



TEGE: Federal, State, and Local

IRS Exam Issues

And Filing Amended Returns

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Presenter

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Important Note:

The information published by the IRS is the authoritative guidance that should be followed. If your situation is unique, or if clear guidance is not set forth in the IRS publications, you may either contact your local IRS representative or seek a technical ruling on the matter.

This is in NOT considered published by the IRS!



Common FSL/ET Examination Issues

- Information returns not issued and/or filed including electronic filing requirements
- Backup withholding
- Worker classification
- Employee use of government property
- Accountable plan rules



Information Returns: Common Forms

Most common Forms 1099:

- Form 1099-MISC (Miscellaneous Income)
- Form 1099-NEC (Nonemployee Compensation) – beginning TY 2020
- Form 1099-INT (Interest)
- Form 1099-G (Certain Government Payments)



Information Returns: Form 1099-MISC and 1099-NEC

- Report payments:
 - \$600 or more
 - Paid in the course of a trade or business
- Exemptions:
 - Payments for merchandise or inventory
 - Payments of rent to real estate agents
 - Payments to corporations (special rules on next slide)



Information Returns: Form 1099-MISC Special Rules

- Payments to corporations for legal services or medical services are reported
- Payments to legal firms for legal services
 - Reported in Box 1 of the 2023 Form 1099-NEC, or
 - Reported in Box 10 of the 2023 Form 1099-MISC
- Payments to corporations for medical and health care services
 - Reported in Box 6 of the 2023 Form 1099-MISC



Information Returns: Due Dates

Furnishing due dates:

- Provide Forms 1099-MISC and Forms 1099-NEC to recipient by Jan. 31st

IRS filing due dates:

- File paper and electronic Forms 1099-NEC by Jan. 31st
- File paper Forms 1099-MISC by Feb. 28th
- File electronic Forms 1099-MISC by Mar. 31st



Information Returns Intake System

E-file through the IRIS Taxpayer Portal

This free, web-based filing system lets you:

- E-file up to 100 returns at a time
- Enter manually or by .csv upload
- Download payee copies to distribute
- Keep a record of completed, filed and distributed forms
- Save and manage issuer information

Or



Application to Application

E-file with software through IRIS Application to Application (A2A)
 If you have a third-party software or service or are developing software, you can use IRIS A2A to e-file thousands of returns (up to 100 MB at a time).
 More information in Pub 5719



Information Returns: Penalties

Information Return Penalties:

- Failure to File (IRC 6721)
 - 2023 returns: \$290
 - 2024 returns: \$3100
- Failure to Furnish (IRC 6722)
 - 2023 returns: \$290
 - 2024 returns: \$310

Publication 1586 – Reasonable Cause



Backup Withholding

- When to start backup withholding:
 - If reportable payments are made to a payee that fails to furnish a valid TIN
 - If a payee is listed on the CP2100 / CP2100-A Notice
 - If directed to do so by the IRS "Lock-In Letter"



Backup Withholding: CP2100/CP2100-A Notice

- IRS reviews Forms 1099 filed for:
 - Missing Taxpayer Identification Numbers (TINs)
 - Obviously incorrect TINs
 - Mismatched names and TINs
- CP2100 / CP2100-A Notice informs taxpayers they may be liable for backup withholding
 - CP2100 = 50 or more errors
 - CP2100-A = less than 50 errors



Backup Withholding: How to Report

- Form 945, *Annual Return of Withheld Federal Income Tax*
 - Annual return due on January 31st
 - Statute is three years from April 15th (presumptive due date)
 - Form 945 deposits **cannot** be combined with Form 941 deposits
 - No deposit required if total is < \$2,500



Backup Withholding: Relief and Penalties

- Form 945 Penalties:
 - Failure to File
 - Failure to Pay
- Relief from Backup Withholding Tax
 - Form 4669, *Statement of Payments Received*
 - Form 4670, *Request for Relief from Payment of Income Tax Withholding*
- Publication 1281, *Backup Withholding for Missing and Incorrect Name/TIN(s)*



Worker Classification: Basic Definitions

- Employee – individual who performs services for an entity
 - Employer has the **right to direct and control** what is done and how it is done
- Independent Contractor – individual who performs services for an entity
 - Control is **only** exercised on the **result** of the work
- Publication 1779, *Independent Contractor or Employee*



Worker Classification: Employee Considerations

Considerations:

- Common Law Rules
- Specific Federal Tax Statutes
- Section 218 Agreement

Resources:

- Publication 963, *Federal-State Reference Guide*
- <http://www.ncsssa.org/>



Worker Classification: Determination

- 20 Common Law Factors
vs
- Categories of Evidence:
 - Behavioral control
 - Financial control
 - Relationship of the parties



Worker Classification: Behavioral Control

- Right to direct and control **how** worker performs task
- Elements to consider:
 - Instruction
 - Evaluation System
 - Training



Worker Classification: Financial Control

- Right to direct and control economic aspects of worker activities
- Elements to consider:
 - Significant investment
 - Unreimbursed expenses
 - Services available to the public
 - Method of payment
 - Opportunity for profit or loss



Worker Classification: Relationship of the Parties

- What is the intent of the parties?
- Elements to consider:
 - Is there a written contract?
 - Are employee-type benefits provided?
 - Permanency of the relationship?
 - Are services provided a key activity of the business?



