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## Payroll Questions Answered by Federal Panel at APA Congress

Answered questions submitted by participants at the American Payroll Association's 23rd Annual Congress in San Diego, CA. Members of this year's panel included: Anita Bartels, Senior Program Analyst, Small Business/Self-Employed Compliance Policy, Employment Tax, Internal Revenue Service; Rick Burgess, Supervisory Special Agent, U.S. Immigration and Customs Enforcement, Department of Homeland Security; Carol Callahan, Director of Employer Services, Office of Child Support Enforcement, Department of Health and Human Services; Tim Haugh, Deputy Director, Office of Policy and Planning, U.S. Immigration and Customs Enforcement, Department of Homeland Security; Chuck Liptz, Director, Employer Reporting and Relations Staff, Social Security Administration; Douglas Rogers, National Program Manager, Penalties and Interest, Internal Revenue Service; and Brian Taverner, Assistant District Director, Wage and Hour

**IRS will mail  
name/SSN mismatch  
letters to 300  
selected employers  
beginning June 15.**

Division, Department of Labor.

This issue of PAYROLL CURRENTLY features IRS and SSA questions. A future issue will include answers to questions presented to the Office of Child Support Enforcement, the Department of Labor, and U.S. Immigration and Customs Enforcement.

### Internal Revenue Service

#### Name/SSN mismatches on Forms W-2

**Q.** What is IRS's current approach to notifying employers and/or assessing penalties for Forms W-2 with incorrect employee names or social security numbers, and how can an employer be proactive about ensuring that a name and number are a match?

**A.** We're currently conducting a pilot test on the best approach to take for answering that question. We've selected 300 employers that have the highest occurrence of noncompliance. To identify those 300, we eliminated any employer that filed 100 or fewer W-2s. Then we identified 150 employers with the highest percentage of mismatched W-2s, and 150 employers with the highest volume of mismatches.

We will be mailing letters to those employers beginning the week of June 15. The letters will explain what the potential penalties are and how the employers should respond. The employers will have the normal 30

days to do so. We will assess penalties against any employer that does not respond. Based on what we learn, we will decide how to proceed from there.

How can an employer be proactive? If you call the SSA's special employer number - (800) 772-6270 - you can verify up to five SSNs at a time. SSA is also currently testing an Internet verification system, and is hoping to roll that system out this summer. In addition, you can send diskettes and tapes to SSA headquarters in Baltimore, or you can send paper lists to Wilkes-Barre.

### Service providers and penalty relief

**Q.** If I've got a signed Form 8655 (Reporting Agent Authorization for Magnetic Tape/Electronic Filers) to allow my service provider to file my quarterly tax return and make my tax deposits, can the service provider request an abatement of penalties on my behalf, as my representative?

**A.** The short answer is no. The long answer is that you need to understand what you're asking for. IRS has four different types of penalty relief.

- *Reasonable cause* is when you're calling and saying, "My dog ate the tax return." It's when you have those off-the-wall situations like a death in the family or a controller who had a heart attack. Most of the things that we see are not technically reasonable cause requests, so keep that in mind.

- *Service error* is when IRS makes a mistake. For example, service providers sometimes take on new clients and clean up old problems. A case that we saw recently involved a major U.S. bank that had 1,000 tax returns that were applied in the wrong

### Inside this issue...

IRS Allows More Time to Spend  
FSA Funds Before Losing Them ..... 5

Senate Approves Revised  
Dollar Limits for Qualified  
Transportation Benefits ..... 5

Department of Homeland  
Security Releases Guidance on  
Form I-9 E-Signatures and E-Storage ..... 6

Tax Year 2005 MMREF-1 and  
MMREF-2 Released by SSA ..... 6

State and Local News  
Kentucky - lump sum child support  
payments  
New Jersey - minimum wage  
- tip credit  
North Dakota - paycards ..... 8

quarters or that were filed as 945s when they should have been 941s or as 941s and they should have been 945s. The provider came in with the right information and worked through this, and it turned out that there were actually only a few returns that had true penalties on them.

- *Statutory waiver* involves something like a postmark. It's in the Code. What you are requesting is date stamp information. Remember, if we're saying you filed late on a return that was mailed, we keep the envelope because that's how we substantiate that you were late. You can ask to see it.

- *Administrative waiver* is often associated with disasters. For example, a disaster area was declared, your client was covered by the declaration, but for some reason when they filed their employment tax return they didn't get proper relief. If you can show that you're within the right zip code, you'll get the right treatment.

