



Recommendations
August 23, 2010

From
American Payroll Association
Government Affairs Task Force
Subcommittee on Federal Tax Forms and Publications

To
The Internal Revenue Service
Tax Forms & Publications Division

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SECTION 1 – ITEMS LEFT OVER FROM PRIOR YEARS

General Forms and Publications

1. Problem

If an employer completes a fill-in form on IRS's website, saves it to a computer hard drive, and prints, signs, and mails a copy to IRS, will the copy saved on the hard drive serve as a valid copy if the employer is audited? The instructions for the form should address that question. In addition, it should be addressed for all fill-in forms at <http://www.irs.gov/formspubs/article/0,,id=98121,00.html>

OPEN

Form W-2

1. Problem

Clarification is needed regarding insertion of double last names or hyphenated last names in Box e (instructions page 9, second column). Until more of the population has the new version of the social security card, which clearly identifies the last name by placing it on a separate line, this is going to continue to be a problem. If the name is not reported correctly, it can result in improper posting of wages to a taxpayer's account with the Social Security Administration, which will affect the eventual receipt of retirement, disability, or survivor's benefits.

Recommendation

The following is a combination of existing language and language from "Critical Links" on the Social Security website (<http://www.socialsecurity.gov/employer/critical.htm>, which was co-authored by Social Security and APA).

Boxes e and f—Employee's name and address. [Replace first paragraph with:]

Enter the name as shown on your employee's Social Security card (first, middle initial, last). If the name does not fit, you may show first initial, middle initial, and last name (and ignore the vertical line).

It's especially important to know the exact last name. If an employee provides a compound name or multiple last names, carefully question them to determine which name is the beginning of the last name and which (if any) is the middle name. If you are not certain of the correct last name, you may try various possibilities with the Social Security Number Verification Service (www.socialsecurity.gov/employer/ssnv.htm) until you find the correct last name.

Connect parts of a compound name with either a hyphen or a blank space. Do not join them into a single word. Include all parts of a compound name in the appropriate name field. For example, for the name "John R Smith-Jones," enter "Smith-Jones" or "Smith Jones" in the last name field.

If the name has changed, the employee must get a corrected card from any Social Security office. Use the name on the original card until you see the corrected one.

On paper Forms W-2 submitted to Social Security (Copy A),

- Do not show titles or academic degrees, such as "Dr.," "RN," or "Esq.," at the beginning or end of the employee's name.
- Do not enter "Jr.," "Sr.," etc., in the "Suff." Box unless the suffix appears on the card. Social Security prefers that you do not enter the suffix at all.

Judy Hahn, CPP, PHR

IRS Response

Adopted, other than the text about ignoring the vertical line.

2. Problem

Clarification is needed on the reporting of restricted stock grants. At page 13, first column, the instructions for Box 12, Code V, state, "This reporting requirement does not apply to the exercise of a statutory stock option, or the sale or disposition of stock acquired pursuant to the exercise of a statutory stock option."

Recommendation

Clarify whether the income from the grant of restricted stock is to be reported with Code V.

Nora Daly, CPP

IRS Response

No response yet from Chief Counsel.

OPEN

3. Problem

Clarification is needed regarding the "Retirement Plan" checkbox in Box 13.

Under a qualified automatic contribution arrangement (QACA), employees may have automatic contributions to a § 401(k) plan, but they may elect within 90 days to opt out and receive a refund of their contributions.

If the employee does opt out, should the Retirement Plan checkbox be checked?

What if the contributions were made in one tax year, but the 90-day period crossed into the next tax year, and the employee opted out in that next tax year?

Jim Medlock, CPP

IRS Response

No response yet from Chief Counsel.

OPEN

Form W-4

1. Problem

After our shared success with Notice 1036 being released earlier and earlier in the past couple of years (released in November 2008, compared with December in 2007, because it didn't include the wage-bracket tables; released in the earlier part of November in 2009 vs. 2008), we're wondering if any similar shortcuts can be discussed to enhance the release of Form W-4.

OPEN

Form 668-W, Notice of Levy on Wages, Salary, and Other Income

1. Problem

When a federal tax levy is received by the employer, the employer provides Part 3 of the Notice to the employee. The employee must indicate the marital status that he or she will use on the next personal income tax return and must list the people that he or she may claim as personal exemptions on the next personal income tax return. The marital status and the number of personal exemptions are used to determine the amount exempt from levy, using Publication 1494.

Once the amount exempt from levy is determined for that levy for that employee, it remains the same for all subsequent years, unless the employee completes a new Part 3. It may be in the employee's interest to complete a new Part 3 and have the amount exempt from levy recalculated for any number of reasons: there may be a change in marital status or the number of personal exemptions. In addition, Publication 1494 is reissued each year to allow for inflation adjustments to the amount exempt from levy. For at least the past ten years, the amounts exempt from levy have been increased.

However, there is currently not a blank Part 3 easily available to the taxpayer.

Recommendation

Make the form available on the IRS website so that taxpayers may complete a new Part 3 for any of the reasons noted above. We understand that IRS is reluctant to place Form 668-W on the website, as it is a notice that is issued by IRS, as opposed to a form that is submitted to IRS. So, alternatively, a new form could be developed that would contain only the information, instructions, and lines necessary for the employee to change the marital status or number of personal exemptions.

Emily Rook, CPP

IRS Response

We are unable to provide a response to this recommendation. Form 668-W is produced by IRS Collection, not Tax Forms and Publications. We passed this recommendation on to the office responsible for Form 668-W last year but have not received a response.

OPEN

[Note from APA: Meanwhile, one may call IRS Tax Forms at 1-800-Tax-Form to request a blank Form 668-W. Also: does the employer need to forward an updated Part 3 to the IRS?]

2. Problem

If an employee that is subject to a federal tax levy is also participating in a qualified automatic contribution arrangement (QACA) which has annual increases in the deferral percentages, are the increased QACA contributions considered an increase in deductions outside the control of the employee (meaning that they will come from the amount that would otherwise be remitted to

the Treasury, as opposed to from the amount that is exempt from levy)? Does the answer differ depending on whether the participation in the QACA began before the levy was served?

Jim Medlock, CPP

IRS Response

We are unable to provide a response to this recommendation. Form 668-W is produced by IRS Collection, not Tax Forms and Publications. We passed this recommendation on to the office responsible for Form 668-W last year but have not received a response.

[Note from APA: It seems to be answered by Rev. Rul. 2009-30 (<http://www.irs.gov/pub/irs-drop/rr-09-30.pdf>) that, for an employee subject to an IRS tax levy, automatic increases under an automatic 401(k) program will be considered voluntary changes to deductions and must come out of the exempt amount.]

OPEN

3. Problem

The instructions to the employer (reverse of Part 1) require that the employee's name and social security number be written on the check to the U.S. Treasury.

"Make your check payable to United States Treasury. Please write on the check (not on a detachable stub) the taxpayer's name, identifying number(s), kind of tax, and tax periods shown on Part 1, and the words "LEVY PROCEEDS."

This places the employee's name and social security number – sensitive information with which one can easily commit identity theft – in front of a lot of people at the employer's office, the IRS (and/or its collection agencies), and the financial institutions which process the checks. An identity thief could also intercept the envelope, knowing that it contains this sensitive information.

