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# Payroll Guide

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## □ Highlights □

**Payroll Tax Cuts Included in President's American Jobs Act** The Act would lower the Social Security tax rate for both employers and employees in 2012.

**Domestic Per Diem Rates Issued for Year Beginning in October** The federal domestic per diem rate tables have been issued for the Oct. 1, 2011 to Sept. 30, 2012 tax period.

**Most Involuntarily Terminated Workers No Longer Eligible to Receive a COBRA Subsidy** Most workers cannot receive the subsidy after Aug. 31, 2011, but there are some exceptions.

**IRS Offers Tax Relief to Victims of Hurricane Irene** The IRS is offering some employment tax relief to Hurricane Irene victims in Connecticut, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Puerto Rico, and Vermont.

**IRS Revises Employer Appointment of Agent Form** Prior versions of this form are now obsolete.

**IRS Publication Includes Mailing Addresses for Employment Tax Returns** The publication includes the mailing addresses for Forms 940, 940PR, 941, 941PR, 941SS, 943, 943PR, 944, and 945.

**IRS Working on New Change of Address Form** Employers changing their mailing address in 2012 will likely be filing a new form with the IRS.

**APA Creates New Smartphone App for Form W-4** The app may help employees determine the proper amount of federal withholding to have deducted from their paychecks.

**IRS Issues FAQs on Adoption Benefits** There are several FAQs on the employer-provided adoption benefit income tax exclusion.

**Employer to Pay Over \$290,000 in Penalties Due to Overzealous Employment Verification Policies** Some non-U.S. citizens were required to provide specific documents to establish their work eligibility even though federal law gives employees some latitude in choosing which documents to provide.

**IRS Revokes Private Letter Ruling that Exempted Value of Employer-Provided Clothing from Taxation** The employer provided additional information that made it unclear whether the clothing qualified as a de minimis fringe benefit.

**Government Employer Responsible for Uncollected FICA Taxes from Transferred International Employees** A new IRS private letter ruling says that a government agency employer is liable for the payment of the employee portion of FICA tax with respect to services performed by its former employees who were transferred to international organizations.

**SIFL Rates Increase in Second Half of 2011** The rates have increased more than a dollar per mile. The terminal charge is \$2.89 higher.

**State Highlights** A number of states have reported new laws and developments.

## Payroll Tax Cuts Included in President's American Jobs Act

President Obama has sent legislation to Congress called the "American Jobs Act." The legislation includes the following provisions:

- *Payroll tax relief for employers.* The legislation would reduce the tax rate on the employer portion of the Social Security tax rate from 6.2% to 3.1%. The reduction would only apply to the first \$5 million of wages that employers pay.
- *Temporarily eliminate employer payroll taxes on wages for new workers, or raises for existing workers.* The legislation would temporarily eliminate the 6.2% Social Security tax on wages for employers who increase their payroll by over \$50 million from the prior year, whether driven by new hires, increased wages, or both.
- *Payroll tax relief for employees.* The legislation would reduce the employee Social Security withholding tax rate on wages from 6.2% to 3.1% in 2012. The employee Social Security withholding tax rate on wages was temporarily reduced from 6.2% to 4.2% in 2011. This provision would provide a tax cut of over \$1,500 to the typical family earning \$50,000 a year (i.e., 3.1% × \$50,000). As with the payroll tax cut passed in December 2010, the American Jobs Act will specify that Social Security will still receive every dollar it would have received otherwise, through a transfer from the General Fund into the Social Security Trust Fund.
- *Unemployment benefits.* The legislation would extend unemployment benefits to six million people who will otherwise lose their benefits by the end of the year. The legislation would also expand "work-sharing" to encourage arrangements that keep employees on the job at reduced hours, rather than laying them off.
- *Income tax credit for hiring the long-term unemployed.* The legislation includes an income tax credit of up to \$4,000 for hiring workers who have been looking for a job for over six months.
- *Income tax credit for hiring veterans.* The legislation includes a Returning Heroes Tax Credit of up to \$5,600 for hiring unemployed veterans who have been looking for a job for more than six months, and a Wounded Warriors Tax Credit of up to \$9,600 for hiring unemployed workers with service-connected disabilities who have been looking for a job for more than six months.