#### **Valid versus invalid Forms W-4**

**Q.** May an employer accept a W-4 that an employee has faxed in? Is it okay for an employee to use a W-4 that IRS issued in a prior year? And if the employer date stamps the W-4 and writes the employee's company ID number on it, does that invalidate the form?

**A.** With regard to the faxed W-4, the short answer is yes, as long as it's a true copy and as long as the employee had access to the worksheets and tables and so on that go along with the W-4 when he or she filled it out.

With regard to a W-4 issued in a prior year, again the short answer is yes. You can use that form as long as the employee had access to the current worksheets and so on.

With regard to date stamping a

W-4 and writing the employee's number on it, the answer is no, this will not invalidate the form. As long as it's not an invalid W-4 to begin with, then your adding that information is not going to invalidate it.

If an employee wrote in a number of allowances, changed his mind, crossed out the number, and wrote in another number of allowances, that also would not invalidate the form. The same thing would hold true if the employee whited-out the number and wrote in a new number. What invalidates the form is changing any of the information that's printed on the form, or changing the jurat.

#### **Avoiding a name/SSN mismatch penalty**

**Q.** If an employer gets a notice from the IRS about a Form W-2 with an incorrect employee name or social security number, what can it do to prevent a penalty? Are there different steps for W-2s with no SSN versus those with an incorrect SSN; and what about terminated employees?

**A.** The short answer is: Nothing. The correct answer is: You already did it. You don't have to do anything. When you hired the employee, you solicited from them the information to complete a W-4. If you use that information to prepare a W-2, that in itself is your safe harbor with respect to penalty relief.

If you get a notice that says the W-2 information isn't correct, check your records and see that you did exactly what you were supposed to do. The W-4 and the W-2 match. For the first notice, your safe harbor is what you did when you hired the person.

Then go back and resolicit the information from that employee. Use that new information next year when you file the employee's W-2. If we give

you a notice for that one, your safe harbor is what you did after you got the first notice.

It makes no difference to us whether the SSN is missing or mismatched. You should do the same thing.

Note that in the case of a terminated employee, you're supposed to try to contact them at their last known address to resolicit the information.

#### **Moving expenses and business expenses**

**Q.** We've hired a new employee to work for us in California. We'll be paying his relocation expenses. But to give him time to sell his house in Pennsylvania and take care of other details, we are paying for him to come out to California for the workweek and fly home on the weekends – round-trip airfare, hotel, and meals. Can these payments be excluded from wages as moving expenses or business expenses?

**A.** These expenses don't qualify as deductible moving expenses, which cover the lodging and/or travel costs of the one-way, final trip from the old city to the new city of residence.

In addition, these expenses are not business expenses. This situation is different from the situation where somebody is living in one city and traveling to another city to do a temporary job. This is preliminary to a move. It's a different scenario. It was the employee's choice to delay his move.

#### **What constitutes an employer-provided medical plan**

**Q.** Can employers pay for their employees' medical expenses on a tax-free basis, even if it's not exactly under a plan? For example: (A) an employer

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## Payroll Solutions

**Q.** One of our employees has requested a \$15,000 loan to settle his divorce. He plans to repay it over the next six years. The company doesn't want to charge much interest, because this employee is an excellent performer. Will the employee receive any taxable income if the company makes the loan at a nominal interest rate? What are the rules regarding taxation and reporting in a situation like this?

**A.** Loans made to employees by their employer at interest rates below the applicable federal interest rate are below-market, compensation-related loans. The amount representing the difference between the interest charged to the employee and the applicable federal interest rate must be included in the income of the employee on any day in which the combined amount of all outstanding loans between the employer and the employee is more than \$10,000. This amount is not subject to federal income tax withholding, but must be reported on the employee's Form W-2; it is subject to social security, Medicare, and FUTA taxes.

If the employer forgives the debt, or for any other reason the employee is not expected to repay the loan, the entire balance of the loan becomes income subject to federal income tax withholding and social security, Medicare, and FUTA taxes in the year the debt is forgiven (see *The Payroll Source*®, p. 3-72).

pays for medical expenses that are in excess of a plan's maximum benefit; or (B) an employer pays for COBRA coverage of terminated employees; or (C) an employer pays for COBRA premiums incurred by a new employee under the plan of his or her former employer?