This also causes problems from a practical point of view, as, for reasons of data security, an employee's SSN is often not stored in the payable systems that produce the checks to be sent to IRS.

In addition, for many employers, placing any information on the *face* of the check is not feasible. Some automated payables systems don't support such a function. The reality is that many employers are already placing this information on the check stub.

Recommendation

To address the data security and process concerns, and until IRS allows electronic remittance of tax levy withholdings (under consideration by IRS Advisory Council), we suggest that IRS

1. Assign each levy a levy number, and have the employer provide that number when remitting the payment instead of the social security number, and
2. Allow employers to use any of these methods to provide the identifying information for the payment:

- a. Placing it on the face of the check,
- b. Placing it on the check stub, or
- c. Placing it on some separate piece of paper – either
 - i. A coupon provided by IRS, or
 - ii. A coupon provided by the employer.

Nora Daly, CPP

And the members of APA's GATF Government Forms and Publications Subcommittee

IRS Response

IRS Collection has improved the process to APA's satisfaction. Employers may send a single check and a detail listing. See <http://legacy.americanpayroll.org/pdfs/pc2009/PCELEC0915.pdf>.

Adopted, but this needs to be explained on Form 668-W.

4. Problem

The instructions for Form 668-W have incorrect information about the exemption from levy for certain types of payments.

On the back of Part 2 of the form are excerpts from the Internal Revenue Code.

Sec. 6334, Property Exempt From Levy:

- (a) Enumeration – There shall be exempt from this levy
 - (4) Unemployment benefits ...
 - (6) Certain annuity and pension payments ...
 - (7) Workman's compensation ...

However, under the Taxpayer Relief Act of 1997, "... unemployment compensation benefits, workers' compensation benefits, annuity and pension payments under the RRTA can be levied at 15%."

Recommendation

Add to the back of Part 2, § 6331(h)(1) and (2), which allow for such a levy on these generally exempt amounts, and § 6334(f), which makes a reference to Sec. 6331.

Nancy Larmore, CPP

IRS Response

We are unable to provide a response to this recommendation. Form 668-W is produced by IRS Collection, not Tax Forms and Publications. We passed this recommendations on to the office responsible for Form 668-W last year but have not received a response.

OPEN

Form 1040, Schedule A (Instructions)

1. Problem

Clarification is needed on the deductibility of another state's disability tax. At page A-2, third column, in a list of deductible state taxes, it states, "Mandatory deductions you made to the California, New Jersey, or New York Nonoccupational Disability Benefit Fund, Rhode Island Temporary Disability Benefit Fund, or Washington State Supplemental Workmen's Compensation Fund."

The instructions are silent about the Hawaii Disability Insurance deductions although they are very similar to New York. New York and Hawaii require that employers provide disability insurance for workers and "allow" the employer to recoup a portion of the premium through deductions from the employee. In New York the maximum deduction is \$.60/week; in Hawaii the maximum is currently \$4.21/week.

Recommendation

Clarify whether the Hawaii disability premiums are deductible.

Nora Daly, CPP

IRS Response

The mandatory contributions that are listed as deductible as state and local income taxes are shown because guidance, usually revenue rulings, have been published that the taxes qualify to be deductible. We will forward information about the Hawaii Temporary Disability Insurance to Chief Counsel.

No response yet from Chief Counsel as of 7/2/10.

OPEN

2. Problem

Clarification is needed on the deductibility of other state and local taxes that are withheld from an employee's pay, such as the Pennsylvania Local Services Tax. APA could compile a list of all non-income taxes that may be withheld from an employee's pay.

Scott Mezistrano, CPP

IRS Response

The list of contributions or amounts that are withheld from an employee's pay that may be deductible is not meant to be all inclusive and we do not have space in the instructions to list every specific state or local withholding that may qualify to be deductible. Chief Counsel would have to rule whether a given type of withholding qualifies as a deductible tax before we could include it in the instructions.

[Note from APA: APA is compiling the list of all non-income taxes that may be withheld from an employee's pay. It will be forwarded to Chief Counsel for consideration. If it cannot be included in the printed instructions for Schedule A, perhaps it could be maintained on the IRS website.]

OPEN

Form 2159, Payroll Deduction Agreement

1. Problem

Many employers do not know that they may decline to enter the agreement.

Although the instructions include a sentence that begins, “If you agree to participate, ...” the form itself isn’t as explicit. Because this is an IRS form, I believe many employers feel they don’t have a choice, but must participate, sign the Form, and begin the withholding.

Recommendation

On the instructions page, use bold face for ““If you agree to participate.”

On the form itself, in the Employer section, provide two checkboxes, such as below.

- I agree to participate in the payroll deduction.
- I decline to participate in the payroll deduction.

In addition, the Employer section should tell the employer, if it declines to participate, whether it needs to return the form to anyone.

Nancy Larmore, CPP

IRS Response

We are unable to provide a response now. Form 2159 is produced by IRS Collection, not Tax Forms and Publications. We passed this suggestion on to the office responsible for Form 2159.

OPEN

Publication 15 B

1. Problem

The discussion of Lease Value Rule (pages 25-27) does not say to pro-rate the value of the automobile by the percentage of personal miles out of total miles.

Recommendation

In the second paragraph under this topic (page 25, first column), add, after the first sentence: "In order to do this, the employee must account to the employer for the business use. This is done by substantiating the usage (e.g., mileage), the time and place of the travel, and the business purpose of the travel. Written records made at the time of each business use are the best evidence. Any use of a company-provided vehicle that is not substantiated as business use is defined by the IRC to be personal use and is included in income."

In the second column on page 25, add a step 3: Multiply the annual lease value by the percentage of personal miles out of total miles driven by the employee.

IRS Response

We forwarded this recommendation to the persons responsible for Publication 15-B.

OPEN

Forms 1099 and 1096

1. Problem

To prepare forms for submission to IRS, businesses have to purchase pre-printed Forms 1099 and 1096 each year and deal with form-alignment issues (compatibility with different accounting software and printers). They can't print the forms as black ink on white paper, due to the requirement for red drop-out ink. (See first paragraph under "2.1.4 Printing" at page 11 of <http://www.irs.gov/pub/irs-pdf/p1179.pdf>.)

Recommendation

IRS should allow these forms to be printed as black ink on white paper. This process has been successfully in place for Form W-3 and W-2 for many years. (Note that employers using black ink must submit a sample to SSA for prior approval. See bottom of page 3 to top of page 4 at <http://www.irs.gov/pub/irs-pdf/p1141.pdf>.)

Janet Friend

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SECTION 2 – ITEMS PROMISED FOR NEXT REVISION

Form W-3c

1. Problem

While Forms W-2, W-3, and W-2c allow space for 4 lines of text at a standard 12 pt. font for employer's name, address, city, state, and zip, the W-3c only allows 3 lines for the same information.

This is a problem when an employer has a d/b/a, a very long name, an address that requires two lines, or is in a foreign country where the country name should ideally be put on a separate line.

This causes the employer to have to devise a different configuration of its name/address information for the W-3c, as compared with the other three forms.

