

PAYROLL DEPARTMENT

2019 YEAR-END COMPLEXITIES

NOVEMBER 15, 2019

Presented for the Chicago Chapter of the American Payroll Association

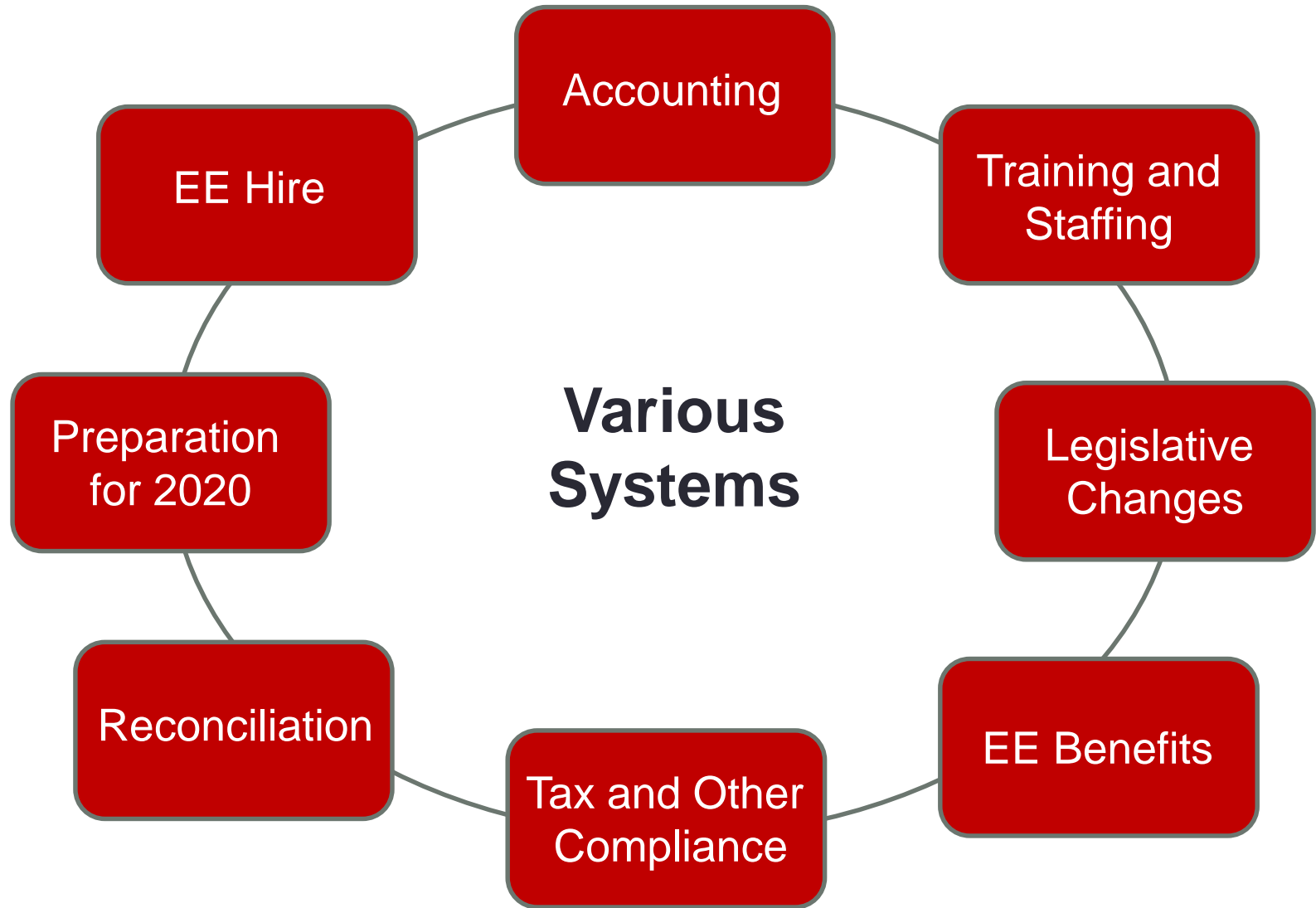
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Presentation Topics

- Development of year-end work plan
- Management and completion of year-end tasks
- Form W-4 compliance
- Social Security number (SSN) verification
- Form W-2 reporting
- IRS priority guidance plan 2019-2020
- Taxation of fringe benefits
- Accountable and nonaccountable plans
- Wage gross-ups
- Supplemental wages
- Nonqualified deferred compensation (NQDC)
- Other executive compensation issues
- Mergers and acquisitions
- Legislative updates