**A.** The short answer to A, B, and C is yes. Under the Internal Revenue Code, the gross income of an employee does not include employer-provided coverage under an accident or health plan. For our purposes at IRS, the plan doesn't necessarily have to be written, but there does need to be some kind of plan in place. Also, if the plan is a self-insured medical reimbursement plan that favors a highly compensated employee, then all or part of the amounts paid on the employee's behalf have to be included in wages subject to federal income tax. So there are some caveats to this answer.

The courts have been very expansive in their definition of "plan." A course of action taken by an employer can be considered a plan. So if an employer pays for medical expenses that exceed the plan's maximum benefit, it should be all right. Same answer where an employer pays for COBRA coverage for a terminated employee. (That's covered in Publication 15-B.) And if an employer pays the COBRA premiums incurred by a new employee under the plan of a former employer, that can be considered a plan for this purpose.

### Health FSAs

**Q.** May an employer allow a terminated employee to continue to be reimbursed from a health flexible spending account up to the amounts contributed before termination?

**A.** Expenses incurred prior to termination of employment can be reimbursed up to the amounts contributed.

**Q.** May an employer charge employees an administrative fee in connection with the FSA, and may that be taken as a pretax deduction?

**A.** Employers can charge administrative fees such that they're part of the bundle. The administrative fees and insurance costs are all pretax. For example, if you have a benefit like dependent care that has a cap, then the amounts attributable to the benefits and administration must all stay under the cap for the exclusion to work.

The analogy is with insurance. When you buy insurance, you don't buy the pure insurance and then pay for administrative fees on the side. It's all bundled into a package.

### Social Security Administration Social security card with only one name

**Q.** We have an employee who has only one name on his social security card. For W-2 purposes, would this name be considered the first name or the last name?

**A.** If it's only one name, it would be considered the last name. For example, Cher would be Cher.

### W-2c Online

**Q.** Can I file Forms W-2c via Business Services Online at SSA's Web site?

**A.** Starting this past January, we now offer a service called W-2c Online, which allows you to file up to five W-2c's at a time over the Internet. Use your SSA PIN and password. Then type in your W-2c information, click a button, and print out the paper copy. Click another button, and transmit it to us electronically. We give you a receipt, and you're done. If you have more than five W-2c's to do, you can do them five at a time electronically. Go to [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer) and click on "Business Services Online." You use the same PIN for all the different SSA online employer services.

### Mandatory electronic Form W-2 filing

**Q.** Should I be exploring the prospect of electronically filing my Forms W-2 with the SSA? Will be this be mandatory at some point?

**A.** Yes. Right now, you can file 250 or more forms on diskette, on tape, or electronically. However, we're getting rid of diskette after 2005 W-2s are filed and we're getting rid of tape this year, so you will eventually have to submit them electronically.

We also offer a program on our Web site called "W-2 Online" that allows you to type in up to 20 W-2s directly. You access it with your SSA PIN and password. You can print copies to give to your employees. Then you just press a button and submit the forms to SSA electronically. It's free.

SSA is sponsoring a software developers conference on June 22 (at SSA). We want to bring together SSA's software developers and representatives of the payroll/wage/tax reporting software developer community. We want to find ways to incorporate links in the software that's being used to create paper W-2s for employers with under 250 employees, so that users of this software can file their W-2s electronically with SSA.

#### **Correcting W-2 SSN errors over multiple years**

**Q.** If I discover that I've filed Forms W-2 for an employee over multiple years with an incorrect social security number, do I have to file a W-2c for each year that it was incorrect?

**A.** The best way to resolve this is to send in a W-2c for each year. The reason is that you don't know if everything was reported exactly the same way each year. We run 23 different routines to try to match up names and numbers. Where an item has been corrected, we will take a look to see if there are other items in other years that fit with it. But if you want to be on the safe side – and let's face it, these are your employees or your coworkers that you're trying to get straightened out – the best thing is to make the extra effort and send a W-2c for each year that's incorrect.

#### **Completing Form W-2 when SSN is unknown**

**Q.** If an employee is hired and fired before we ever even find out his or her social security number, what should we put in the SSN box on Form W-2?

**A.** If you go by the book, the answer is that you should put all zeroes in that box. However, you can do things a little differently if you have a number from the individual that you know is wrong.

When things don't match, the item goes into the Earnings Suspense File. And there are tens of millions of items in the Earnings Suspense File that have all zeroes. It may be easier for SSA to find later, if the problem is resolved, if there is a number instead of just zeroes. So if you have a number, even though you know it's wrong and the person doesn't work for you anymore and you

can't fix it, you can send that name and number to us if you have some documentation (i.e., the W-4).