For example, it might complete the W-2, W-2c, and W-3 as:

ABC Company
dba XYZ Company
123 Main Street
Anytown USA

However, it would have to remember to change the configuration on the W-3c to

ABC Company dba XYZ Company
123 Main Street
Anytown USA

Could that increase the chance that the Social Security Administration would not be able to associate the W-3c with the correct employer?

Recommendation

Is there any way to enlarge Box b on the W-3c?

Yonina Shineweather, CPA

IRS Response

Adopt for next revision.

Publication 1141, General Rules and Specifications for Substitute Forms W-2 and W-3

1. Problem

At page 12, it says

“.05 Employee copies of Form W-2 (Copies B, C, and 2), including those that are printed on a single sheet of paper, must be easily separated. Providing perforations between the individual copies satisfies this requirement, but using scissors to separate Copies B, C, and 2 does not.

“Note. The perforation requirement in this section does not apply to printouts of copies of Forms W-2 that are furnished electronically to ...”

In today's economy, employers are not willing to pay extra for perforated paper to furnish W-2s to their employees. We have customers asking if they can provide their employees' W-2 copies B, C and 2 on blank white paper, using a pdf file.

Recommendation

Remove the requirement that employers use perforated paper for employee W-2s. Many employers are ignoring this requirement.

Nora Daly, CPP

IRS Response

Will be adopted in the 2010 edition.

SECTION 3 – NEW ITEMS FOR 2010

Publication 15, (Circular E), Employer’s Tax Guide

1. General recommendation regarding hyperlinks

For online versions of the publications, all mentions of other forms and publications should be hyperlinked.

-- Bill Schmalle, CPP

2. General recommendation regarding “What’s New” section

Problem:

All of the information in this and all other sections are subject to change by Congress and IRS. For example, the COBRA Premium Assistance Credit is discussed as applying to employees terminated before March 1, 2010, but this was later extended to employees terminated as late as May 31, 2010.

Recommendation:

Include, at the beginning of the “What’s New” section, the following:

Payroll tax law and regulations are subject to change at any time. Be sure to see any updates at the Payroll Professionals Tax Center at <http://www.irs.gov/businesses/small/industries/article/0,,id=185188.00.html>

-- Bill Schmalle, CPP

3. Page 2, column 2: “File Form 945”

Problem:

2010 publication instructs reader to file form for nonpayroll income tax withheld in 2008. It should have referred to 2009.

Recommendation:

In 2011 publication, refer to nonpayroll income tax withheld in 2010.

-- Mike Pappas, CPP

4. Page 2, column 2: “On February 16”

Problems:

- a. Wording on which W-4s are expiring could be more specific.
- b. Wording as to how to withhold income tax from wages of an employee whose exempt W-4 has expired is confusing.
- c. There should be clarification as to what to do if the employee furnishes a new exempt W-4 after wages have been paid on February 16 or later.

Recommendation:

Rewrite the paragraph as follows:

Exempt Forms W-4 expire. Any Form W-4 claiming exemption from withholding from wages of the previous year has now expired. Begin withholding for any employee who previously claimed exemption from withholding but has not given you a new Form W-4 for the current year. If the employee does not give you a new Form W-4, withhold tax as if he or she is single with zero withholding allowances or withhold based on the last valid Form W-4 you have for the employee. See [section 9](#) for more information. If, after you have paid wages and withheld taxes on February 16 or later, the employee furnishes a new exempt W-4, you may apply the exempt W-4 to future wages, but do not refund taxes withheld while the exempt status was not in place.

Note that the sentence as to how to withhold from the wages of an employee who has not furnished a new W-4 is copied from Section 9. While the existing language on page 2 shows a preference for using an earlier valid W-4, if one exists, over withholding at single-zero, Section 9 shows no preference, and neither does Reg. §31.3402(f)(4)-2(c).

-- Nora Daly, CPP; Mike Pappas, CPP; Scott Mezistrano, CPP

5. Page 3, column 1: "Before December 1"

Problem:

The need to submit a new W-4 also applies if an employee's marital status has changed.

Recommendation:

Rewrite the sentence as: "Remind employees to submit a new Form W-4 if their marital status or withholding allowances have changed ..."

-- Nora Daly, CPP

6. Page 3, column 2: "Paying Wages, Pensions or Annuities"

Problem:

References to Form 941c are outdated, since it was last used for errors discovered before January 1, 2009.

Recommendations:

- a. Remove all references to the date on which an error is discovered. Even if an error really was discovered before January 1, 2009, and the employer is only now making the correction, it would still do so on Form 941-X.
- b. Remove all references to Forms 941-X and 944-X as "new."
- c. Remove all references to Form 941c.

-- Nora Daly, CPP; Mike Pappas, CPP; Scott Mezistrano, CPP

7. Page 4, column 2: "Nonpayroll Income Tax Withholding"

Problems:

- a. 2010 publication gives the deadline for filing a 2009 return, but not the 2010 return.
- b. One of the bulleted items is "Certain government payments subject to voluntary withholding," but it's not clear what these might be.

Recommendations:

- a. In the 2011 publication, provide the deadline for filing the 2010 return and the 2011 return.
- b. Provide an example of "Certain government payments subject to voluntary withholding."

-- Mike Pappas, CPP; Scott Mezistrano, CPP

8. Page 8, column 2: "Who Are Employees?"

Problems:

- a. This section is somewhat confusing. It has misled some readers into thinking that anyone described in the statutory employee section is automatically an independent contractor, while that section is trying to say that IF someone is an independent contractor, they may still be a statutory employee for purposes of FICA and FUTA taxes.
- b. The section should refer the reader to where more information may be found.

Recommendations:

- a. At the end of the "Employee status under common law" section, add the following paragraph:
If someone who works for you is an employee under the common law rules discussed above, you generally must withhold federal income tax from his or her pay, and the pay will be subject to social security, Medicare, or FUTA tax. If someone who works for you is not an employee under the common law rules, these taxes will generally not apply (unless backup withholding of federal income tax applies; see Instructions for Form 1099-MISC). However, see the following sections on statutory employees and statutory nonemployees.
- b. In the "Statutory Employees" section, replace the first paragraph with:
Even if someone who works for you is not an employee under the common law rule, the law (statute) may require you treat the following categories of workers as employees for purposes of social security, Medicare, and FUTA taxes. See Publication 15-A for more information on statutory employees.
- c. At the end of the "Statutory nonemployees" section, add the following:
See Publication 15-A for more information on statutory nonemployees.

-- Amy Bradley, CPP; Scott Mezistrano, CPP

9. Page 9, column 2: "Covered services of a child or spouse."

Problem:

The use of the word "individual" sometimes causes confusion.

Recommendation:

Rewrite as:

Covered services of a child or spouse. The wages for the services of a child or spouse are subject to income tax as well as social security, Medicare, and FUTA taxes if he or she works for:

- A corporation, even if it is controlled by the worker's parent or spouse,
- A partnership, even if the worker's spouse or parent is a partner, unless each partner is a parent of the worker,
- An estate, even if it is the estate of a deceased parent or spouse.

Note that we have added "or spouse" to the final bullet. It seems to follow logically from the previous discussion, but is it correct?

-- Mike Pappas, CPP; Scott Mezistrano, CPP

10. Page 14, column 1: "Reporting tips."

Problems:

- a. The paragraph discusses reporting uncollected taxes, but these rules apply to reporting collected taxes as well.
- b. The references to prior years' forms can be cleaned up, assuming the line numbers will be the same on the 2011 Form 941.