Overview



Development of year-end work plan

- Create the year-end team (e.g. Payroll, HR, IT and Accounting) and focus on the following tasks:
- Establish major year-end objectives
- Develop timeline with task owners (internal and external)
- Reconcile 2019 federal, state, and local deposits/filings
- Prepare reports (federal, state, local, and general accounting)
- Provide employees with 2019 Forms W-2
- Prepare for 2020
- Proceduralize routine tasks and identify unique situations that require additional research and expertise
- Sample year-end work plans can be found in professional publications provided by APA, BNA, PPC, or RIA

Management and completion of year-end tasks

Operate in “year-end mode” throughout the year and test data to ensure:

- Correct withholding totals
- Sufficient employment tax deposits are made
- Correct G/L postings
- Form 941 and 941-X filings equal YTD wage and withholding totals
- Form W-2 mapping
- Correct earnings and deduction code attributes
- Exceptions and unique items are addressed

Identify Payroll Department Technical Resources

- IRS website www.irs.gov
- IRS Payroll Professional Tax Center
www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Payroll-Professionals-Tax-Center-Information-for-Payroll-Professionals-and-Their-Clients
- Publication 15, (Circular E), Employer's Tax Guide
- Publication 15-A, Employer's Supplemental Tax Guide
- Publication 15-B, Employer's Tax Guide to Fringe Benefits
- Publication 509, Tax Calendars

Identify Payroll Department Technical Resources

(continued)

- SSA BSO website www.socialsecurity.gov/bsowelcome.htm
- State and local departments of revenue and employment security website www.americanpayroll.org/weblink/statelocal-wider
- Subscription-based payroll compliance resources
- APA (The Payroll Source and many other publications)
- BNA (Payroll Library)
- CCH (Payroll Management Guide)
- RIA (Payroll Practitioner's Compliance Handbook)

Form W-4 compliance

Employer responsibilities

- Federal income tax withholding is based on a valid Form W-4
- Form W-4 tells the employer:
 - Rate of withholding (e.g., single, married, head of household)
 - Number of withholding allowances (Forms W-4 prior to 2020)
 - Additional withholding amounts
 - Exemption from withholding (note 2020 Form W-4 under Line 4c)
- Default to “single with no allowances” if no Form W-4 is on file

Form W-4 compliance

Employer responsibilities

- Develop a written policy supporting solicitation, retention, and withholding standards
- New employees must provide signed Form W-4 on or before the first date of employment
- No withholding changes without a new valid Form W-4 to support the changes
- No adjustment for withholdings for pay periods prior to the effective date of the W-4
- Retain Forms W-4 for all active employees until audit period has closed
- Request new Forms W-4 by Feb. 15 of the current year from employees who claimed “exempt” from withholding on Form W-4

Form W-4 compliance

Invalid Forms W-4

- A Form W-4 may not be invalid if:
 - any part of the form is altered (e.g., under penalty of perjury declaration is scratched out)
 - any writing is on the form that is not requested (e.g., employee requests a flat amount of withholding)
 - any written or verbal statement by the employee that any information on the form is false
- If an invalid form is provided, continue to withhold based on the employee's previously provided Form W-4 or if a new employee, withhold at single and no allowances

Form W-4 compliance

What's New???

Form W-4 Department of the Treasury Internal Revenue Service	Employee's Withholding Certificate ▶ Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay. ▶ Give Form W-4 to your employer. ▶ Your withholding is subject to review by the IRS.		OMB No. 1545-0074 2020
Step 1: Enter Personal Information	(a) First name and middle initial	Last name	(b) Social security number
	Address		▶ Does your name match the name on your social security card? If not, to ensure you get credit for your earnings, contact SSA at 800-772-1213 or go to www.ssa.gov .
	City or town, state, and ZIP code		
	(c) <input type="checkbox"/> Single or Married filing separately <input type="checkbox"/> Married filing jointly (or Qualifying widow(er)) <input type="checkbox"/> Head of household (Check only if you're unmarried and pay more than half the costs of keeping up a home for yourself and a qualifying individual.)		

Form W-4 compliance

What's New???

Step 2:

Multiple Jobs or Spouse Works

Complete this step if you (1) hold more than one job at a time, or (2) are married filing jointly and your spouse also works. The correct amount of withholding depends on income earned from all of these jobs.

Do **only one** of the following.

- (a) Use the estimator at www.irs.gov/W4App for most accurate withholding; or
- (b) Use the Multiple Jobs Worksheet on page 3 and enter the result in Step 4(c) below for roughly accurate withholding; or
- (c) If there are only two jobs total, you may check this box. Do the same on Form W-4 for the other job. This option is accurate for jobs with similar pay; otherwise, more tax than necessary may be withheld ► ☐

CAUTION: If you have privacy concerns, choose (a) or (b). If you and/or your spouse have income from self-employment, including as an independent contractor, choose (a).