## Domestic Per Diem Rates Issued for Year Beginning in October

The General Services Administration (GSA) has posted the federal domestic per diem rate table for fiscal year 2012 on its website. The rates are in effect from Oct. 1, 2011 through Sept. 30, 2012 [GSA Per Diem Bulletin FTR 12-01, 8/22/11].

The per diem rate table is used by employers who pay a per diem allowance to employees for business travel away from home within the continental United States (CONUS). The per diem allowance is an alternative to reimbursing employees for their actual substantiated expenses for away-from-home lodging, and meals and incidental expenses (M&IE). The per diem rate may not exceed the rate paid by the federal government to its workers on travel status. The rate varies by locality of travel. If employees provide simplified substantiation (time, place, and business purpose), the per diem reimbursement isn't subject to income or payroll tax withholding and isn't reported on the employee's Form W-2.

Total per diem rates by locality for fiscal year 2012 will range from \$123 to \$367. Vail, Colorado has the highest per diem rate in the table (i.e., \$367 during the period from Dec. 1, 2011 to March 31, 2012).

The following localities have been added to the table for fiscal year 2012:

- Montgomery (Montgomery and Autauga Counties), Alabama;
- Ocala (Marion County), Florida;
- Michigan City (LaPorte County), Indiana;
- Alexandria/Leesville/Natchitoches (Allen, Jefferson Davis, Natchitoches, Rapides, and Vernon Parishes), Louisiana;
- Benton Harbor (Berrien County), Michigan;
- Mackinac Island (Mackinac County), Michigan;
- Mount Pleasant (Isabella County), Michigan;
- Jefferson City (Cole County), Missouri; and
- Sheboygan (Sheboygan County), Wisconsin.

The maximum standard per diem rate for travel locations not listed in the per diem rate table will remain at \$123 (\$77 for lodging, \$46 for M&IE) in fiscal year 2012.

There are six possible M&IE rates (i.e., \$46, \$51, \$56, \$61, \$66, and \$71). These rates remain unchanged from the previous fiscal year. Lodging rates for locations listed in the per diem rate table will range from \$77 to \$296 in fiscal year 2012.

The new per diem rate table is in Payroll Guide at ¶ 3807.

### **Most Involuntarily Terminated Workers No Longer Eligible to Receive a COBRA Subsidy**

The Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) has updated its list of frequently asked questions (FAQs) on the COBRA Premium Reduction (subsidy) to note that some involuntarily terminated workers may still be eligible to receive a COBRA subsidy even though the subsidy is not available to most workers beyond Aug. 31, 2011 [EBSA website, *FAQs On The COBRA Premium Reduction*, Q1].

Under the American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5) and subsequent amendments, workers who were involuntarily terminated (i.e., assistance-eligible individuals or AEIs) between Sept. 1, 2008 and May 31, 2010, could receive a 65% subsidy on their COBRA continuation health insurance premiums for up to 15 months. Workers who were involuntarily terminated in May 2010 and who began receiving COBRA coverage in June 2010 are no longer eligible to receive the subsidy after Aug. 31, 2011. However, the new FAQ points out that some individuals will still be eligible to receive the subsidy after Aug. 31, 2011, if they are not eligible for another group health plan or Medicare, and their COBRA coverage did not start until a later date due to the terms of a severance arrangement, use of banked hours, or some other similar provision that delayed the start of their COBRA coverage. For example, if an individual was involuntarily terminated on May 31, 2010, and, due to the terms of a severance agreement, his or her COBRA coverage did not start until Dec. 1, 2010, the individual would still be eligible to receive the full 15 months of the subsidy through Feb. 29, 2012, as long as he or she is not eligible for another group health plan or Medicare.

AEIs whose COBRA continuation coverage lasts for more than 15 months will need to pay the full amount of the premium to continue their COBRA continuation coverage.

*COBRA credit still on employment tax returns.* The person who provides the subsidy to an AEI (e.g., an employer) receives a credit for the subsidy on the person's employment tax return. Most employers claim the credit on Form 941, *Employer's Quarterly Federal Tax Return*; Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*; or Form 944, *Employer's Annual Federal Tax Return*.