Recommendation:

Rewrite the first two sentences as:

Reporting tips. Report tips and social security and Medicare taxes (collected as well as uncollected taxes) on Form W-2 and on lines 5b and 5c of Form 941 (lines 4b and 4c of Form 944). Report an adjustment on line 7c of Form 941 (line 6 of Form 944) for the uncollected social security and Medicare taxes.

-- Mike Pappas, CPP; Scott Mezistrano, CPP

11. Page 15, column 1: examples of supplemental wage withholding

Problem:

The examples could be slightly edited for clarity.

Recommendation:

Edit as below.

Example 1. ... plus a commission of \$2,000, which you combine with regular wages and do not separately identify. You figure the withholding based on the total of ...

Example 2. ... Electing to use supplemental wage withholding method 1-b, you

1. Add the bonus amount to the amount of wages from the most recent pay date (May 1)
(\$2,000 + \$2,000 = \$4,000).

...

Example 4. The facts are the same as in Example 2, except you pay Sharon a second bonus of \$1,000 bonus on May 28. Using supplemental wage withholding method 1-b, you:

1. Add the second bonus amount to the wages going back to the most recent payment of regular wages:

(May 1 \$2,000 + May 14 \$2,000 + May 28 \$1,000 = \$5,000).

...

3. Subtract the amounts withheld from the wages going back to the most recent payment of regular wages from the combined withholding amount.

(\$785.00 - \$164.00 - \$371.00=\$250.00)

...

-- Scott Mezistrano, CPP

12. Page 16, column 1: "Exemption from federal income tax withholding."

Problem:

The period to which an exempt W-4 is applied could be made more clear

Recommendation:

Rewrite the second paragraph as follows:

A Form W-4 claiming exemption from withholding is generally applicable only to wages paid in the same calendar year as indicated by the form and paid after the employer receives the form. However, there is a grace period applied to wages paid through February 15 of the following year. To be exempt from withholding from wages paid after February 15, an employee must provide a new Form W-4 claiming exemption. If the employee does not give you a new Form W-4, withhold tax as if he or she is single with zero withholding allowances or withhold based on the last valid Form W-4 you have for the employee. If, after you have paid wages and withheld taxes on February 16 or later, the employee provides a new Form W-4, you may apply it to future wages, but do not refund taxes already withheld

-- Jenifer Conkling

13. Page 23, column 1: examples for "Application of Monthly and Semiweekly Schedules"

Problem:

The examples could be slightly edited for clarity.

Recommendation:

Edit as below.

Monthly schedule example. Spruce Co. is a monthly schedule depositor, and it is a seasonal employer. It paid wages each Friday during March. Under the monthly deposit

schedule, Spruce Co. must deposit the combined tax liability for the four March paydays by April 15.

Spruce Co. paid no wages during April. Therefore it has no tax liability for April and does not have a deposit requirement for April (which would have been due by May 15).

Semiweekly schedule depositor. Green, Inc., is a semiweekly schedule depositor, and it pays wages once each month on the fourth Friday of the month. Green, Inc., paid wages on Friday, April 22, 2010. The tax liability for this pay day must be deposited by Wednesday, April 27, 2010, because, under the semiweekly deposit schedule, liabilities for wages paid Wednesday through Friday must be deposited by the following Wednesday.

Although Green, Inc., is a semiweekly schedule depositor, it will normally deposit its tax liability only once a month because it pays wages only once a month. Should it pay any wages on any other pay dates, it would be required to follow the semiweekly deposit schedule as required for those pay dates

-- Mike Pappas, CPP

14. Page 28, column 1: "Caution"

Problem:

First word on next-to-last line is spelled inconsistently with its treatment in the rest of the publication.

Recommendation:

Change to "payor."

--Yonina Shineweather, CPA

15. Page 28, columns 1-2: "Current Period Adjustments"

Problem:

The subsections explaining the adjustments do not follow the order of the form.

Recommendation:

Reorder as follows:

1. Fraction-of-cents adjustment.
2. Adjustment of tax on third-party sick pay.
3. Adjustment of tax on tips.
4. Adjustment of tax on group-term life insurance premiums paid for former employees.

--Yonina Shineweather, CPA

16. Page 28, column 2: "Adjustment of tax on group-term life insurance ..."

Problem:

Employers often mistakenly think they may apply this adjustment to the FICA tax on group-term life insurance provided to employees while they were employed but on which the employer is imputing the income after the employee's termination.

Recommendation:

Rewrite first sentence as follows:

When group-term life insurance over \$50,000 is provided to an employee after his or her termination, the employee share of social security and Medicare taxes on that period of coverage is paid by the former employee with his or her tax return and is not collected by the employer. This adjustment may not be taken for group-term life insurance provided to employees while they were employed but on which the employer is imputing the income after the employee's termination.

-- Amy Bradley, CPP

17. Page 28, column 2: "Fractions-of-cents adjustment."

Problem:

In the paragraph beginning, "Compare these amounts," the reference to the "2009 Form 944" is confusing and would require annual updating.

Recommendation:

Omit the reference to the year and state simply "line 6 of Form 944."

--Yonina Shineweather, CPA

18. Page 31, column 2: "Computing FUTA tax."

Problems:

- a. It is not made clear how an employer qualifies for the maximum 5.4% credit against the 6.2% FUTA tax.
- b. The explanation of situations in which the employer needs to deposit more than 0.8% needs to be clarified.

Recommendations:

a. Rewrite the last two sentences as follows:

The credit may be as much as 5.4% of FUTA taxable wages. If you are entitled to the maximum 5.4% credit, the FUTA tax rate after the credit is 0.8%. You are entitled to the maximum 5.4% credit if you paid your state unemployment taxes in full, on time, and on all the same wages as are subject to FUTA tax, and as long as the state is not determined to be a credit reduction state. See the Instructions for Form 940.

b. Move the last two sentences in this column (under "Depositing FUTA tax.") to this section, as a new paragraph, and rewrite as:

In some states, the wages subject to state unemployment tax are the same as the wages subject to FUTA tax. However, certain states exempt some types of wages from state unemployment tax, even though they are subject to FUTA tax (for example, wages paid to corporate officers, certain payments of sick pay by unions, and certain fringe benefits). In such a case, you may be required to deposit more than 0.8% FUTA tax on those wages. See the Instructions for Form 940.

-- Mike Pappas, CPP; Scott Mezistrano, CPP

Publication 15-A, Employer's Supplemental Tax Guide

1. General recommendation regarding hyperlinks

For online versions of the publications, all mentions of other forms and publications should be hyperlinked.

-- Bill Schmalle, CPP

2. General recommendation regarding "What's New" section

Problem:

All of the information in this and all other sections are subject to change by Congress and IRS. For example, the COBRA Premium Assistance Credit is discussed as applying to employees terminated as late as February 28, 2010, but this was later extended to employees terminated as late as May 31, 2010.