Complete Steps 3 through 4(b) on Form W-4 for only one of these jobs. Leave those steps blank for the other jobs. (Your withholding will be most accurate if you complete Steps 3 through 4(b) on the Form W-4 for the highest paying job.)

Form W-4 compliance

What's New???

Step 3:	If your income will be \$200,000 or less (\$400,000 or less if married filing jointly):		
Claim			
Dependents	Multiply the number of qualifying children under age 17 by \$2,000 ► \$		
	Multiply the number of other dependents by \$500 ► \$		
	Add the amounts above and enter the total here	3	\$



Form W-4 compliance

What's New???

Step 4 (optional): Other Adjustments	(a) Other income. If you want tax withheld for other income you expect this year that won't have withholding, enter the amount of other income here. This may include interest, dividends, and retirement income. You should not include income from any jobs . . .	4(a)	\$
	(b) Deductions. If you expect to claim deductions other than the standard deduction and want to reduce your withholding, use the Deductions Worksheet on page 3 and enter the result here	4(b)	\$
	(c) Extra withholding. Enter any additional tax you want withheld each pay period .	4(c)	\$

Form W-4 compliance

What's New???

Step 5: Sign Here	Under penalties of perjury, I declare that this certificate, to the best of my knowledge and belief, is true, correct, and complete.		
	 _____ Employee's signature (This form is not valid unless you sign it.)		 _____ Date
Employers Only	Employer's name and address	First date of employment	Employer identification number (EIN)

For Privacy Act and Paperwork Reduction Act Notice, see page 3.

Cat. No. 10220Q

Form **W-4** (2020)

Social Security number verification

Decentralized correspondence (DECOR) notice from SSA

- Previously known as “no-match” letters
- SSA attempts to resolve W-2 postings with name and number mismatches
- Unresolved mismatches are placed in the SSA earnings suspense file
- SSA will first attempt to contact employee to resolve mismatch
- If SSA fails to make contact with employee, SSA will send DECOR notice to employer

Potential penalty for incorrect Forms W-2

- IRC §§ 6721 and 6722 may impose civil penalties of up to \$520 for each failure of an employer to provide a timely and correct Form W-2 to the employee or the SSA
- Employers that can establish reasonable cause for Form W-2 reporting failures may avoid assessment of some or all civil penalties

Social Security number verification

- Employers may verify SSNs of new and current employees with the SSA
- SSA provides two Internet options to verify employee SSNs
 - Registered users of the (SSNVS) can check up to 10 SSNs online (process can be repeated)
 - Registered users may also upload up to 250,000 names and SSNs and receive results within the next government business day
- An online tutorial and registration instructions for the SSNVS can be found at www.ssa.gov/employer/bsotut.htm

Social Security number verification

Suggested SSN and name compliance procedures

- Document procedures to obtain correct name and SSN.
- Obtain a copy of employee's Social Security card for new hires.
- Remind employees to report name changes to the SSA.
- Validate employees' SSNs when hired through the SSNVS at www.ssa.gov/employer/ssnv.htm
- Note the name and SSN verification procedures discussed above generally relate to Form W-2 compliance and not necessarily procedures to determine an employee's eligibility to work. For work eligibility procedures and tools, see the Department of Homeland Security and SSA website at www.uscis.gov.

Form W-2 reporting

Electronic Form W-2

- Providing Forms W-2 to employees electronically can result in cost savings as well as greater distribution efficiency
- Employers may provide Form W-2 to employees through any electronic means if the provisions under Treas. Reg. §§ 1.6041-2(a)(5) and 31.6051-1(j) are met. These provisions generally require the employer to:
 - Obtain employee consent for an electronic Form W-2
 - Inform the employee a hard copy Form W-2 will be provided if consent is not received
 - Allow employee to withdraw consent prior to furnishing the Form W-2
 - Provide employee with instructions on how to obtain a hard copy
 - Provide notification when the electronic Form W-2 is made available
 - Allow access to the electronic Form W-2 through Oct.15 of the following year

Form W-2 reporting

SSA 2019 Form W-2 reporting due dates

- Timing
 - Provide Forms W-2 to employees on or before January 31, 2020
 - If not required to file electronically and are submitting Forms W-2 on paper, file with SSA on or before January 31, 2020
 - If filing electronically, file with SSA on or before January 31, 2020
- Additional resources
 - For a more comprehensive listing of filing and deposit deadlines, see IRS Pub. 509 “Tax Calendars”

Forms 1099-NEC and 1099-MISC

- New for 2020 1099-NEC
 - Change resulted from accelerated due date of nonemployee compensation
 - Report nonemployee compensation
 - Due date is 01/31/2020 to payee and the IRS

