



# DEPOSITING AND REPORTING WITHHELD TAXES

## CHAPTER 8

2017 CPP Study Class

# EMPLOYER IDENTIFICATION NUMBER

- Nine digit number (00-0000000) used to identify employer to the IRS and SSA and ensure credit to the correct employer account
  - Apply online, 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 third party but employer must sign Form SS-4 and authorization
  - Only one EIN per responsible party (of entity) a day...
  - Individual applying must be an authorized designee
  - Application must be made no later than seven days after the first payment of wages
- “Applied for” status can be used for first filing
- Merger, consolidation and reincorporation – use EIN of surviving entity; if new entity, apply for new ID

# MAKING TAX DEPOSITS

- Employment taxes handled different than other taxes
- Employment taxes must generally be deposited electronically through the Electronic Federal Tax Payment System (EFTPS)
- Exception if amounts are small and can be paid with the return, e.g. annual FUTA liability of less than \$500

# PAYROLL TAX DEPOSIT RULES

- Two depositor statuses for Form 941 employers:
  - (1) Monthly or (2) Semiweekly
  - Determined by total Form 941 liability during a “look back period”
    - 12 month period ending June 30 of previous year
      - 2017 look back period is July 1, 2015 through June 30, 2016
      - 2017 look back period is 2015 if Form 944 filed in original look back period
      - Forms 941-X not taken into account
  - \$50,000 or less in tax liability → Monthly
  - Exceeds \$50,000 → Semiweekly
- Exceptions apply for:
  - Less than \$1,000 annual
  - Less than \$2,500 quarterly
  - Over \$100K accumulated

# 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 is the second year preceding the current calendar year
  - Look back for 2017 is 2015 regardless of whether the employer filed Form 941 or Form 944 during 2014
- Must make request to file Form 944 or change to Form 941 by April 1 of current tax year

# PAYROLL TAX DEPOSIT RULES

- Non payroll tax withholding treated separately with similar deposit rules
  - E.g. backup withholding, withholding from pension distributions
  - Reported annually on Form 945
- New employers are monthly unless they trigger the one day rule or they accumulate more than \$50,000 during a look back period (ending June 30)
- Agricultural employers
  - Annual return (Form 943)
  - Lookback period for 2017 is 2015
  - \$50,000 threshold to determine deposit schedule is the same
  - May have two different rules (farm and nonfarm employees)

# PAYROLL TAX DEPOSIT RULES

- Monthly depositors – due the 15<sup>th</sup> of following month
- Semiweekly –
  - Wages paid on Wed, Thu or Fri due by following Wed
  - Wages paid on Sat, Sun, Mon or Tue due by following Fri
- One day rule –
  - If accumulated employment tax liability exceeds \$100,000, must be deposited by following business day
  - Look at current monthly or semiweekly period
  - Once triggered, monthly depositors become semiweekly for remainder of current calendar year and next calendar year
  - Also applies to non payroll taxes

# PAYROLL TAX DEPOSIT RULES

- Semiweekly periods bridging two quarters = separate deposits (don't combine them!)
- “De minimis” deposit rules – less than \$2,500 for quarter 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

# PAYROLL TAX DEPOSIT RULES

- “Safe harbor” shortfall rule – deposit obligation is satisfied if shortfall is less than the greater of \$100 or 2% of amount due
  - Must be made up by “make up” date
  - Monthly – by due date of quarterly return
  - Semiweekly – by the first Wed or Fri occurring on or after the 15<sup>th</sup> of the month or, if earlier, due date of quarterly return
- EFTPS deposits made when withdrawn from account

# HOW TO DEPOSIT PAYROLL TAXES

- Must be deposited electronically through Electronic Federal Tax Payment System (EFTPS) – applies to all federal taxes deposited after Jan 1, 2011
  - Exception for:
    - Liability less than \$2,500 in quarter
    - Monthly depositor paying safe harbor shortfall
    - Form 944 filers (less than \$1,000 annual liability)
- New businesses are automatically pre-enrolled in EFTPS
  - EFTPS PIN sent in mail
  - Call number to activate by entering banking info and authorizing transfer of funds