Recommendation:

Include, at the beginning of the "What's New" section, the following:

Payroll tax law and regulations are subject to change at any time. Be sure to see any updates at the Payroll Professionals Tax Center at

<http://www.irs.gov/businesses/small/industries/article/0,,id=185188,00.html>

-- Bill Schmalle, CPP

3. Page 2, column 1, "Furnishing Form W-2 to employees electronically"

Problem:

As written, it would seem that an employer is prohibited from posting W-2s to a secure website unless it gets consent. However, consent is needed only to allow the employer to terminate the provision of Form W-2 on paper. Posting the W-2s to a secure website doesn't preclude also providing them on paper, and many employers do both processes. The preamble to the final regulations states, "However, the regulations do not prohibit a furnisher from storing all statements on the web server. Whether the furnisher stores all statements or only those statements for which consents are received is a business decision for the furnisher." (69 F.R. 7567, 2-18-04)

Recommendation:

Rewrite the first paragraph as (changed text in bold):

You may set up a system to electronically furnish Form W-2, Wage and Tax Statement. You may post an employee's Form W-2 to a secure website whether or not the employee consents, but to terminate delivery of a paper form, you must have the employee's consent. An employee must provide his or her consent electronically (or receive confirmation of any consent made using a paper document), and you must notify the employees of all hardware and software requirements to receive the forms. **You may not send a Form W-2 via e-mail** who does not consent or who has revoked consent previously provided.

Scott Mezistrano, CPP

4. Page 17, column 2, "Liability not transferred to the employer"

Problem:

The paragraph indicates that when liability has not been transferred, the third party has the option of completing Form W-2 either with its own name and EIN or with the employer's name and EIN. This is indicated via the final sentence: "Otherwise, the third party must complete Form W-2 as shown in *Reporting sick pay on Form W-2* earlier." This is incorrect. Since liability has not been transferred, the third party retains all tax responsibilities for the sick pay, including using its own name and EIN on Form W-2.

Recommendation:

Omit the last sentence of the paragraph beginning with "Otherwise..."

Yonina Shineweather, CPA

5. Page 20, column 1, Employee's Portion of Taxes Paid by Employer

Question: Don't these examples need to be adjusted to account for federal income tax withholding on the value of the taxes paid by the employer?

Scott Mezistrano, CPP

6. Page 20, column 2, Stated pay of more that \$98,629.80

Problem:

The current wording "the correct social security wage amount is \$98,629.80" is misleading, since the correct social security wages to report in Box 3 is \$106,800, as explained further in the paragraph. In fact, \$98,620.80 is NOT the correct social security wage to report; \$106.800 is the correct social security wage to report.

Recommendation:

The sentence should read, "the portion of stated wages subject to social security tax is \$98,629.80." This would clarify that a portion of the stated wages is subject to social security and a portion is not, as explained further in the paragraph.

Yonina Shineweather, CPA

7. Page 21, column 1, International Social Security Agreements

Problem:

"Employee and employers who are subject only to foreign social security taxes...are exempt form U.S. social security..." This is not correct. If an employee/employer is subject to foreign social security taxes as well as other foreign taxes, such as foreign income taxes, he/she will still be exempt from U.S. social security taxes.

Recommendation:

Delete the word "only" from the above sentence. It obscures the intended meaning.

Yonina Shineweather, CPA

Publication 15-B, Employer's Tax Guide to Fringe Benefits

1. General recommendation regarding hyperlinks

For online versions of the publications, all mentions of other forms and publications should be hyperlinked.

-- Bill Schmalle, CPP

2. General recommendation regarding "What's New" section

Problem:

All of the information in this and all other sections are subject to change by Congress and IRS. For example, a couple of years ago, we had a mid-year change in the business mileage rate.

Recommendation:

Include, at the beginning of the "What's New" section, the following:

Payroll tax law and regulations are subject to change at any time. Be sure to see any updates at the Payroll Professionals Tax Center at <http://www.irs.gov/businesses/small/industries/article/0,,id=185188,00.html>

-- Bill Schmalle, CPP

3. Page 1, "What's New"

Problems:

- a. The business mileage rate should also be discussed from the perspective of reimbursing an employee for business use of a personal vehicle.
- b. The relocation mileage rate should be mentioned.
- c. Mention of the adjusted values for health savings accounts was left out.

Recommendations:

a. Rewrite the existing paragraph as:

The business mileage rate for 2011 is xx cents per mile. You may use this rate to reimburse an employee for business use of a personal vehicle (see Publication 463), and, under certain conditions, you may use this rate under the cents-per-mile rule to value the personal use of a vehicle you provide to an employee. See Cents-Per-Mile Rule in section 3.

b. Add a paragraph:

The moving expense mileage rate for 2011 is XX cents per mile. See Moving Expense Reimbursements in section 2.

c. It won't be an issue for 2011, because we already know that the HSA values are the same for 2011, but in other years, add a paragraph:

Various values related to health savings accounts have been adjusted. See Health Savings Accounts in section 2.

-- Scott Mezistrano, CPP

4. Page 9, column 1: "Form W-2" (refers to Dependent Care)

Problem:

The reporting instructions are not complete enough with regard to including in box 10 all dependent care assistance provided to the employee under a dependent care assistance plan and including in boxes 1, 3, and 5 any amount in excess of \$5,000.

Recommendation:

Replace the paragraph with the following:

Report in box 10 of the employee's Form W-2 the total value of all dependent care assistance you provide to the employee through any dependent care assistance program(s). Report both the nontaxable portion of assistance (up to \$5,000) and any assistance above the amount that is non-taxable to the employee.

Example: Company A provides a dependent care assistance flexible spending arrangement to its employees through a cafeteria plan. In addition, it provides occasional on-site dependent care to its employees at no cost. Emily, an employee of company A, had \$4,500 deducted from her pay for the dependent care flexible spending arrangement. In addition, Emily used the on-site dependent care several times. The fair market value of the on-site care was \$700. Emily's Form W-2 should report \$5,200 of dependent care assistance in Box 10 (\$4,500 flexible spending arrangement plus \$700 on-site dependent care). Boxes 1, 3, and 5 should include \$200 (the amount in excess of the nontaxable assistance), and applicable taxes should be withheld on that amount.

-- Mike Pappas, CPP

5. Page 10-11, "Employee Stock Options"

Problems:

- a. This section is very confusing.
- b. There is no definition of disqualifying disposition.

Recommendations:

- a. Divide this information into subsections for qualified and nonqualified stock options.
- b. Under qualified stock options, define each of incentive stock options and employee stock purchase plans.
- c. Give one treatment for the exercise of qualified stock options with regard to federal, social security, and Medicare taxes, whether exercised before or on or after October 23, 2004.
- d. Explain the box 1 reporting requirement for a disqualifying disposition of stock acquired under an incentive stock option plan or an employee stock purchase plan, and that no withholding is required.
- e. Define a disqualifying disposition (stock sold less than two years from grant of option or one year from exercise)
- f. Explain that the disqualifying disposition must be reported as the lesser of
 - FMV at exercise less exercise price
 - sale price less exercise price
- g. Explain the box 1 reporting requirement for the disposition of stock acquired under an employee stock purchase plans, and that no withholding is required.

-- Mike Pappas, CPP; Scott Mezistrano, CPP

6. Page 12, column 1, "The 10-employee rule"

Problem: The second paragraph is very confusing and does not emphasize or explain the concept of "permanent benefit," which is essential to understanding when an employer may count an employee who is not receiving the insurance.