Forms 1099-NEC and 1099-MISC

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		OMB No. 1545-0116 2020 Form 1099-NEC		Nonemployee Compensation
PAYER'S TIN		1 Nonemployee compensation	Copy 1 For State Tax Department	
RECIPIENT'S TIN		\$		
RECIPIENT'S name		2		
Street address (including apt. no.)		3		
City or town, state or province, country, and ZIP or foreign postal code		4 Federal income tax withheld		
FATCA filing requirement <input type="checkbox"/>		\$		
Account number (see instructions)		5 State tax withheld	6 State/Payer's state no.	7 State income
		\$		\$
		\$		\$

Form **1099-NEC**

www.irs.gov/Form1099NEC Department of the Treasury - Internal Revenue Service

IRS Priority Guidance Plan 2019-2020

- The Priority Guidance Plan 2019-2020 was published 10/08/2019 and provides a central direction for the IRS mission, vision and priorities. The following are the relevant employment tax matters:
 - Regulations under IRC §§119 and 132 (meals)
 - Guidance under §125 on Health FSAs
 - IRC §§409A and 457 final regulations
 - Regulations under §§4980H and 105(h) related to HRAs

IRS Payroll Tax Compliance Campaign

IRS Publication 5084 (Rev. 8-2019)

- Payroll taxes account for almost 72% of all revenue collected by the IRS
- In 2019 the IRS is hiring 600 new Revenue Officers
- In March of 2019 IRS Field Collection and IRS Criminal Investigation (CI) launched a two-week campaign aimed at reducing employment tax noncompliance
- In an IRS April 11, 2019 news release, Darren Guillot, Director of IRS Field Collection Operations said:

“Enforcement is never our first resort but protecting this significant source of revenue to the nation deserves our best efforts including reaching out to help business help themselves.”

Taxation of fringe benefits

Gross income

- Gross income includes all income from whatever source derived unless a specific exclusion applies.
- Valuation of taxable fringes
- Fair market value
- Statutory method
- When fringes are considered paid
- Withholding on fringes
- Deposit of taxes withheld

Taxation of fringe benefits

Excluded fringe benefits

- Employer cafeteria plans allow employees to choose between cash or fringe benefits which may include:
 - Accident or health coverage (employee pretax deduction)
 - Accident and health benefits (Employer contributions)
 - Up to \$50,000 of group-term life insurance on the life of the employee
 - Long-term and short-term disability coverage
 - Dependent care assistance not exceeding \$5,000 per year

Taxation of fringe benefits

Excluded fringe benefits (*continued*)

- Employer cafeteria plans allow employees to choose between cash or fringe benefits which may include:
 - Flexible spending arrangements (FSAs) for medical expenses up to \$2,700 in 2019 and **\$2,750** in 2020
 - Contributions to a 401(k) plan (see limits on retirement COLA slide)
 - Adoption assistance benefits \$14,080 in 2019, **\$14,300** in 2020

Taxation of fringe benefits

Excluded fringe benefits (*continued*)

- Achievement awards
 - Must be either length of service or safety achievement based
 - \$1,600 limit for “qualified plan awards”
 - \$400 limit for “nonqualified plan awards”

Taxation of fringe benefits

Excluded fringe benefits (*continued*)

- Athletic facilities
 - Exclude value of an employee's use of an on-premises gym or other athletic facility operated by the employer if substantially all the use of the facility is by the employees, their spouses, and their children
- De minimis fringe benefits
 - Described as an employer-provided fringe benefit that has so little value, accounting for it would be unreasonable or administratively impracticable
 - Examples may include copy machine use, holiday gifts, life insurance on spouse (if less than \$2,000), meals, parties and picnics, tickets for entertainment or sporting events, public transportation fare or typing

Taxation of fringe benefits

Excluded fringe benefits (*continued*)

- Dependent care assistance
 - Services an employer pays for directly or provides under a dependent care assistance program
 - Up to \$5,000 each year (must be coordinated with spouse's benefit)
 - Excluded portion (up to \$5,000) is reported in box 10 of Form W-2
 - Dependent care benefits in excess of \$5,000 are considered wages and should be included in boxes 1, 3, and 5 of Form W-2
- Educational assistance
 - Made permanent under the American Taxpayer Relief Act of 2012
 - Up to \$5,250
 - Amounts over \$5,250 possibly excluded as a working condition benefit
 - Includes graduate and undergraduate classes

Taxation of fringe benefits

Excluded fringe benefits (*continued*)