# HOW TO DEPOSIT PAYROLL TAXES

- Existing employers can enroll by completing Form 9779, *Business Enrollment Form for EFTPS*, or online (separate for each EIN)
  - If on paper, will receive Form 9787, *Business Confirmation/Update Form*, and instruction booklet within 15 days
  - Enrollment process takes 2-10 weeks
  - PIN will be sent separately

# HOW TO DEPOSIT PAYROLL TAXES

- EFTPS payment options:
  - EFTPS-Direct (ACH Debit)
    - Employer accesses EFTPS directly to report its tax deposit information and instructs EFTPS to move funds to the Treasury's account
    - Request must be made at least one banking day before due date by 8:00 PM Eastern Time
    - Can be done online or via phone
  - EFTPS-Through a Financial Institution (ACH Credit).
    - Employer directs its Financial Institution (FI) to send the funds to the Treasury's account and tax data to IRS
    - Make sure FI offers the service and their required deadlines
  - Same day payment via Fed Wire
    - Deemed made on the date received by the Federal Reserve Bank (FRB) – FRB deadline is 5pm ET

# HOW TO DEPOSIT PAYROLL TAXES

- Holidays – initiate payment one day before the holiday to ensure timely payment
- Proof of 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
  - File amended return (Form 941-X or Amended Form 940)
  - If waiting for the refund would become a ‘hardship’, file Form 911, *Application for Taxpayer Assistance Order*
- Keep accurate records to establish timely deposits

# PENALTIES

- Failure to Deposit Timely:
  - 2% of un-deposited amount if deposited within 5 days of due date
  - 5% if within 6-15 days
  - 10% if more than 15 days after due date (or made within 10 days of IRS notice or not made electronically when required)
  - 15% if not paid within 10 days of receiving IRS notice
- Calculated based on Form 941 or Schedule B
- Remember, if using a payroll service, the liability remains on the employer
  - IRS does issue “Inquiry PINs” so taxpayers can confirm deposits made by payroll service providers

# PENALTIES

- Failure to deposit penalty may be abated for:
  - First payroll tax deposit not made by EFTPS
  - A small depositor (< \$7m net worth) who fails to deposit in first quarter or after deposit schedule changes
- To abate failure to deposit penalties, employer must show reasonable cause
  - Based on all facts and circumstances
  - Used all ordinary business care and prudence

# PENALTIES

- How deposits 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
    - Can contact IRS within 90 days of notice to designate deposit period
    - Rules apply to Forms 940, 941, 943 and 1042
    - Employer can re-designate corporate income estimated tax payments as employment tax deposits
    - IRS can also reallocate payroll tax deposits from one quarter to another and from one type of tax return to another

# PENALTIES

- Willful failure (Trust Fund Recovery Penalty)
  - 100% of liability (yikes!)
  - Responsible person must have acted willfully in not withholding and/or paying over trust fund taxes
    - Responsible person excludes non-owner employees who work under the direction of a manager and other clerical employees
  - Cannot be imposed without first being notified by IRS at least 60 days in advance
  - Liability may be shared between responsible persons
  - Can be imposed against an officer of a PEO
- Criminal penalties
  - In addition to the 100% penalty, if willful, responsible person can be fined up to \$10K and/or imprisoned for up to 5 years

# EMPLOYMENT TAX RETURNS

- Form 941, *Employer's Quarterly Federal Tax Return*
- Exemptions from filing Form 941:
  - Seasonal employers (only file quarters with liability)
  - Non-payroll tax withholding (annual Form 945)
  - Employers of domestic workers (Form 1040 Schedule H)
    - \$2,000 or more in cash wages (2017)
    - FICA taxes only, unless employee & employer agree to withhold income tax
  - Employers with employees in U.S. territories outside continental U.S. (Form 941-SS) or Puerto Rico (Form 941-PR)
    - To report FICA taxes
    - Federal income tax withholding reported on Form 941
  - Agricultural employers (annual Form 943)
  - Employers with annual employment tax liabilities of \$1,000 or less (annual Form 944)