Form 943 and Form 944 are annual returns, so the credit will still appear on the 2011 versions of these forms that will be filed in January 2012. The credit also still appears on the IRS draft version of the 2012 quarterly Form 941, since, as the FAQ above points out, there may be circumstances under which the credit may still be claimed on a 2012 employment tax return.

### **IRS Offers Tax Relief to Victims of Hurricane Irene**

The IRS is offering some employment tax relief to taxpayers in Connecticut, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Puerto Rico, and Vermont who were impacted by Hurricane Irene [IR 2011-87, 09/01/2011].

*Connecticut.* Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham counties have been declared federal disaster areas. Individuals who reside or have a business in these counties may qualify for tax relief. The IRS will waive the failure-to-deposit penalty for employment tax deposits due on or after August 27 and before Sept. 13, 2011, as long as the deposits were made by *Sept. 12, 2011* [IRS Notice CT-2011-40, 9/6/11].

*Massachusetts.* Berkshire and Franklin counties have been declared federal disaster areas. Individuals who reside or have a business in these counties may qualify for tax relief. The IRS will waive the failure-to-deposit penalty for employment tax deposits due on or after August 27 and before Sept. 13, 2011, as long as the deposits were made by *Sept. 12, 2011* [IRS Notice, 9/6/11].

*New Hampshire.* Carroll and Grafton counties have been declared federal disaster areas. Individuals who reside or have a business in these counties may qualify for tax relief. The IRS will waive the failure-to-deposit penalty for employment tax deposits due on or after August 27 and before Sept. 13, 2011, as long as the deposits were made by *Sept. 12, 2011* [IRS Notice NH-2011-31, 9/8/11].

*New Jersey.* Atlantic, Bergen, Burlington, Camden, Cape May, Cumberland, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Sussex, Union, and Warren counties have been declared federal disaster areas. Individuals who reside or have a business in these counties may qualify for tax relief. The IRS will waive the failure-to-deposit penalty for employment tax deposits due on or after August 27 and before Sept. 13, 2011, as long as the deposits were

made by *Sept. 12, 2011* [IRS Notice NJ-2011-42, 9/1/11].

*New York.* Albany, Bronx, Clinton, Columbia, Delaware, Dutchess, Essex, Greene, Kings, Montgomery, Nassau, Orange, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schoharie, Suffolk, Sullivan, Ulster, Warren, Washington, and Westchester counties have been declared federal disaster areas. Individuals who reside or have a business in these counties may qualify for tax relief. The IRS will waive the failure-to-deposit penalty for employment tax deposits due on or after August 26 and before Sept. 13, 2011, as long as the deposits were made by *Sept. 12, 2011* [IRS Notice NY-2011-34, 9/1/11].

*North Carolina.* Bertie, Beaufort, Brunswick, Camden, Carteret, Chowan, Craven, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Hertford, Hyde, Johnson, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Tyrell, Vance, Warren, Wayne, and Wilson counties have been declared federal disaster areas. Individuals who reside or have a business in these counties may qualify for tax relief. The IRS will waive the failure-to-deposit penalty for employment tax deposits due on or after August 25 and before Sept. 10, 2011, as long as the deposits were made by *Sept. 9, 2011* [IRS Notice NC-2011-58, 9/1/11].

*Puerto Rico.* The Arroyo, Aguas Buenas, Caguas, Canovanas, Carolina, Cayey, Cidra, Coamo, Comerio, Humacao, Jayuya, Juncos, Loiza, Luquillo, Orocovis, Patillas, Ponce, and San Juan municipalities have been declared federal disaster areas. Individuals who reside or have a business in these municipalities may qualify for tax relief. The IRS will waive the failure-to-deposit penalty for employment tax deposits due on or after August 21 and before Sept. 7, 2011, as long as the deposits were made by *Sept. 6, 2011* [IRS Notice SP-FL-2011-14, 8/30/11].

*Vermont.* Addison, Bennington, Caledonia, Chittenden, Orange, Rutland, Washington, Windham, and Windsor counties have been declared federal disaster areas. Individuals who reside or have a business in these counties may qualify for tax relief. The IRS will waive the failure-to-deposit penalty for employment tax deposits due on or after August 29 and before Sept. 14, 2011, as long as the deposits were made by *Sept. 13, 2011* [IRS Notice VT-2011-34, 9/2/11].