- No additional cost services
 - Services provided must be offered in the employer's line of business
 - Services can be excluded from employee's income
 - Employer cannot incur substantial additional costs
 - Cannot discriminate in favor of highly compensated employees
- Employee discounts
 - Price reductions given to an employee on property or services offered to customers in the ordinary course of business
 - Services may be discounted up to 20 percent of the price you charge nonemployee customers
 - Merchandise may be discounted up to the employer's profit percentage multiplied by price you charge nonemployee customers for the property

Taxation of fringe benefits

Excluded fringe benefits (*continued*)

- Meals
 - De minimis meals have little value, are provided infrequently, and would be administratively impracticable to account for (holiday lunch, coffee, doughnuts, soft drinks, etc.)
 - Meals for the convenience of employer or from employer-operated eating facility for employees
- Lodging if:
 - furnished on the employer's premises
 - furnished for employer's convenience
 - employee accepts lodging as a condition of employment

Taxation of fringe benefits

Excluded fringe benefits (*continued*)

- TCJA of 2017 eliminated moving expense deductions
- Moving expense reimbursements are no longer excluded until TCJA provisions sunset after December 31, 2025
- Check state conformity
 - Fixed date of IRC adoption
 - Rolling date of IRC adoption
 - Specific provisions

In 2026, excludible reimbursements may include reasonable expenses for:

- transporting personal effects from old home to new home
- travel of employee and dependents from old home to new home

Taxation of fringe benefits

Excluded fringe benefits (*continued*)

- Transportation benefits (commuting)
 - De minimis transportation
 - Qualified transportation benefits
 - Parking \$265 per month in 2019, \$270 in 2020
 - Public transportation/vanpool \$265 per month in 2019 \$270 in 2020
- Working condition fringe benefit
 - Property or service provided so that the employee can perform his or her duties
 - Mileage to provide service for customers or client
 - Supplies
 - Professional dues and subscriptions

Accountable and nonaccountable plans

Failure to meet the accountable plan provisions, could create unexpected tax assessments, penalties and interest



Employee business expense reimbursements



The IRS defines two categories of employee expense arrangements

- **Accountable plans**
- Nonaccountable plans**



Reimbursements of employee business expenses may be excluded from wages if reimbursed under an accountable plan



Reimbursements of employee business expenses that are not provided under an accountable plan are deemed paid under a nonaccountable plan and are included in the employee's wages

Accountable and nonaccountable plans

Employee business expense reimbursements (*continued*)

- The accountable plans must meet the following three requirements:
 - Business connection
 - Expense must be work-related
 - Adequate substantiation
 - Must be provided within a reasonable period of time
 - Treasury regulations provide two safe harbors for “reasonable period of time”
 - Receipts required for lodging and for expenses in excess of \$75 or more
 - Return of excess payment
 - Must be returned within a reasonable period of time
 - Treasury regulations provide two safe harbors for “reasonable period of time”
 - ~ Fixed date method
 - ~ Periodic statement method

Wage gross-ups

Taxes paid on behalf of the employee

- An employer may use a wage “gross-up” to provide a fringe benefit or bonus to an employee net of any tax consequence
- Payment of taxes by an employer for an employee creates additional compensation subject to withholding
- Rev. Rul. 86-14 provides a method to compute the economic benefit of wage gross-ups that can be summarized as follows:
 - $100\% - \text{payroll tax \%} = \text{net \%}$
 - $\text{Payment} \div \text{net \%} = \text{grossed-up wage}$
 - Check gross-up calculation related to payroll tax to be remitted

Wage gross-ups

- In 2019, ABC Corporation experienced record profits and wanted to reward John Smith for a job well done. John's base salary was \$100,000. ABC paid him a \$10,000 bonus at the end of the year and absorbed the employee federal and state income tax withholding (FITW and SITW) and FICA tax applicable to the bonus so John actually received \$10,000 cash.
- ABC computed the gross-up based on FITW 22%, SITW 7%, FICA 7.65%, and computed the gross-up as follows:

Step 1: Calculate gross-up percentage =									
1	-	0.22		-	0.07		-	0.0765	= 0.6335
Step 2: Grossed-up wages =									
		\$	10,000	/	0.6335		=	\$ 15,785.32	
Step 3: Check									
		\$ 15,785.32	X		0.3665		=	\$ 5,785.32	
		\$ 15,785.32	-		\$ 5,785.32			\$ 10,000.00	

Supplemental wages

- Supplemental wages are described in IRS Pub. 15 as “wage payments to employees that are not regular wages.” Examples may include:
 - Bonuses, commissions, overtime, severance, awards, and prizes
 - Back pay, retroactive pay increases
 - Federal income tax withholding for supplemental wages is 22 percent (the third-lowest tax rate for single filers)
 - However, a higher withholding rate of 37 percent applies to supplemental wage payments exceeding \$1 million (Treas. Reg. §31.3402(g)-1(a)(2))