# BUSINESS REORGANIZATIONS

- Statutory merger or consolidation
  - Surviving corporation files Form 941 for quarter of change (including both entity wages)
  - Each entity files Schedule D to report discrepancies between Forms W-2 and Forms 941
    - Surviving entity files with first quarter Form 941 for year following merger
    - Acquired entity files with final Form 941
  - Surviving entity is considered the same employer and taxpayer as the acquired entity

# BUSINESS REORGANIZATIONS

- Acquisition where (1) successor acquires substantially all of the property of another employer, and (2) directly after the acquisition, employs the predecessor's employees:
  - Standard Procedure
    - Each entity files 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
    - Each entity files Forms W-2 for transferred employees
  - Alternate Procedure
    - Both parties agree that predecessor will not have to report wages/taxes for employees hired by the successor on Form W-2
    - Successor files Forms W-2 for transferred employees
    - Each entity files Schedule D to report discrepancies between Forms W-2 and Forms 941

# FILING FORM 941

- Usually due by the last day of the first month following the quarter
  - Automatic extension until the 10<sup>th</sup> of the following month if deposits are made timely

FORM 941 FILING DEADLINES			
Quarter	Quarter Ends	941 Due Date	Automatic Extension
Jan. - Mar.	March 31	April 30	May 10
Apr. - June	June 30	July 31	August 10
July - Sept.	September 30	October 31	November 10
Oct. - Dec.	December 31	January 31	February 10

- Saturdays, Sundays and federal holidays – due date is next business day
- Considered filed based on postmark – certified or registered mail recommended
- Designated private delivery services (PDS):
  - E.g. Federal Express (FedEx), United Parcel Service (UPS)

# FILING FORM 941

- File with IRS office assigned to the employer's region
- Separate address if payment is included
- Become familiar with:
  - Form 941 and Form 941 Schedule B
  - Form 941 Schedule R (allocation for aggregate Form 941 filers, e.g. CPEOs and agents)
  - Form 941-PR (Puerto Rico)
  - Form 941-SS (American Samoa, Guam, Northern Mariana Islands, and Virgin Islands)
  - Form 943 and Form 943-A (agricultural employers)
  - Form 944 (employers with less than \$1,000 in liability)
  - Form 945 (non payroll)

# MAKING CORRECTIONS

- Form 941-X

- Under collection / withholding

- Discovered before Form 941 is filed

- Report the correct amounts on the Form 941

- Discovered after Form 941 is filed

- Interest and penalty free adjustment if Form 941-X filed in the quarter in which error was discovered and payment is made timely (even if not collected from employee)

UNDERREPORTED TAX—DUE DATE FOR FORM 941-X	
If you discover an error in...	Form 941-X is due...
January, February, March	April 30
April, May, June	July 31
July, August, September	October 31
October, November, December	January 31

- No adjustment to income tax withholding or Additional Medicare tax after close of the tax year

- Any under-collected amount may be deducted from any compensation given to the employee

# MAKING CORRECTIONS

## ■ Form 941-X

### □ Over collection / withholding

#### ■ Discovered before Form 941 is filed

- Report the correct amounts on Form 941 and refund to employee by due date of Form 941 (or within year if federal income tax in fourth quarter)

#### ■ Discovered after Form 941 is filed

- Reimburse employee and file Form 941-X to claim credit or refund
- Refund income tax withholding and Additional Medicare tax before end of the calendar year
- For FICA tax reimbursements in following calendar year, collect consent from employee and issue Form W-2c
  - IRS has provided guidelines on consent requirements
  - Consents can be obtained electronically
  - Consent if not needed if employer can show “reasonable efforts” have been made to obtain consent
  - Rev Proc 2017-28 was issued Mar 20, 2017 to clarify requirements

# MAKING CORRECTIONS

## ■ Form 941-X

### Part 2: Complete the certifications.

3. I certify that I've filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

**Note:** If you're correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5. If you're correcting overreported amounts, for purposes of the certifications on lines 4 and 5, Medicare tax doesn't include Additional Medicare Tax. Form 941-X can't be used to correct overreported amounts of Additional Medicare Tax unless the amounts weren't withheld from employee wages or an adjustment is being made for the current year.

