative Services, LLC

Letter 3851-B, and then letter 3850-B, which sets the date of the meeting between the employer and IRS personnel. The audits will focus on worker classification, fringe benefits, information reporting, and officers' compensation, Tuzynski said. APA has learned from IRS that the bulk of the 6,000 employers will be from the SB/SE division. These employers have assets of less than \$10 million. The other IRS divisions serving employers are the Large and Midsize Business Division and the Tax-Exempt and Government Entities Division.

Employers selected for research audits or any IRS audit may be interested in “Tips on Dealing with an IRS Audit,” published in the Spring 2010 edition of the SSA/IRS Reporter. The article is on page 2 at http://www.irs.gov/pub/irs-utl/ssa_irs_reporter_spring_2010.pdf.

TIP AUDITS BREAK NEW GROUND

The IRS will now assess the employer share of FICA taxes on unreported tips, announced Tuzynski. The IRS will accomplish



this via new tip audits based on information gathered from Forms 4137, *Social Security and Medicare Tax on Unreported Tip Income*. Form 4137 is filed by tipped employees with their personal income tax returns so they can pay their share of FICA taxes on tips not reported to their employers. The employee has to report the employer's identification number on the form, and that will allow the IRS to total the amounts for that employer as reported by all of its employees that file Form 4137.

These employers will receive a "Pre-notice and Demand Letter L4520," allowing the employer at least 30 days to resolve any discrepancies in the taxes reported by the employees.

Then the IRS will issue a "Section 3121(q) Notice and Demand" for the employer match of these taxes.

In subsequent meetings with the IRS, APA has learned that in 2010 these employers must add this liability to Form 941 on line 7c ("Current quarter's adjustments for tips and group-term life insurance"). However, the 941 for 2011 and beyond will have a new line (5e) specifically for this purpose.

APA REPRESENTATIVE ON IRPAC MAKES HEADWAY

Emily Lindsay, CPA, APA's representative on the IRS Information Reporting Program Advisory Committee (IRPAC), discussed many projects she and the committee



► What Is Capital Summit?

Capital Summit brings inquisitive payroll professionals together with leaders of the federal agencies. Each presentation focuses on the latest and still-developing payroll legislative and regulatory issues, and participants have opportunities to ask questions. In addition to representatives from more than a dozen offices of the executive and legislative branches of our government, Capital Summit also features presentations from APA members who serve on federal advisory committees and lead APA lobbying efforts.

are advocating on behalf of the payroll and accounts payable professions.

One of her most recent successes is the inclusion in the 2010 Form W-4 of a message to employees who are nonresident aliens (NRAs), directing them to a new notice with instructions on how to complete the W-4. The message says, "If you are a nonresident alien, see Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing this form." Both the W-4 and Notice 1392 are available at www.americanpayroll.org under the "Membership" tab and "Forms, Pubs, Info" section.

NRAs are non-U.S. citizens working in the United

States who do not meet the qualifications to be considered a "resident alien." NRAs are not eligible for the "standard deduction" from income when calculating their income tax, nor are they eligible for the Making Work Pay credit. So, they must complete the W-4 in a specific manner, which identifies them as NRAs to the payroll department. See Publication 15, *Circular E, Employer's Tax Guide*, for more information on the special withholding procedures.

RELIEF FROM BACKUP WITHHOLDING

Individual payees (e.g., independent contractors) who receive a second "B" notice from their payer, stating that their name

► **Capital Summit Speakers also included representatives from:**

U.S. Senate

The Department of the Treasury

U.S. Citizenship and Immigration Services

Immigration and Customs Enforcement

The Department of Labor

The Office of Child Support Enforcement

The Social Security Administration

The Federal Deposit Insurance Corporation

The Federal Trade Commission

NACHA, the Electronic Payments Association

The American Benefits Council



and taxpayer identification number (TIN) do not match, have been subject to backup withholding on their payments unless they get validation of the TIN via Form SSA-7028, *Notice to Third Party of Social Security Number Assignment*. However, the Social Security Administration no longer issues that form for this purpose.

Besides keeping some of the payment from the payee, backup withholding creates more burden for the payer (withholding, depositing, reporting, and filing Form 945, *Annual Return of Withheld Federal Income Tax*).

IRPAC urged the IRS to address this problem, Lindsay explained, by allowing payees to present their payers with a document other than Form SSA-7028 or by suspending backup withholding in these situations.

Last month, the IRS issued a solution. The payee may now contact a local SSA office and request a Social Security

Number Printout. The Social Security Number Printout will serve as acceptable validation of the individual's TIN for purposes of preventing backup withholding. This solution was provided in IRS Announcement 2010-41 [<http://www.irs.gov/pub/irs-drop/a-10-41.pdf>].

IRPAC is comprised of representatives from many industries that have information reporting responsibilities, such as the payroll and accounts payable communities, which file the Forms W-2 and 1099 that the IRS compares against income reported on individual income tax returns.

You can read more in-depth coverage of Capital Summit in *Payroll Currently*, Volume 18, Issue 4.

BNA generously sponsored the 2010 Capital Summit. Keep an eye out for information to come about next year's Capital Summit. Check back regularly on APA's homepage, www.americanpayorll.org, at the "Courses & Conferences" tab. ■



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