#### **Third-party sick pay checkbox**

**Q.** On Form W-2, should the third-party sick pay checkbox be checked only by the third party, or also by employers when the W-2 contains any third-party sick pay? What is the purpose of this checkbox?

**A.** Whoever is reporting the sick pay should be checking this box on the W-2, as well as the W-3. If it's a third party, they should be checking it. If it's the employer, they should be checking it.

We look at this box during the reconciliation process when we match up the 941 data that goes to IRS and the W-2 data that's sent to SSA. If there's a mismatch, we want to find out why it occurred. Sometimes it's due to third-party sick pay, and this helps us to resolve that issue.

If an employer has an employee who is getting third-party sick pay through a third party, an insurance company that the employer has contracted with, then the insurance company may provide the employer the information for the employee's W-2. Note that in this case, if the third party is not providing a W-2, the employer would need to check the third-party sick pay checkbox.

#### **Filing missing Forms W-2**

**Q.** We've received a notice that our Form W-3 does not match the totals of our Forms 941 for 2004. Research revealed that this was due to 100 Forms W-2 that were never filed. In submitting these missing forms to SSA, what should we use as a transmittal form? We've already submitted a W-3 for a total that included the data on these missing W-2s, and we don't want these forms to be counted twice, thereby creating another out-of-balance situation. Also, while the original batch of W-2s was filed electronically, may these remaining 100 forms be filed on paper?

**A.** When you send these 100 W-2s to us, you want to have a W-3 as a cover sheet. Note that the totals on the W-3 should reflect only the 100 missing W-2s. These aren't corrections,

so you wouldn't file W-2c's and use a W-3c.

You can send paper, but we would prefer that you don't. If you would like these 100 forms to be processed in three to five days as opposed to three to five months, you should send them to us electronically.

#### **Business Services Online**

**Q.** What new developments are planned for Business Services Online for the next filing season?

**A.** I've been talking about W-2c Online, which took a lot of work to get off the ground. A lot of complicated programming went into it, and we didn't have all the bells and whistles we wanted the first year. In January 2006, we're adding a "save" feature, where you can key some data and save it and then come back to your work later.

Currently, the number of reports that you can save with W-2 Online is five. We've been asked to increase that to 50 reports.

We're also going to be refreshing our Web site – the employer pages and Business Services Online. For one thing, we're going to make our attestation page, which currently goes on for a long time, much shorter and more specific.

One other thing you may want to know is that we plan to open up our window in December so that you can start transmitting data to us. We won't start processing it until January. But if you have it ready and you want to upload it to SSA around the middle of December, that will be possible.

#### **Internet EVS**

**Q.** When will the Internet version of SSA's Employee Verification Service be available to all employers?

**A.** This is a pilot program that we've been running. We want to put this service on the Internet for all employers. We plan to allow employers to do up to 10 SSNs at a time and get an instant response, and then 10 more and 10 more and 10 more, etc. Or employers can send us files with up to 250,000 names and SSNs and get next business day service.

We're currently going through the OMB clearance process. Stay tuned. Once we get approval, we'll roll it out nationally. **PC**

## IRS Allows More Time to Spend FSA Funds Before Losing Them

The IRS has announced a change in the rule prohibiting deferred compensation under a §125 cafeteria plan. A 2½-month grace period is now permitted after the end of a plan year during which unused amounts in flexible spending accounts may be paid or reimbursed to plan participants for qualified benefit expenses incurred during the grace period. For calendar year plans, this change will give employees until March 15 to spend amounts they contributed to their FSAs during the previous year before they lose amounts that are not spent [Notice 2005-42, released 5-18-05].

### Background

A cafeteria plan generally may not include any plan that defers the receipt of compensation or operates in a manner that enables participants to defer compensation by, for example, permitting participants to use contributions for one plan year to purchase a benefit that will be provided in a subsequent plan year. This rule is commonly referred to as the “use-it-or-lose-it” rule, requiring that unused contributions or benefits remaining at the end of the plan year be “forfeited.”

### Grace period

A cafeteria plan document may now, at the employer’s option, be amended to provide for a grace period immediately following the end of each plan year. The grace period must apply to all participants in the cafeteria plan. Expenses for qualified benefits incurred during the grace period may be paid or reimbursed from benefits or contributions remaining unused at the end of the immediately preceding plan year.