Recommendation:

Rewrite the paragraph as follows:

For this rule, you may count employees who are offered the insurance but choose not to receive it, unless, in order to receive the insurance they must also pay the cost of a permanent benefit. A permanent benefit is an economic value extending beyond one policy year (for example, a paid-up or cash-surrender value) that is provided under a life insurance policy.

-- Mike Pappas, CPP; Scott Mezistrano, CPP

7. Page 12, column 2, "Coverage over the limit"

Problems:

- a. The explanation doesn't address the fact that the employer may have to include the value of group-term life insurance even if the employee paid for it entirely (e.g., if the employer has arranged for the employee to buy it at less than the cost per Table 2-2).
- b. The explanation does not make it clear that the employer may, at its option, withhold federal income tax on this benefit.

Recommendations:

- a. Rewrite the first sentence as, "You must include in your employee's wages the cost of all group-term life insurance beyond \$50,000 worth of coverage, reduced by the amount the employee paid toward the insurance."
- b. Add a sentence at the end of the first paragraph: "This amount is subject to social security and Medicare taxes, and you may, at your option, withhold federal income tax."
- c. In the second paragraph, add the "all" to the first sentence: "... multiplying the number of thousands of dollars of all insurance coverage over \$50,000 ..."

-- Mike Pappas, CPP; Scott Mezistrano, CPP

8. Page 12, column 2, "Coverage for dependents"

Problems:

- a. The paragraph states that it is a de minimis benefit if it is \$2,000 or less, but it doesn't explain that if it is in excess of \$2,000, it is all taxable.
- b. We need clarification as to whether the box 12-code C reporting applies to dependent coverage.
- c. We need clarification as to whether income tax withholding is optional.

Recommendations:

- a. Replace the second sentence with the following: "If the face amount is greater than \$2,000, then the entire amount of the dependent coverage, reduced by the amount the employee paid on an after-tax basis, must be included in income."
- b. Address problems b and c above.

-- Mike Pappas, CPP; Scott Mezistrano, CPP

9. Page 13, column 1: "Former employees."

Problem:

Employers often mistakenly think they may report in W-2 box 12 uncollected FICA tax on group-term life insurance provided to employees while they were employed but on which the employer is imputing the income after the employee's termination.

Recommendations:

- a. Rewrite first sentence as follows:

When group-term life insurance over \$50,000 is provided to an employee (including retirees) after his or her termination, the employee share of social security and Medicare taxes on that period of coverage is paid by the former employee with his or her tax return and is not collected by the employer.

- b. Rewrite last sentence as follows:

See the Instructions for Forms W-2 and W-3 and the Instructions for Form 941.

- c. Add to end of paragraph (however, with recommendation a, the paragraph already mentions twice that this procedure is for coverage provided after separation):

This procedure may not be used for group-term life insurance provided to employees while they were employed but on which the employer is imputing the income after the employee's termination.

-- Amy Bradley, CPP; Scott Mezistrano, CPP

Publication 1281, Backup Withholding for Missing and Incorrect Name/TIN(s)

1. Throughout publication: references to Form SSA-7028 and image of Form SSA-7028

Problem:

SSA has eliminated Form SSA-7028, which was used by payees to confirm their social security numbers (SSNs) to their payors after the payor received a second notice of incorrect taxpayer identification number within three years. IRS will now allow the payee to confirm his or her SSN with a Social Security Number Printout, which may be obtained at a SSA office. (IRS Announcement 2010-41 (<http://www.irs.gov/pub/irs-drop/a-10-41.pdf>))

Recommendation:

The publication needs to reflect the new procedure and include a sample of a Social Security Number Printout (in place of the current SSA-7028 on the last page).

-- James Medlock, CPP

2. Page 5, Q/A 11; Page 26, CD/DVD Information

Problems:

- a. It is not clear which category applies to a payor with exactly 50 error documents.
- b. It is not clear which media will be used for a payer with exactly 250 documents

On page 5, it says:

Large volume filers will receive a CD or DVD data file CP2100, mid-size filers receive a paper CP2100, and small filers receive a paper CP2100A.

Large Filer250 or more error documents;
Mid Size Filer ...Less than 250 error documents and greater than 50 error documents;
Small Filer Less than 50 error documents.

On August 18, 2009, Virginia Tarris, IRS, wrote to APA, "An employer with 50 error documents is a Mid Size Filer."

On page 26, it says, "If you have 251 to 100,000 incorrect payee "B" records your data will be on a CD." That conflicts with page 5 with regard to a payer with exactly 250 documents.

Recommendations:

- a. Update page 5 to say "Mid Size Filer ...Between 50 and 249 documents."
- b. Update page 26 to say "If you have 250 to 100,000 incorrect payee "B" records, ..."

-- James Medlock, CPP

Form 941, Schedule B, and Schedule D

1. Form 941, Line 18 (“If your business has closed ...)

Problem:

Taxpayer might miss the requirement, per the form instructions, to “Also attach a statement to your return showing the name of the person keeping the payroll records and the address where those records will be kept.”

Recommendation:

After the date box, insert

See Instructions for Form 941, page 2: “What if you reorganize or close your business?”

-- Amy Bradley, CPP

2. Form 941 Instructions, page 1, “Purpose of Form 941”

Problem:

Employer responsibility to match FICA taxes could be clarified.

Recommendation:

Replace fourth paragraph with:

Federal law also requires employers to contribute to social security and Medicare taxes. This contribution is not withheld from employees’ pay but is generally equal to the amount withheld for these taxes from employees’ pay.

-- Judith Kaye Hahn, CPP, PHR

3. Form 941 Instructions, page 2, “Review Your Business Information at the Top of the Form”

Problem:

The EIN is discussed, but it is not defined until the fourth paragraph.

Recommendation:

Move the fourth paragraph to the beginning of this section.

-- Judith Kaye Hahn, CPP, PHR

4. Form 941 Instructions, page 3, "Reconciling Forms 941 and Form W-3

Problem:

Social security and Medicare wages and tips are mentioned, but not the taxes.

Recommendations:

After "Social security tips," add another bullet: "Social security taxes."

After "Medicare wages and tips," add another bullet: "Medicare taxes."

-- Judith Kaye Hahn, CPP, PHR

5. Form 941 Instructions, page 6, "7b. Current quarter's adjustment for sick pay."

Problems:

- a. The instructions don't address the adjustment that might be required on a 941 filed by a third-party payer.
- b. Employers could use a reminder here that sick pay paid by the third party needs to be included in lines 5a and 5c, even though that is stated in the instructions for lines 5a. I have seen many employers leave the wages out of those lines and then enter a positive adjustment for their share of FICA taxes.

Recommendation:

Edit the instructions as follows (additions in bold):

Enter the adjustment for the employee share of social security and Medicare taxes that were withheld **and deposited** by your third-party sick pay payer **with regard to sick pay paid by the third-party. (These wages should be included on lines 5a and 5c.)** **If you are the third-party sick pay payer, enter the adjustment for any employer share of these taxes deposited by the employer.**

-- Amy Bradley, CPP

6. Form 941 Instructions, page 6, "7c. Current quarter's adjustments for tips and group-term life insurance."

Problem:

The second bullet point refers to "former employees" without a definition of "former employees." Employers often mistakenly think they may take an adjustment for uncollected FICA tax on group-term life insurance provided to employees while they were employed but on which the employer is imputing the income after the employee's termination.