4. If you checked line 1 because you're adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:

- a. I repaid or reimbursed each affected employee for the overcollected federal income tax or Additional Medicare Tax for the current year and the overcollected social security tax and Medicare tax for current and prior years. For adjustments of employee social security tax and Medicare tax overcollected in prior years, I have a written statement from each affected employee stating that he or she hasn't claimed (or the claim was rejected) and won't claim a refund or credit for the overcollection.
- b. The adjustments of social security tax and Medicare tax are for the employer's share only. I couldn't find the affected employees or each affected employee didn't give me a written statement that he or she hasn't claimed (or the claim was rejected) and won't claim a refund or credit for the overcollection.
- c. The adjustment is for federal income tax, social security tax, Medicare tax, or Additional Medicare Tax that I didn't withhold from employee wages.

5. If you checked line 2 because you're claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:

- a. I repaid or reimbursed each affected employee for the overcollected social security tax and Medicare tax. For claims of employee social security tax and Medicare tax overcollected in prior years, I have a written statement from each affected employee stating that he or she hasn't claimed (or the claim was rejected) and won't claim a refund or credit for the overcollection.
- b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security tax and Medicare tax. For refunds of employee social security tax and Medicare tax overcollected in prior years, I also have a written statement from each affected employee stating that he or she hasn't claimed (or the claim was rejected) and won't claim a refund or credit for the overcollection.
- c. The claim for social security tax and Medicare tax is for the employer's share only. I couldn't find the affected employees; or each affected employee didn't give me a written consent to file a claim for the employee's share of social security tax and Medicare tax; or each affected employee didn't give me a written statement that he or she hasn't claimed (or the claim was rejected) and won't claim a refund or credit for the overcollection.
- d. The claim is for federal income tax, social security tax, Medicare tax, or Additional Medicare Tax that I didn't withhold from employee wages.

# MAKING CORRECTIONS

- Amended Schedule B
  - Should be filed with Form 941-X when:
    - Tax decrease and assessed failure-to-deposit penalty
    - Tax increase on non-timely filed Form 941-X
  - Do not file a Schedule B when reporting a tax increase on a timely filed Form 941-X
- Statute of limitations
  - Generally, corrections must be made within three years of the date Form 941 was filed, or, if over-reported, two years from date you paid the tax, whichever is later
  - For these purposes, all four quarters are deemed filed on April 15 of following calendar year
  - Protective claims can be filed if right to refund is contingent on future event(s)
- Form 843, *Claim for Refund and Request for Abatement*, can still be used to request a refund of assessed interest, additions to tax, or penalties

# LATE REPORTING & PAYING OF TAX

- Penalty for late filing of returns
  - 5% of tax shown on return (reduced by timely deposit/credits) for each month or fraction of month up to max of 25%
  - 15% per month up to max of 75% if due to fraud
- Penalty for failure to pay employment taxes
  - 0.5% of unpaid tax for each month or fraction of month up to max of 25%
  - Additional 0.5% for amount on IRS notice if not paid within 21 calendar days of demand (10 business days if above \$100K), up to max of 25%
  - If due to negligence, 20% of amount due as a result of the negligence
  - If due to fraud, 75% of the underpayment due to fraud