Nonqualified deferred compensation



IRC § 409A



Amounts deferred after 2004 must meet requirements of IRC § 409A



Amounts deferred before 2005 generally are governed by prior law, unless the NQDC plan was materially modified after Oct. 3, 2004



Failure to meet the requirements of IRC § 409A will result in immediate recognition of the deferred compensation and a 20 percent penalty imposed on the NQDC participant

Nonqualified deferred compensation



Form W-2 reporting requirements



Note employers are no longer required to report deferrals or earnings as defined under IRC § 409A in box 12 of Form W-2 using code Y



Once deferred compensation amounts are actually or constructively received or the plan fails to meet the requirements of IRC § 409A, the amounts must be included in the employee's Form W-2



Amounts included in income because the plan failed to meet the section 409A requirements are reported in box 12 of Form W-2 using code Z

Nonqualified deferred compensation



FICA general timing, special timing, and nonduplication rules



General timing: An employee's compensation is subject to FICA taxes in the year actually or constructively received by the employee



Special timing rule: FICA is assessed as of the later of when services are performed or there is no longer a substantial risk of forfeiture



All amounts required to be taken into account for FICA purposes are included in the employee's FICA taxable wages



Nonduplication rule: Once amounts deferred are taken into account for FICA tax purposes, they are never again subject to these taxes (IRC § 3121(v)(2)(B))



Any earnings credited to amounts deferred after the date taken into account for FICA purposes should not be subject to FICA tax

Nonqualified deferred compensation

Payments to an employee's former spouse can be complex. Please note the separation of tax consequences between the employee and the former spouse.



Alternate payee reporting and tax consequences related to distributions made to a former spouse



All amounts required to be taken into account for FICA purposes are included in the employee's FICA taxable wages



Amounts attributable to a former spouse are not included in the employee's federal income taxable wages



Amounts attributable to a former spouse are includable in the former spouse's gross income and reported on Form 1099-MISC, box 3 other income

Other executive compensation issues

- See the IRS Audit Technique Guides at: www.irs.gov/businesses/small-businesses-self-employed/audit-techniques-guides-atgs

Athletic skyboxes/cultural entertainment suites

Awards/bonuses

Club memberships

Corporate credit card

Executive dining room

Loans

Qualified employee discounts

Relocation expenses

Security-related transportation

Spousal dependent life insurance

Spousal or dependent travel

Wealth management

Merger and Acquisition Issues



Mergers/acquisitions have a significant impact on Payroll



It is not uncommon for Payroll to be one of the last departments informed of merger/acquisition activity



Payroll's merger/acquisition responsibilities may include:

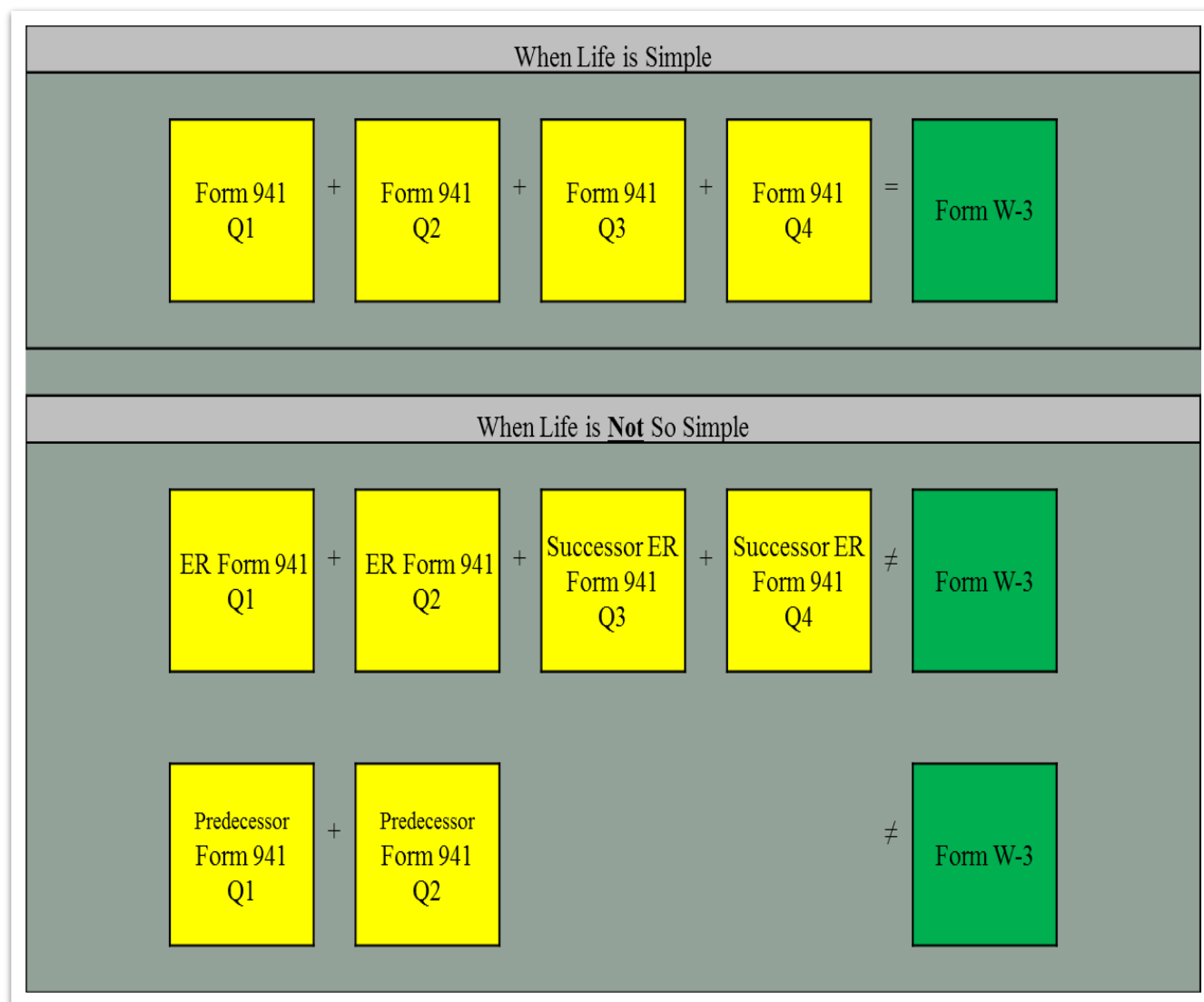
- State and local tax account registration
- Filing final returns closing tax accounts
- Data entry or import of new employee records
- Payroll system integration
- Acquiring and transmitting new hire data