If a cafeteria plan document is amended to include a grace period, a participant who has unused benefits or contributions relating to a particular qualified benefit from the immediately preceding plan year, and who incurs expenses for that same qualified benefit during the grace period, may be paid or reimbursed for those expenses from the unused benefits or contributions as if the expenses had been incurred in the immediately preceding plan year.

During the grace period, a cafeteria plan may not permit unused benefits or contributions to be cashed out or converted to any other taxable or nontaxable benefit. Unused benefits or contributions relating to a particular qualified benefit may only be used to pay or reimburse expenses incurred with respect to that particular qualified benefit. For example, unused amounts elected to pay or reimburse medical expenses in a health FSA may not be used to pay or reimburse dependent care or other non-medical expenses incurred during the grace period.

### Two and one-half month rule

The grace period must not extend beyond the fifteenth day of the third calendar month after the end of the immediately preceding plan year to which it relates (the “two and one-half month rule”).

The effect of the grace period is that the participant may have as long as 14 months and 15 days (the 12 months in the current cafeteria plan year plus the grace period) to use the benefits or contributions for a plan year before those amounts are “forfeited” under the “use-it-or-lose-it” rule.

To the extent any unused benefits or contributions from the immediately preceding plan year exceed the expenses for the qualified benefit incurred during the grace period, those remaining unused benefits or contributions may not be carried forward to any subsequent period (including the subsequent plan year) and are “forfeited” under the “use-it-or-lose-it” rule.

As under current practice, employers may continue to provide a “run-out” period after the end of the grace period, during which expenses for qualified benefits incurred during the cafeteria plan year and the grace period may be paid or reimbursed.

### Effective date

An employer may adopt a grace period as authorized in Notice 2005-42 for the current cafeteria plan year (and subsequent cafeteria plan years) by amending the cafeteria plan document before the end of the current plan year.

### Examples

**FACTS.** An employer with a cafeteria plan ending on December 31, 2005, amended the plan document before the end of the plan year to permit a grace period that allows all participants to apply unused benefits or contributions remaining at the end of the plan year to qualified expenses incurred during the grace period immediately following that plan year. The grace period adopted by the employer ends on March 15, 2006. Employee X timely elected salary reduction of \$1,000 for a health FSA for the plan year ending December 31, 2005. As of December 31, 2005, X has \$200 remaining unused in his health FSA. X timely elected salary reduction for a health FSA of \$1,500 for the plan year ending December 31, 2006.

**EXAMPLE (1).** During the

### News Notes...

#### Senate Approves Revised Dollar Limits for Qualified Transportation Benefits

On May 17, the U.S. Senate approved H.R. 3, a highway funding measure known as the Transportation Equity Act. The bill includes a provision to set the dollar limits for qualified transportation fringe benefits at \$155 per month (vanpool/transit – currently \$105) and \$200 (parking), effective for taxable years beginning after December 31, 2005. In addition, for calendar years after 2009, the dollar limit for vanpool/transit benefits would be same as the dollar limit for parking benefits (i.e., the benefits would be equalized). These dollar amounts would be indexed for inflation after 2008 (with 2007 as a base year).

On March 10, the House approved a different version of this bill, without this provision. The House and Senate versions of the bill must be reconciled and approved by both houses of Congress and the White House. At press time, a conference committee had not yet been appointed to resolve the differences between the two versions of this bill.

grace period from January 1 through March 15, 2006, X incurs \$300 of unreimbursed medical expenses. The unused \$200 from the plan year ending December 31, 2005 is applied to pay or reimburse \$200 of X's \$300 of medical expenses incurred during the grace period. Therefore, as of March 16, 2006, X has no unused benefits or contributions remaining for the plan year ending December 31, 2005. The

remaining \$100 of medical expenses incurred between January 1 and March 15, 2006 is paid or reimbursed from X's health FSA for the plan year ending December 31, 2006. As of March 16, 2006, X has \$1,400 remaining in the health FSA for the plan year ending December 31, 2006.