# LATE REPORTING & PAYING OF TAX

- Employer can appeal penalties / “additions to tax” based on reasonable cause or undue hardship
- Interest – federal short term rate plus 3%
- Criminal penalties
  - Willful failure to file, pay or keep records – up to \$25K (\$100K for corporations) and/or one year imprisonment
  - Willful delivery of fraudulent tax returns – up to \$10K (\$50K for corporations) and/or one year imprisonment
  - Willful evasion of payment of taxes – up to \$100K (\$500K for corporations) and/or 5 years imprisonment
  - Knowingly signing fraudulent forms – up to \$100K (\$500K for corporation) and/or 3 years of imprisonment
- Return preparers can also be subject to penalties

# FORM W-2

- Required if:
  - Employer pays compensation to an employee for work performed, even if not in cash
  - Compensation is subject to withholding
  - If not subject to withholding, reporting is required for amounts over \$600
- See the “CPP Tip Sheet” for W-2 Box Busters
- Statutory merger or consolidation
  - Surviving entity files Forms W-2 for year of merger
- Acquisitions with predecessor / successor relationship
  - Follow Standard or Alternate procedure

# FORM W-2

- Undeliverable Forms W-2 – keep copies for four years
- Reissued Forms W-2 – stamp with “reissued” unless provided electronically
- Multiple Forms W-2 are acceptable when:
  - Multiple states
  - Separate payrolls for different compensation items
  - System limitation
  - More than four items in Box 12
  - 100% of value of company-provided vehicle included in income
  - Last minute third party sick pay adjustments

# FORM W-2

- When and where to file
  - File with SSA by Jan 31 of following year (Form W-3 and W-2s)
  - Due to employee by Jan 31 of following year (states may differ)
  - Employers ceasing business – file with SSA and give to employee by due date of final Form 941
  - Ex-employee – provide within 30 days if requested
  - More than 250 must be filed electronically

# FORM W-2

- Provision of electronic Forms W-2 to employees
  - Web or email attachment
  - Employee consent required
    - Can withdraw consent any time with 30 days written notice
  - Must be available by January 31 and remain available until October 15 of following year
    - Form W-2c must be available for the same period or 90 days after posting, whichever is later
  - Notice to employees 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)

# CORRECTIONS TO FORM W-2

## ■ Corrected Forms W-2

- If discovered before Copy A has been filed with SSA, provide employee with Form W-2 with “Corrected” written on it, check the “Void” on the original Copy A and include the new Copy A
- If Copy A has already been filed, issue Form W-2c, *Corrected Wage and Tax Statement*, to correct the error
- For 2016 Forms W-2 onward, no Form W-2c is required if:
  - No single amount is wrong by more than \$100
  - No single amount reported for withheld tax is wrong by more than \$25
  - Employee does not request Form W-2c
- No correction is required with SSA for address only changes

# FORMS W-2C AND W-3C

- Only items that need correcting should be included
- Form W-3C (transmittal form) must be included even if only one W-2C
- File with SSA
- Undelivered forms – four year retention
- More than 250 must be filed electronically

# RECONCILIATION PROCESS

- To prevent being out of balance between deposits, tax liabilities and tax returns, try to reconcile:
  - Each payroll
  - Quarterly – also balance to preliminary Forms W-2
  - Annually – Forms 941 to Forms W-2
- IRS and SSA share information to detect out of balance situations:
  - SSA issues notice if Form 941 amounts are greater than W-2s
  - IRS issues notice if W-2 amounts are greater than Forms 941

# FORM 1099 SERIES

- For nonemployee, reportable payments
- Payee's TIN can be truncated on payee copy (first five)
- Form 1099-MISC
  - Only required if payments total \$600 or more (\$10 for royalties)
    - Box 7 – payments for services made to non corporate entities
    - Box 7 – attorneys fees (including corporations)
    - Box 7 – directors fees
    - Box 3 – deceased employee wages paid to beneficiary
    - Box 3 – prizes and awards not for services
    - Box 14 – payments to attorneys (gross proceeds / settlements)
    - Box 6 – payments to healthcare providers
    - Box 2 – royalty payments of \$10 or more
  - If no TIN provided (or incorrect TIN as notified by IRS), payments are subject to 28% backup withholding
  - Foreign financial institution can file a Form 1099-MISC to satisfy its FACTA reporting requirement