Keep in mind all of these tasks may need to be completed in a very tight time frame or at year end

Merger and Acquisition Issues

Out of balance Forms 941 and W-2 will result in notices and inquiries from the SSA and IRS.



Merger and Acquisition Issues

IRS CAWR Unit and
SSA reconciliation
process

- The SSA shares Form W-2 data with the IRS and the IRS shares Form 941, 943, 944 (Form 94X) and Schedule H data with the SSA

The SSA and IRS
have an
agreement to
exchange
employment tax
data

- Specifically, the Combined Annual Wage Reporting (CAWR) is a document matching program that compares the Federal Income Tax (FIT) withheld, Medicare wages, Social Security wages, and Social Security Tips reported to the IRS on the Forms 94X and Schedule H against the amounts reported to SSA via Forms W-3 and the processed totals of the Forms W-2.

Merger and Acquisition Issues

IRS CAWR Unit and SSA reconciliation process

- **Notice SSA-L-93-SM** “Employer Questionnaire Discrepancy Between IRS and SSA Records”
 - Provided from SSA to employer when the Social Security and/or Medicare Wages reported to SSA on Forms W-2 are lower or higher than the Social Security and/or Medicare Wages reported to IRS on Forms 94X/Schedule H
- **Notice SSA-L-94-SM** “Second Request Questionnaire”
 - if the initial contact does not fully resolve the discrepancy, SSA follows up with a second questionnaire
- If, after two contacts, the imbalance is not completely resolved, SSA refers the case to the IRS

Merger and Acquisition Issues

The employment tax compliance requirements in the year of a merger or acquisition can be complex

- Failure to comply with specific reporting requirements can lead to time-consuming corrections as well as penalties and interest
- Generally, employers must report the acquisition or merger activity on Form 941 Schedule D “Report of Discrepancies Caused by Acquisitions”
- The type of merger or acquisition will determine the appropriate employment tax compliance requirements (see Rev. Rul. 62-60 and Rev. Proc. 2004-53)

Merger and Acquisition Issues

Example: On July 1, 2018, Employer A (Successor) acquires all the employees and assets of Employer B (Predecessor). If Employer A does not apply the successor employer provisions correctly, Employer A may incur the following unnecessary expenses:

Assumptions	EE Count	Rate	Total Cost
All EEs earn in excess of twice the SUI Wage Base of \$15K	1,000	3.00%	\$ 450,000
All EEs earn in excess of twice the FUTA Wage Base of \$7K	1,000	0.6%	\$ 42,000
All HCEs earn in excess of twice the SS wage base of \$128,400	100	6.2%	\$ 796,080
Total Cost			\$ 1,288,080