**EXAMPLE (2).** X incurs \$150 of medical expenses during the grace period. As of March 16, 2006, X has \$50 of unused benefits or contributions

remaining for the plan year ending December 31, 2005. The unused \$50 cannot be cashed-out, converted to any other taxable or nontaxable benefit, or used in any other plan year (including the plan year ending December 31, 2006). The unused \$50 is subject to the "use-it-or-lose-it" rule and is "forfeited." As of March 16, 2006, X has the entire \$1,500 elected in the health FSA for the plan year ending December 31, 2006. **PC**

## Department of Homeland Security Releases Guidance on Form I-9 E-Signatures and E-Storage

On October 30, 2004, President Bush signed into law a bill giving employers the option to create and store Forms I-9 (*Employment Eligibility Verification*) in electronic format. The legislation also permits electronic signatures to verify information on the forms (see **PAYROLL CURRENTLY, Issue No. 23, Vol. 12**). The legislation contained an effective date of April 29, 2005 or the effective date of implementing regulations, whichever occurred first.

On April 29, when the law went into effect, implementing regulations were still being developed. U.S. Immigration and Customs Enforcement (ICE, Department of Homeland Security) therefore issued interim guidelines for employers that want to make use of the electronic option (see [www.ice.gov/graphics/news/factsheets/i-9employment.htm](http://www.ice.gov/graphics/news/factsheets/i-9employment.htm)).

According to ICE, employers have a variety of Form I-9 options. For example, they may continue to complete Forms I-9 on paper but

choose to store the forms electronically. Alternatively, employers may choose to both complete and retain the Form I-9 wholly electronically.

### Technology options

There is no single government-wide electronic signature or recordkeeping standard. However, where federal agencies (e.g., the IRS) have provided electronic recordkeeping standards, "these standards may serve as a helpful reference for employers until [the Department of Homeland Security] issues regulations to govern the storage of Forms I-9." The use of accepted standards ensures the integrity, accuracy, and reliability of the electronic signature and storage system, explains ICE.

### Electronic signatures

If a Form I-9 is completed electronically, ICE advises that the electronic signatures used "should be created through the use of a system that includes a method to acknowledge that the attestation to be signed has been read by the signatory and

attaches (or logically associates) the electronic signature to an electronically completed Form I-9 at the time of the transaction." Currently, electronic signatures are accomplished using various technologies, e.g., electronic signature pads, personal identification numbers, biometrics, and "click to accept" dialog boxes.

### Electronic storage system

The electronic storage system used by an employer to retain Forms I-9 may include a quality assurance program that regularly evaluates the system. ICE says that such evaluations should include periodic checks of electronically stored data and methods to prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored data. To facilitate Form I-9 inspections by federal officers, employers may consider an electronic storage system that includes an indexing system and the ability to reproduce legible and readable hard copies of electronically stored Forms I-9. **PC**

## Tax Year 2005 MMREF-1 and MMREF-2 Released by SSA

The SSA's tax year 2005 MMREF-1 and MMREF-2 booklets (*Magnetic Media Reporting and Electronic Filing: Submitting Annual W-2 Copy A Information to the Social Security Administration; Magnetic Media Reporting and Electronic Filing of W-2c Information: Correction of Annual Federal W-2 Information*; see *The Payroll Source*®, p. 8-89), which contain specifications for the magnetic media and electronic filing of Form W-2, Copy A, and Form W-2c, Copy A, respectively,

are available for downloading from the SSA's Web site at [www.socialsecurity.gov/employer/pub.htm](http://www.socialsecurity.gov/employer/pub.htm). Note: Magnetic media/electronic submitters using the MMREF-1 specifications should use the MMREF-2 specifications for making corrections on magnetic media or electronically.

### Changes for tax year 2005

- The social security wage base for tax year 2005 is \$90,000.
- In **Section 1.1: Filing Requirements**, a question has been

added – "What are the money fields that are forwarded to IRS and are not maintained by SSA?"

- In **Section 1.3: Processing a File**, additional language has been added for the question – "How long does it take to process my file?" – to stress the importance of including complete submitter contact information in the RA Submitter Record.

- In **Section 2.5: Government Employer**, additional language has been added for the question – "I am

a government employer. How do I report Medicare Qualified Government Employee (MQGE) earnings?" – to clarify how to report these earnings.

- In **Section 2.6: Military Employer**, an item has been added to the list of earnings types that should *not* be reported as Employment Type Code M (Military) – “Earnings paid to civilian contractor employees.”

- In **Section 4.1: General**, the following instructions have been added concerning large submissions:

- Do *not* repeat the Employer Record for each RW/RO Record.

- If your organization files on behalf of multiple employers, include no more than one million Employee Wage Reports or 50,000 Employer Reports per submission. Following these guidelines will help to ensure that your wage data is processed in a timely manner.