## **IRS Revises Employer Appointment of Agent Form**

The IRS has issued a June 2011 version of Form 2678, *Employer/Payer Appointment of Agent*, and its instructions. Form 2678 is used by employers who pay wages through an agent (i.e., a tax filing service) to authorize the agent to sign returns and perform other acts on their behalf. The form can also be filed to revoke an existing appointment of an agent. A new appointment is not effective until the IRS approves the request. Employers may appoint agents to file Forms 941, 941-PR, 941-SS, 943, 943-PR, 944, 944-PR, 944-SS, 944(SP), 945, CT-1, and CT-2.

*Form 940 and Form 940-PR.* Generally, an agent cannot be appointed to file Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, or Form 940-PR (the version of Form 940 that is filed by Puerto Rico employers). However, proposed regulations that were issued in 2010 now allow a home care service recipient to request approval for an agent to report, file, and pay taxes on a Form 940 or Form 940-PR by checking the box in the footnote on Form 2678, Part 2, line 5 (see Payroll Guide Newsletter at ¶ 3.5). Home care service recipients receiving home care services through a program administered by a federal, state, or local government agency are also required to check a box on Part 3 of Form 2678.

An agent for a home care service recipient that files an aggregate Form 940 must complete Form 940, Schedule R, *Allocation Schedule for Aggregate Form 940 Filers*, and file it with the aggregate Form 940. See Payroll Guide at ¶ 4255 for further information on Form 940, Schedule R.

An agent that files an aggregate Form 941 must complete Form 941, Schedule R, *Allocation Schedule for Aggregate Form 941 Filers*, and file it with the aggregate Form 941. See Payroll Guide at ¶ 4225 for further information on Form 941, Schedule R.

*Must use current version of the form.* Form 2678 was last revised in October 2007. The instructions advise filers not to use a prior version of the form. The IRS considers all prior versions of the form to be obsolete. Prior versions of the form will not be processed.

## **IRS Publication Includes Mailing Addresses for Employment Tax Returns**

The IRS recently updated Publication 3891, *Lockbox Address Directory*. The publication includes the mailing addresses for Forms 940, 940PR, 941, 941PR, 941SS, 943, 943PR, 944, and 945. The mail-

ing address is determined based on the U.S. state in which the employer is located, and whether a payment will be enclosed with the return. For example, a tax practitioner filing Form 940 for a client who is located in Alabama would send the form to the Department of the Treasury, IRS, Ogden, UT, 84201-0046, if no payment is enclosed, and to the IRS, P.O. Box 105078, Atlanta, GA, 30348-5078, if a payment will be enclosed with the return.

The IRS also offers electronic filing and payment options for the above returns.

### **IRS Working on New Change of Address Form**

The IRS has posted a draft version of a new change of address form on its website that will be used by business filers beginning in 2012. Form 8822-B, *Change of Address - Business*, will be used to report mailing address changes on employment, excise, income (including Forms 1065 and 1120), and other business returns. Currently, all address changes are reported on Form 8822, *Change of Address*. In 2012, the IRS expects this form to only be filed to report address changes for individual, gift, estate, and generation-skipping transfer tax returns. On the September 1 payroll industry conference call, the IRS advised employers to continue to use Form 8822 to report address changes until Form 8822-B is finalized.

### **APA Creates New Smartphone App for Form W-4**

The American Payroll Association (APA) has created a free smartphone app, called the "Paycheck Maximizer," to help employees properly fill out their Form W-4 so that they do not have too much or too little federal withholding deducted from their paychecks.

The app can be downloaded at [http://www.nationalpayrollweek.com/edu\\_w4.cfm](http://www.nationalpayrollweek.com/edu_w4.cfm). After downloading the app, employees should click "Begin" to start working on their W-4. The available "touch screen" options include the ability to touch a word highlighted in blue and underlined, which takes the user to the definition of that word. There are also "previous" and "next" options at the bottom of each screen to make navigation simple. In addition, there are "Help" options on some screens. For example, there is a "Help Me!" option that asks employees for their hourly salary, average hours per week, and weeks per year, to help them determine their gross annual income.