Employee Use of Government Property

Employer-provided vehicles:

- Personal use is taxable
 - Commuting
 - Vacation
 - Weekend
 - Use by spouse or dependent
- Business vs. Personal miles – must be recorded



Accountable Plan Rules

- Amounts are non-taxable if certain rules are met
 - Three Rules:
 1. Business connection
 2. Adequate accounting
 3. Excess returned on a timely basis
- If no accountable plan, then amounts are taxable wages to the employee



IRS Form 941-X

Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*, is used to correct:

- Employee wages
- Income tax withheld from wages
- Taxable social security wages and tips
- Taxable Medicare wages and tips
- Taxable wages and tips subject to Additional Medicare tax withholding



How to Fix Contribution Errors

- Perform a payroll reconciliation to avoid costly errors
- Fill out Form 941-X to:
 - Ask for a refund
 - Send additional contributions



Information Required

- Before you start, you will need:
 - Total gross payroll for the period
 - Totals for each payroll deduction for the period
 - Quarterly Forms 941
 - Forms W-2 / W-3
- Ensure payroll figures to date match
- Verify gross pay includes all types of payments and benefits



Verify Deductions

Before Tax

- Health and dental insurance
- Dependent care
- Medical flexible spending accounts
- Certain retirement arrangements

After Tax

- Employee insurance share
- Union dues
- Garnishments
- Other unique employee items

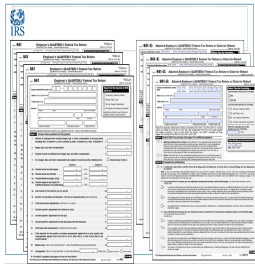


Correcting Errors

- List of all affected employees
- Review employee deductions
- Verify that total deductions have been setup correctly



When to File Form 941-X



- You must file a separate Form 941-X for each tax period in which there was an error.
- Do not mail a Form 941-X for a previous quarter along with a Form 941.



When to File Form 941-X, Continued

- Generally file by the later of:
 - 3 years from the date you filed the original return, or
 - 2 years from the date you paid the tax
- All quarterly Forms 941 filed for a calendar year are considered filed on April 15th of the following year if they are filed before that date



Form 941-X, Part 2

Part 2 Complete the certifications.

- 1.** 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 applicable.
- Note:** If you're correcting overreported 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 certification on line 4 and 5, Medicare tax doesn't include additional Medicare tax from 2013. Don't use 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 box 1 because you're adjusting overreported federal income tax, social security tax, Medicare tax, or Additional Medicare Tax, check all that apply. You must check at least one box.
- a. I reported 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 certify that the affected employee 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 box 2 because you're claiming a refund or abatement of overreported federal income tax, social security tax, Medicare tax, or Additional Medicare Tax, check all that apply. You must check at least one box.
- a. I reported 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 employer's share of social security tax and Medicare tax. For requests 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 certify that the affected employee, or each affected employee didn't give me a written consent to file a claim for the employer'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.

For Paperwork Reduction Act Notice, see the separate instructions. www.irs.gov/form941 Form 941-X (2014) Form 941-X (2014) **Next**



Form 941-X, Part 2: Certifications

- Part 2 "Certifications":
 - All necessary Forms W-2C filed
 - All employees reimbursed if necessary, including SS and Medicare taxes
 - Requesting credit for overpayments w/ >90 days remaining on the Statute of Limitations



Form 941-X, Part 2: Employee Statement

Employee Name _____

Employer Name _____

I have received a repayment of \$ _____ as over collected social security and Medicare taxes for 20 _____. I have not claimed a refund of or credit for the over collected taxes from the IRS, or if I did, that claim has been rejected; and I will not claim a refund or a credit of the amount.

Employee Signature _____

Date _____



Form 941-X, Part 2, Continued

- Part 2 “Certifications”:
 - If the employee fails to provide a written statement after reasonable effort;
 - Certify that you are only requesting a refund of the employer paid portion of tax



Form 941-X, Parts 3 and 4

- Part 3 –
 - Enter corrections for the quarter
 - Compute the tax due or refund
- Part 4 –
 - Explain the corrections made
 - Include the rationale for making adjustments
 - The explanation helps process the adjustment efficiently



Form 941-X: Final Notes

- File Form 941-X as soon as error is detected
 - Generally, no interest or penalties will be assessed if Form 941-X is filed by due date of return for period discovered
 - Must pay tax due when file Form 941-X
- Always sign and date Form 941-X before mailing
- Provide an explanation for adjustments
- Attach any necessary documentation



Summary

- Forms 1099-MISC and 1099-NEC
 - Due dates and penalties
- When to start backup withholding
- Worker classification:
 1. Behavioral control
 2. Financial control
 3. Relationship of the parties
- Employee use of government property
- Accountable plan rules
- How and when to file Form 941-X



Resources

- Website: <https://www.irs.gov/>
- Telephone number: (800) 427-1040
- Federal, state and local government site: <https://www.irs.gov/government-entities/federal-state-local-governments>
- FSLG toolkit: <https://www.irs.gov/government-entities/federal-state-local-governments/fslg-toolkit>



The End

Thank you