- In **Section 4.2: Rules**, language has been added for the question – “What rules do you have for the social security number (SSN)?” – to clarify how to correct social security numbers/names.

- In **Section 4.7: Code RW – Employee Wage Record** and **Section 4.10: Code RT – Total Record**, language has been added to the “Specifications” for the following fields: Social Security Wages, Social Security Tax Withheld, Medicare Wages and Tips, Medicare Tax Withheld, and Social Security Tips.

- In **Section 7.3: Data Requirements**, the following language has been added – Any file name may be used. However, please ensure that the file name has a valid extension (for example, “.txt”).

- In **Section 9.2: Data Requirements**, the following language has been added – Do not add an extension (“.dat”, “.bak”) when filing on diskette.

- **Section 10.0: Magnetic Tape/Cartridge Filing** (in the 2004 publication) and references to magnetic tape and cartridge have been deleted.

- Updates have been made to the list of contacts in **10.0: Appendix A: Contacts for Questions About This Publication**.

- In **11.0: Appendix B: Correctable MMREF-1 Fields Through a MMREF-2 File**, language has been added to the following “Correctable” fields: Tax Year, Employer/Agent EIN, and Employment Code.

- In **14.1: Appendix E: Form W-3 and MMREF-1**, language has been revised for “MMREF-1 File Record/Field Position” box numbers 11 and 12 as follows:

- Box number 11 “Nonqualified plans” is a **sum of** MMREF-1 RT Record fields: Nonqualified Plan Section 457 and Nonqualified Plan Not Section 457;

- Box number 12 “Deferred compensation” is a **sum of** MMREF-1 RT Record fields: Deferred Compensation Contributions to Section 401(k), Deferred Compensation Contributions to Section 403(b), Deferred Compensation Contributions to Section 408(k)(6), Deferred Compensation Contributions to Section 457(b), Deferred Compensation Contributions to Section 501(c)(18)(D), Simple Retirement Account, **and** Deferrals Under a Section 409A Nonqualified Deferred Compensation Plan.

- In **16.0: Appendix G: Country Codes**, the following changes have been made:

- Yugoslavia (YI) has been changed to Serbia and Montenegro (YI);

- England (UK), Scotland (UK), and Wales (UK) have been added.

- In **18.0: Appendix I: Glossary**:

- The following terms have been added: EET (Earnings Employment Type), ESLO (Employer Services Liaison Officer), PIN (Personal Identification Number), RRB (Railroad Retirement Board), SSN (Social Security Number), and USERRA (Uniformed Services Employment and Reemployment Rights Act); and

- The following terms have been deleted: BDW, CPI, Form 6559, Form 6559A, Header labels, Internal labels, and Tapemark and Trailer labels.

- References to proprietary software have been deleted.

- Some editorial changes and corrections have been made for clarification.

### Record changes

- The field for “Personal Identification Number (PIN)” has been shortened from 17 to 8 positions in the Code RA Submitter Record (positions 12-19).

- A field for “Non-Taxable Combat Pay” has been added to the Code RW Employee Wage Record (positions 386-396) and the Code RT Total Record (positions 280-294). The field does not apply to Puerto Rico or Northern Mariana Islands employees.

- A field for “Deferrals Under a Section 409A Non-Qualified Deferred Compensation Plan” has been added to the Code RW Employee Wage Record (positions 430-440) and the Code RT Total Record (positions 355-369). The field does not apply to Puerto Rico or Northern Mariana Islands employees.

- A field for “Income Under Section 409A on a Non-Qualified Deferred Compensation Plan” has been added to the Code RO Employee Wage Record (positions 89-99) and the Code RU Total Record (positions 115-129). The field does not apply to Puerto Rico or Northern Mariana Islands employees.

### Filing deadlines

- File Copy A of Forms W-2 and W-3:

- on 3½-inch diskette by February 28, 2006; or

- via Business Services Online (BSO) or Electronic Data Transfer (EDT) by March 31, 2006.

*Note:* You may owe a penalty for each Form W-2 that you file late.

### Electronic filing

- For tax year 2005, BSO filers may upload their files beginning on December 19, 2005.

### Other filing reminders

- Tax year 2005 is the last year SSA will accept diskette submissions.

- The only physical media that SSA accepts is 3½-inch diskette.

- *RA Submitter Record Information*.

- It is imperative that the submitter’s *telephone number* and *e-mail address* be entered in the appropriate positions. Failure to include correct and complete submitter contact information may make it necessary for

SSA to reject a submission.