Employees can save their results, which is useful for testing various different withholding scenarios.

The app can be used on an iPhone, iPod touch, or iPad, and on smartphones using the Android operating system.

The APA says that the app is "the perfect tool for payroll professionals to recommend to new technology-savvy employees."

### **IRS Issues FAQs on Adoption Benefits**

The IRS has posted frequently asked questions (FAQs) about adoption benefits on its website.

Employers may pay or reimburse eligible employees for qualified adoption expenses related to the adoption of an eligible child, and exclude the amount from employee income for federal income tax withholding purposes if the benefits are provided as part of an adoption assistance program. The amount must be included in wages for FICA and FUTA tax purposes.

Employees may also be eligible to claim an adoption credit on their personal income tax returns if they adopted or attempted to adopt a child and paid qualified expenses relating to the adoption. Employees may not claim both the credit and an employer-provided exclusion on the same expense.

There are fourteen FAQs on the IRS website, including FAQs on the following topics: (1) What is the adoption credit?; (2) What is the income exclusion for employer-provided adoption benefits?; (3) What are qualified adoption expenses?; (4) Who is an eligible child?; (5) What did the Patient Protection and Affordable Care Act change about the adoption credit?; (6) When do I exclude employer-provided adoption assistance from my income?; (7) How do I claim the credit or the exclusion?; (8) What records should I keep to claim the adoption credit or the income exclusion?; and (9) What audit documentation is necessary for special needs adoptions?

Some of the rules for adopting a foreign child are not the same as the rules for adopting a child who is a U.S. citizen or resident.

There is further information on adoption benefits in Payroll Guide at ¶ 3542.

### **Employer to Pay Over \$290,000 in Penalties Due to Overzealous Employment Verification Policies**

The Department of Justice (DOJ) has reached a settlement agreement with Farmland Foods Inc.

(Farmland), resolving allegations that Farmland engaged in a pattern or practice of discrimination by imposing unnecessary and excessive documentary requirements on non-U.S. citizens and foreign-born U.S. citizens when establishing their eligibility to work in the U.S. [DOJ Office of Public Affairs Press Release, 8/22/11].

*Background.* An employer must complete a Form I-9, *Employment Eligibility Verification*, for all newly-hired employees (both citizen and noncitizen) to verify their identity and authorization to work in the United States. Employees may give their employer documents from *any* of the following three lists to verify their identity and employment authorization:

- *List A.* This list includes documents that establish both identity and work eligibility.
- *List B.* This list includes documents that are used to verify the identity of the individual.
- *List C.* This list includes documents that are used to verify an individual's eligibility to work in the United States.

*DOJ investigation.* Farmland required all newly hired non-U.S. citizens and some foreign-born U.S. citizens to present specific and, in many cases, extra work-authorization documents beyond those required by federal law. In the case of non-U.S. citizens, Farmland required the presentation of additional work authorization documents, generally by requiring Social Security cards, even when employees had already produced other documents establishing work authority. In the case of foreign-born naturalized U.S. citizens, Farmland required evidence of citizenship, such as certificates of naturalization or U.S. passports, even when those individuals had other means of proving their work authority. Farmland's demand for specific or excessive documents to establish work authority violated the anti-discrimination provision of the Immigration and Nationality Act (INA).

In addition to ending its impermissible document requests and modifying its employment eligibility verification process, Farmland has agreed to pay \$290,400 in civil penalties, the highest civil penalty paid through settlement since enactment of the INA's anti-discrimination provision in 1986. Farmland also agreed to certain monitoring and reporting provisions, and to train its human resources personnel to follow proper procedures.

See Payroll Guide at ¶ 20,385 for further information on Form I-9.

## **IRS Revokes Private Letter Ruling that Exempted Value of Employer-Provided Clothing from Taxation**

The IRS has revoked IRS Letter Ruling 201005014, which allowed employees in a political subdivision to exclude the value of employer-provided clothing and related accessories from their taxable income as a de minimis fringe benefit [IRS Letter Ruling 201135022].