# FORM 1099 SERIES

- Form 1099-R
  - Distributions of retirement income
    - Periodic and lump sum distributions
    - Death benefits as part of qualified plan
    - Direct rollovers (with code in Box 7)
  - Gross amount reported in Box 1
  - Taxable (Box 2a) and nontaxable (Box 5) reported separately
  - Not required for distributions under \$10

# FORM 1099 SERIES

- Due by January 31 of following year (to payee and IRS)
  - Deadline for filing Forms 1099-MISC with nothing in Box 7 is Feb 28 (paper) and Mar 31 (electronic)
  - Deadline for Forms 1099-R (and others) is Feb 28 (paper) and Mar 31 (electronic)
- Automatic 30 day extension for IRS filing with Form 8809, *Application for Extension of Time to File Information Returns*
- Filed with IRS not SSA – transmittal form is Form 1096
- Separate Form 1096 with each type of Form 1099
- Electronic delivery similar to Form W-2 requirements
- Electronic reporting required for over 250 forms

# FORMS 1099 – PENALTIES

- **General penalties**
  - \$50 per return for failure to file or provide correct information, max \$532K per year (\$186K for small businesses)
  - \$100 if corrected more than 30 days after due date but before Aug 1, max \$1,596,500 (\$532K for small businesses)
  - \$260 per return if not corrected by Aug 1, max \$3,193,000 (\$1.064m for small businesses)
- **Small business – average annual gross receipts of up to \$5m for the three most recent tax years**
- **Penalties increase for willful failure**
- **Failure to provide statement to payee, or provision of incorrect information (1099 or W-2)**
  - Same structure as general penalties
  - Only one penalty per statement

# FORMS 1099 – PENALTIES

- No penalty for:
  - Less than 10 or 0.5% of info returns corrected by Aug 1
  - Small errors under \$100 (\$25 for tax)
  - Inconsequential errors, e.g. incorrect address
  - Reasonable cause
- Penalties can also apply for TIN mismatches or failure to file electronically
- Notified by Notice 972CG, *Notice of Proposed Civil Penalty*
  - 45 days to respond with any explanation

# FORM W-2 ELECTRONIC REPORTING

- Required for 250 or more statements (not employees)
- 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*, by due date
- If not followed, penalties for failure to file return apply
- Can file Forms W-2 and W-2c over the Internet – but must register with SSA Business Services Online (BSO)
  - Report wages to SSA (manually enter up to 20 or upload file)
  - View errors, request extension, acknowledge resubmission and view name and SSN mismatches
  - Fill in W-2s (up to 50 per submission) – useful for small employers



# FORM 1099 ELECTRONIC REPORTING

- Required for 250 or more of any single type of 1099
- First time approval required – complete Form 4419, *Application for Filing Returns Electronically*, at least 30 days before return due date
- ACA forms have same requirements (Forms 1094-B, 1095-B, 1094-C and 1095-C)

# EMPLOYMENT TAX E-FILE SYSTEM

- Forms 940, 941, 944 and 941-X
- Need to work with approved Reporting Agent or use approved off-the-shelf software (COTS)
- Benefits
  - Notification of errors before filing
  - Instant acknowledgement (need to receive acceptance)
  - Integrated payment options
  - Electronic signature
- Online application to participate after registering for e-services on the IRS website
- Requires
  - PIN registration
  - Reporting Agent registration – Form 8655
  - Submission of test file

# SPECIAL WAGE PAYMENTS

- For employees or former employees 62 or over
- Used by SSA to calculate social security benefits
- Report wage payments that were earned in a prior year
  - Bonuses
  - Severance pay
  - Accumulated vacation or sick pay
  - Back pay
  - Stock options
  - Deferred compensation
- In practice, Form SSA-131, *Employer Report of Special Wage Payments*, can be submitted when requested by local SSA office or employee

# QUESTIONS?

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