Merger and Acquisition Issues

**A
predecessor
employer is:**

- The employer of record of the acquired employees immediately preceding the merger/acquisition

**A successor
employer is:**

- An employer who acquires substantially all the assets of the predecessor employer
 - in its trade or business
 - or in a separate unit of its trade or business
- And immediately employs individuals that worked for the predecessor during the same calendar year as the acquisition

Types of Mergers and Acquisitions

Stock purchase

- If entity continues operations and is not merged into another entity, employer continues to report and remit under its own FEIN

Statutory merger or consolidation

- Typically, the stock of target entity is acquired
- No successor/predecessor relationship exists
- If successor/predecessor merge or consolidate, the resulting employer is considered to be one continuous employer

Asset acquisition

- Typically, assets and employees are acquired
- Successor/predecessor relationship may exist if employees are acquired immediately after the assets are acquired

Reporting Requirements and Options Post Merger or Acquisition

Statutory merger or consolidation

- No reporting options
- Resulting entity considered the employer for entire year
- Resulting entity will report all wages of both successor/predecessor for entire year

Asset acquisition

- Options available under Rev. Proc. 2004-53
 - **Standard procedure**, each employer reports its respective wages paid in the calendar year
 - **Alternate procedure**, successor employer reports wages paid by both predecessor and successor in the calendar year

Reporting Requirements and Options

Post Merger or Acquisition (*continued*)

What are the Form W-4 compliance requirements after a merger/acquisition?

Standard Procedure:

- The predecessor must keep on file the Forms W-4 provided by its former employees. The transferred employees must provide the successor with new Forms W-4 as the successor now becomes responsible for deducting and withholding tax from wages paid to the transferred employees

Alternate Procedure

- If the employers are using the alternate procedure the predecessor must transfer to the successor all current Forms W-4

Reporting Requirements and Options Post Merger or Acquisition (*continued*)



No impact on employees

Even if successor/predecessor provisions are not applied correctly, employee can obtain credit for over withheld FICA on individual income tax return



Manage timing for migration of payrolls

Consider timing of acquisition
Delay migration of payrolls until 01/01

Reporting Requirements and Options Post Merger or Acquisition (*continued*)

- In the year of merger/acquisition use Form 941 Schedule D
 - **Form 941 Schedule D** “Report of Discrepancies Caused by Acquisitions, Statutory Mergers, or Consolidations”
 - Used to identify parties to mergers/acquisitions
 - Reconciles differences between Forms 941 and W-3
 - Avoids need for Notices SSA-L-93-SM or SSA-L-93-SM

Mergers and Acquisitions State Considerations

Application of the state SUI experience transfer provisions

- Mandatory transfer provisions limit planning opportunities
- Optional transfer provisions allow greater planning opportunities

Application of the state predecessor and successor wage base transfer provisions

- Generally similar to the federal provisions and will result in favorable tax treatment

Legislative updates

- Where can you get legislative updates?
 - Professional service firms' website and email distribution lists
 - IRS website specifically the electronic reading room
www.irs.gov/uac/electronic-reading-room?_ga=1.117773577.1096761398.1461783065
 - Subscriptions to legal and tax publishers

Legislative updates

Inflation Adjusted Items

Other Adjusted items. Generally, taxpayers and employers can find common inflation adjusted items in a Revenue Procedure published in mid to late October. Calendar year 2020 inflation adjusted items can be found on the IRS website in Rev. Proc. 2019-44. Inflation adjusted items most relevant to payroll include:

Common Payroll Inflation Adjusted Items	2019	2020
Automobile Business Standard Mileage Rate	\$ 0.58	
Monthly Qualified Transportation fringe Benefit Commuting Limits	\$ 265	\$ 270
Monthly Qualified Transportation fringe Benefit Parking Limits	\$ 265	\$ 270
Foreign Income Exclusion	\$ 105,900	\$ 107,600
Health FSA	\$ 2,700	\$ 2,750
Adoption Assistance	\$ 14,080	\$ 14,600

Frequently asked payroll questions

Common payroll compliance questions

- How are payments to a deceased employee's beneficiary reported?
- What methods can be used to reduce employment tax penalties?
- How do we report severance payments to a former employee?
- Are gift cards taxable compensation to an employee?
- How are settlement payments to a former employee and their attorney reported?
- How are wages of a predecessor employer reported?
- When is a worker considered an independent contractor?
- When should an employee's compensation be grossed-up?
- When should wages be treated as supplemental wages?
- What fringe benefits are included in an employee's compensation?
- Are employer-reimbursed moving expenses taxable?
- When should an employer include the use of an automobile in an employee's compensation?
- Are loans to employees taxable?

Questions





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Thank you for attending! Questions, please contact me at:

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