– All submitters must obtain a PIN through the SSA's registration process and must enter that PIN in the RA Submitter Record.

– Be sure the PIN assigned to the employee who is attesting to the accuracy of the W-2 data is included in the RA Submitter Record.

- *RE Employer Record Information.*

– Following the last RW/RO Record for the employer, create an RT/RU Record. Then create either the RE Record for the next employer in the submission, or an RF Record if this is the last report in the submission.

– Be sure to enter the correct tax year in the Employer Record (RE Record).

– The Tax Jurisdiction Code (position 220 on the RE Record) relates to the *employee's location*, not the employer's location. For example, Puerto Rico employees have a

Tax Jurisdiction Code of "P."

- Be sure each data file submitted is complete (RA through RF Records).

- Do *not* create a file that contains any data after the Final Record (RF Record).

- *Electronic file upload.*

– Do *not* upload multiple diskette submissions. Copy multiple diskettes into a single file and send the single file via BSO ([www.socialsecurity.gov/bsowelcome.htm](http://www.socialsecurity.gov/bsowelcome.htm)).

– If you compress the submission, compress the "single" file before sending it.

- *Diskette filing.*

– If the size of the wage report exceeds the capacity of a single diskette, a file may be split into multiple files and submitted on multiple diskettes, one file per diskette.

– If you compress the submission, compress each file separately using software that will

compress your files in .ZIP format.

- *Electronic Data Transfer (EDT) filing.*

– You cannot compress the file.

#### Future changes

- For tax year 2006, this publication will be renamed as Publication 42-007, *Specifications for Filing Forms W-2 Electronically*.

#### Mailing addresses for diskettes

- Send via the *U.S. Post Office* to:

Social Security Administration  
AWR Magnetic Media Processing  
5-F-17, NB, Metro West  
P.O. Box 33014

Baltimore, MD 21290-3014

- Send via *other carriers* to:  
Social Security Administration  
AWR Magnetic Media Processing  
5-F-17, NB, Metro West

300 N. Greene Street

Baltimore, MD 21290-0300. **PC**



## STATE AND LOCAL NEWS

For more state and local news, subscribe to APA's *PayState Update*, the biweekly newsletter devoted exclusively to state and local payroll compliance. Call 210-224-6406 or visit [www.americanpayroll.org](http://www.americanpayroll.org) for more information.

**Kentucky** Effective 1-1-06, employers with 20 or more employees must notify in writing the Cabinet for Families and Children or a child support agency of any lump sum payments of \$150 or more to be made to an employee under a child support withholding order. The notice must be made no later than 45 days before the payment is to be made or, if the employee's right to the payment is determined to be less than 45 days before it is to be made, the date on which that determination is made. After notification, employers must hold each payment for 30 days after the date it would otherwise be paid to the employee and, by court order, pay all or a specified amount of the payment to the Division of Child Support. Employers may deduct a \$1 administrative fee for each payment [H.B. 155, L. 2005].

**New Jersey** Effective 10-1-05, the minimum wage will increase to \$6.15 an hour from \$5.15 an hour (this updates *The Payroll Source*®, p. 2-57). It will increase again to \$7.15 an hour, effective 10-1-06 [S.B. 2065, L. 2005].

The state follows federal law regarding the tip credit. Under the Fair Labor Standards Act, employers are required to pay a tipped employee only \$2.13 an hour in wages, so long as the employee's tips are enough to make up the remainder of the minimum hourly wage then in effect (see *The Payroll Source*®, p. 2-30). Thus, the current tip credit is \$3.02 an hour. Because the state minimum wage is being increased as described above, the tip credit will increase to \$4.02 an hour, effective 10-1-05, and then to \$5.02 an hour, effective 10-1-06 (this updates *The Payroll Source*®, p. 2-59) [S.B. 2065, L. 2005].

**North Dakota** Effective 8-1-05, employers may pay wages by a stored-value card at the election of the employee. The card must be issued by a federally insured bank or credit union and the value of the funds underlying the card must be a deposit that is insured by the Federal Deposit Insurance Corporation or National Credit Union Administration. Before paying wages by stored-value card to an employee, the employer must have deposited with the issuer funds in an amount at least equal to the wages due from the employer to each employee whose wages are being paid by a stored-value card and any account fees that are charged to the employer by the issuer [H.B. 1347, L. 2005].