Recommendation:

Edit the second bullet as follows:

... Medicare taxes on premiums paid for group-term life insurance coverage provided after an employee's termination.

-- Amy Bradley, CPP; Scott Mezistrano, CPP

7. Form 941 Instructions, page 7, second bullet

Problem:

It could better define who is a semiweekly depositor.

Recommendation:

Edit the first sentence as (addition shown in bold):

If you reported more than \$50,000 of taxes for the lookback period (see above), **or if you became subject to the \$100,000 Next-Day Deposit Rule**, you are a ...

-- Judith Kaye Hahn, CPP, PHR

8. 941 Instructions, page 8, "Paid Preparer's Use Only"

Problem:

The instructions say that paid preparers must sign with a manual signature, but alternative methods are allowed.

Recommendations:

- a. Remove second sentence from first paragraph.
- b. Insert the below as a second paragraph.

Alternative signature method. Paid preparers may sign paper returns with a manual signature or by rubber stamp, mechanical device, or computer software program. For details and required documentation, see Notice 2004-54, 2004-33 I.R.B. 209 at www.irs.gov/irb/2004-33_IRB/ar10.html.

-- Amy Bradley, CPP

9. 941 Schedule B, instructions printed on the form itself, fourth sentence

Problem:

It says to "write" the liability, but many employers use an electronic version of the form.

Recommendation:

Change it to "Record ..."

-- Judith Kaye Hahn, CPP, PHR

10. 941 Schedule B Instructions, "Purpose of Schedule B (Form 941)"

Problem:

It is not until after many paragraphs that the "purpose" of Schedule B is discussed. This section could use some clarifications and reorganization.

Recommendations:

- a. After the first sentence of the first paragraph, insert the first sentence from the "Caution" at the bottom of the page ("The IRS uses Schedule B (Form 941) to determine if you have deposited your federal employment tax liabilities on time.")
- b. Then, start a new paragraph with the remaining text ("To determine if you are a semiweekly depositor, ...").
- c. The rest of the "Caution" can remain there with the "Caution" symbol.
- d. In the current second paragraph, change "(payroll taxes)" to "(employment taxes)" to be consistent with the treatment in the rest of the instructions.
- e. In the current third paragraph, change the first sentence to
Federal law also requires employers to contribute to social security and Medicare taxes. This contribution is not withheld from employees' pay but is generally equal to the amount withheld for these taxes from employees' pay.
- f. Insert the heading "What is Reported on Schedule B (Form 941)?" before the paragraph beginning with "On Schedule B (Form 941), list your tax liability ..."
- g. In the current fourth paragraph, change the first sentence to
On Schedule B (Form 941), record your tax liability for each date on which you accrued a liability (generally, on the days on which you paid wages to your employees).
- h. Remove the current fifth paragraph and any other references to the advance earned income credit.
- i. Change the current sixth paragraph to the below. Note that reference to Form 8109 is eliminated, as that form is eliminated as of 2011.
Do not use the Schedule B (Form 941) to show the date you deposited your employment taxes or the amount you deposited. This information is taken from the Electronic Federal Tax Payment System (EFTPS).

-- Judith Kaye Hahn, CPP, PHR; Scott Mezistrano, CPP

11. 941 Schedule D Instructions, "General Instructions"

Problem:

The organization of the instructions does not mirror that of the instructions for Schedules B and R.

Recommendations:

- a. Change "Understanding Schedule D (Form 941)" to "Purpose of Schedule D (Form 941)."
- b. Remove "What is Schedule D (Form 941)."

-- Judith Kaye Hahn, CPP, PHR

“General Instructions for Certain Information Returns (Forms 1098, 1099, 3921, 3922, 5498, and W-2G)”

1. Page 5, column 1, “Keeping copies.”

Problem:

It is not clear whether payors may dispose of paper copies of information returns containing backup withholding, as they may with other information returns, as long as they “have the ability to reconstruct the data.”

Recommendation:

Edit the second sentence to mirror the first sentence: “Keep copies of information returns or have the ability to reconstruct the data for 4 years if backup withholding was imposed.”

-- Scott Mezistrano, CPP

Forms W-2, W-3, and Instructions

1. Form W-3: Instructions section of form

Problem:

The brief instructions include a section on Electronic Filing but it doesn't mention the threshold for mandatory electronic filing.

Recommendation:

Rewrite as follows. Additions in bold; note paragraph breaks.

Electronic Filing

If filing 250 or more Forms W-2, you must file them electronically unless IRS granted you a waiver.

The Social Security Administration (SSA) strongly suggests **all** employers report Form W-3 and W-2 Copy A electronically instead of on paper.

SSA provides two free options on its Business Services Online (BSO) website: ...

-- Ray Krause, CPP

2. W-2/W-3 instructions: Page 1, column 1, "Reporting for nonqualified deferred compensation plans."

Problem:

The format of this heading is inconsistent with the others in the "Reminders" section, and it's not in alphabetical order. In addition, there is another heading for "Nonqualified deferred compensation plans" in the second column.

Solution:

- a. Delete this heading.
- b. Move the sentence ("You are not required ... subject to section 409A.") to the beginning of the "Nonqualified deferred compensation plans" section in the second column.

-- Pam Torres, CPP

3. W-2/W-3 instructions: Page 1, column 2, "Online Filing of Forms W-2 and W-3." and "Online wage reporting."

Problem:

The first section does not mention the threshold for mandatory electronic filing. The second section contains information that would be better placed in the first section, so that the second section is more in keeping with the larger section of which it is a part ("Need Help?").

Recommendation:

- a. Include in the first section: "If filing 250 or more Forms W-2, you must file them electronically unless IRS granted you a waiver."
- b. Move these sentences from the second section to the first section, or delete them to the extent they are duplications:
 - "Using a personal computer, ... report wage data."
 - "Corrections to previously ... by accessing BSO."
 - "Employers also can electronically ... on page 3."

-- Bill Schmalle, CPP; Pam Torres, CPP; Scott Mezistrano, CPP

4. W-2/W-3 instructions: Page 2, column 2, "Who must file Form W-2."

Problem:

The requirements are unclear. The first paragraph would seem to indicate that there may be some employees for whom a W-2 is not required, but the second paragraph seems to say that a W-2 is required for every employee.

Recommendation:

Assuming this is correct,

- a. Move the second paragraph to the top of the section.
- b. Remove "Also" from the beginning.
- c. Place "even if the employee is related to the employer" in parenthesis.
- d. Add ", from whom:" to the end of that sentence.
- e. Place the two bullets from the current first paragraph under this new first paragraph.
- f. Delete the current first sentence (Employers must file ... each employee from whom.).

-- Scott Mezistrano, CPP

5. W-2/W-3 instructions: Page 2, column 2, "Who may sign Form W-3."

Problem:

The first sentence of the second paragraph ("If an authorized sender ...") is unclear. It could be read that the payer must send an additional set of W-3/W-2.

Recommendation:

Use the "Caution" from page 7, column 1.

-- Mike Pappas, CPP; Scott Mezistrano, CPP

6. W-2/W-3 instructions: Page 3, column 2, "Taxpayer Identification Numbers (TINs)."

Problem:

The sentence about individual taxpayer identification numbers (ITIN) does not address the W-2 reporting procedure when someone with an ITIN has worked. SSA has said to place that number on the W-2 if wages must be reported and that's the only number the worker can provide.

Recommendation:

Change the sentence to, "Someone who does not have a SSN but has an individual taxpayer identification number (ITIN) might not be authorized to work in the United States. However, if this person has performed services, report the wages on Form W-2 with the ITIN in the place of the SSN. For more information, ..."

-- Scott Mezistrano, CPP

7. W-2/W-3 instructions: Page 4, column 1, "Agent reporting."

Problem:

The second sentence is unclear.

Recommendation:

Rewrite the (b) section as "... (b) pays social security wages to an individual on behalf of more than one employer, and (c) the total of the individual's social security wages from these employers is greater than the social security wage base, ..."

-- Scott Mezistrano, CPP

8. W-2/W-3 instructions: Page 4, "Corrections." (The section starts in column 1, but the problem is in column 2, paragraph 4.)

Problem:

The sentence, "If you are correcting social security or Medicare wages or tips, ...," could lead one to think that if the corrections are to other items, the employer doesn't need to file the W-2c with the SSA.

Recommendation:

- a. Delete this sentence.
- b. In the first paragraph of this section, insert as the second sentence, "File Forms W-2c with the SSA."

-- Scott Mezistrano, CPP

9. W-2/W-3 instructions: Page 4, column 2, “Deceased employee’s wages.”

Problem:

The fifth paragraph could lead one to think that a 1099-MISC is required when reissuing a payment that was constructively received by the deceased while he or she was still alive.

Recommendation:

Rewrite the first sentence of that paragraph as, “Whether the payment is made in the year of death or after the year of death, unless it is a reissuance of wages that were constructively received by the deceased while he or she was still alive, you also must report it in box 3 ...”

-- Scott Mezistrano, CPP

10. W-2/W-3 instructions: Page 5, column 1, “Educational assistance programs.”

Problem:

The paragraph confuses the distinction between job-related and non-job-related educational assistance.

Recommendation:

Rewrite the first two sentences as: “Employer-provided educational assistance that qualifies as a working condition benefit is excludable from an employee’s wages. For educational assistance that does not qualify as a working condition benefit, a \$5,250 exclusion may apply if the assistance is provided under an educational assistance program under section 127.”

-- Scott Mezistrano, CPP

11. W-2/W-3 instructions: Page 5, column 2, “Group-term life insurance.”

Problems:

- a. The explanation doesn’t address the fact that the employer may have to include the value of group-term life insurance even if the employee paid for it entirely (e.g., if the employer has arranged for the employee to buy it at less than the cost per table 2-2 in Pub 15-B).
- b. The explanation does not make it clear that the employer may, at its option, withhold federal income tax on this benefit.
- c. Employers often mistakenly think they may require former employees to pay the social security and Medicare taxes on the taxable portion of group-term life insurance that was provided while the employee was employed (but on which the employer is imputing the income after the employee’s termination).

Recommendations:

- a. Rewrite the first sentence as, “You must include in your employee’s wages (boxes 1, 3, and 5) the cost of group-term life insurance beyond \$50,000 worth of coverage, reduced by the amount the employee paid toward the insurance. The cost is determined by the table in section 2 of Pub. 15-B.
- b. Let the second sentence stand (“Also, show the amount in box 12 with Code C.”)

- c. Rewrite the third sentence as, “For coverage provided to employees while they were employed, you must withhold social security and Medicare taxes, and you may, at your option, withhold federal income tax.”
- d. Edit fourth sentence as: “For coverage provided to employees after they were employed, the employees must pay ...”

-- Amy Bradley, CPP; Scott Mezistrano, CPP

12. W-2/W-3 instructions: Page 6, column 1, “Health savings accounts (HSA).”

Problem:

Second paragraph. There is enough confusion about the Code W reporting of HSAs that it’s worth repeating the parenthetical explanation from the first paragraph.

Recommendation:

Rewrite the first sentence as: “You must report all employer contribution (including an employee’s contribution through a cafeteria plan), to an HSA in box 12 ...”

-- Scott Mezistrano, CPP

13. W-2/W-3 instructions: Page 6, column 1, “Moving expenses.”

Problem:

In other parts of the instructions, there is often mention of another publication or form that would give more information on a topic. Here, however, there is mention of qualified and nonqualified moving expenses, but no definition of these terms.

Recommendation:

Add the following sentence: “For more information on qualified and nonqualified moving expenses, see IRS Publication 521, *Moving Expenses*.”

-- Bill Schmalle, CPP

14. W-2/W-3 instructions: Page 6, column 1, “Nonqualified deferred compensation plans.”

Problem:

Some of the current text and structure could cause confusion.

Recommendation:

- a. First paragraph: Remove second sentence. It could make the employer think that it must withhold this tax. This tax is addressed in the third paragraph.
- b. Second paragraph: Change order of second and third sentences.
- c. Third paragraph, second sentence: Replace “reported” with “which is calculated.”

-- Scott Mezistrano, CPP

15. W-2/W-3 instructions: Page 6, columns 1-2, "Railroad employers."

Problem:

Column 2, second paragraph. The use of the word "also" makes it sound as though there could be employees for whom both FICA and RRTA apply. Is that true? If so, for these employees, are you saying that

- a. both taxes should be reported on one W-2 and these W-2s should be submitted with the W-3 the "941" box checked, or
- b. a separate W-2 should be prepared specifically for the FICA taxes and only these W-2s should be submitted with the W-3 with the "941" box checked.

Recommendation:

Please clarify which of the above is correct.

-- Scott Mezistrano, CPP

16. W-2/W-3 instructions: Page 6, column 2, "Repayments."

Problem:

In the second paragraph, there is a reference to section 13 of Pub. 15 and section 9 of Pub. 51, but they say hardly anything more than what is written here.

Recommendation:

In the second paragraph, replace the second and third sentences with "Do not correct "Wages" in box 1 or "federal income tax" in box 2 on the W-2c. File the amended return as appropriate for the return on which the wages were originally reported (Form 941-X, 943-X, or 944-X). Amend the social security and Medicare wages and taxes for the period during which the wages were originally paid."

Add to the end of the third paragraph, "Refer your employee to the "Repayments" section in Pub. 525."

-- Pam Torres, CPP; Scott Mezistrano, CPP

17. W-2/W-3 instructions: Page 7, "Penalties"

Problem: The first sentence reads "The following penalties generally apply to the person required to file Form W-2." These forms are generally filed by a company, not a person, and the penalty is generally applied against the company.

Recommendation: Add the word "employer," as follows: "The following penalties generally apply to the employer or person required to file Form W-2."

-- Bill Schmalle, CPP

18. W-2/W-3 instructions: Page 14, "Index"

Recommendation:

Add entries for

-- Lost Form W-2 ... 6

Adjust entries for

-- Designated Roth contributions ... 5, 8, 10, 12

-- Military employers ... 10, 11, 12

-- Nonqualified deferred compensation plans ... 1, 6, 11

-- Pam Torres, CPP