**IRS Letter Ruling 201005014.** The taxpayer is a political subdivision in State A. It is divided into departments, several of which are further divided into divisions and sections (collectively, departments). Many of the taxpayer's employees are eligible to receive work-related articles of clothing and accessories, including tee shirts, polo shirts, sweaters, jackets, swimsuits, socks, sweatshirts, coats, pants, jeans, shorts, gloves, hats, fanny packs, belts, clip-on ties, and equipment bags. Most of the items bear the taxpayer's logo, or other information identifying the individual as an employee of the taxpayer. Employees are required to wear the clothing items while performing services for the taxpayer.

Code Sec. 132(e)(1) defines a de minimis fringe benefit as any property or service the value of which is so small (after taking into account the frequency with which the employer provides similar fringes to other employees) as to make accounting for it unreasonable or administratively impracticable.

In ruling in 2010 that the value of employer-provided clothing and related accessories could be excluded from the employees' taxable income as a de minimis fringe benefit, the IRS looked at: (1) the value of the benefits; (2) the frequency with which the taxpayer distributed the benefits; and (3) whether it was administratively impracticable to require the taxpayer to account for the benefits.

*The value of the benefits.* The IRS said that the items identified by the taxpayer were of low value. Using the cost of the items as an approximation of their value, the IRS believed that it was reasonable to conclude that the items qualified as de minimis fringe benefits.

*The frequency with which the taxpayer distributed the benefits.* Employees typically receive the clothing and accessories when they are hired. They receive replacements on an as-needed basis. The IRS did not consider the receipt of these items once, or perhaps twice, annually as so frequent that, given the low value of each item, the receipt of the items could not be properly characterized as de minimis.

*Administrative considerations.* The taxpayer convinced the IRS that it would be unreasonable to account for the value of each item. Establishing a system to track each individual item's cost would be expensive.

**New ruling.** The IRS advised the taxpayer in a letter dated Jan. 6, 2011, that it was reconsidering its position in IRS Letter Ruling 201005014. The taxpayer then provided additional information to the IRS that made it apparent there were variations in the acquisition and distribution of the clothing and accessories by the various departments. Based on those variations, the IRS can not conclude, on a categorical basis, that the items at issue in the ruling request were de minimis fringe benefits.

The revocation of IRS Letter Ruling 201005014 will only be applied prospectively.

A private letter ruling is directed only to the taxpayer who requested it. It may not be used or cited as precedent.

### **Government Employer Responsible for Uncollected FICA Taxes from Transferred International Employees**

A new IRS private letter ruling says that a government agency employer (the Department) is liable for the payment of the employee portion of FICA tax with respect to services performed by its former employees who were transferred to international organizations. The amount of employee FICA tax paid by the Department is includible in the gross income of the employee and is treated as additional wages for employment tax purposes (including FICA and income tax withholding) [IRS Letter Ruling 201134015].

**The law.** 5 USCS 3582 provides that, if certain requirements are met, a transferring employee may retain many rights and benefits of federal employment, and may retain a right of reemployment by the federal government when employment with an international organization is terminated.

Service performed in the employ of an international organization by certain transferred federal employees is generally excepted from employment for FICA tax purposes, unless the service constitutes "employment" under Code Sec. 3121(y). Under that section, service performed in the employ of an international organization by an individual who was transferred to the international organization under 5 USCS 3582 is considered "employment" for FICA tax purposes, if: (a) immediately before the transfer, the individual per-

formed services with a federal agency (as defined in 5 USCS 3582(1)) that were considered employment for employment tax purposes; and (b) the individual would be entitled, upon separation from such international organization (as defined in 5 USCS 3581(5)), and proper application, to reemployment with such federal agency under 5 USCS 3582.

**The facts.** Certain individuals (the transferees) who were employees of the Department, were transferred to international organizations pursuant to 5 USCS 3582. The services performed by the transferees met the requirements to be subject to FICA tax under Code Sec. 3121(y).

The Department recently learned that its payroll service provider (PSP) failed to collect FICA taxes for several years from the transferees during their period of employment with the international organization. Most of the overdue employee FICA taxes were paid by the transferees. However, some of the transferees who were not timely billed have informed the Department that they do not believe they should be required to pay these overdue taxes, and the Department has not yet paid the employer FICA taxes with respect to these transferees. The Department was informed that there is no procedure under these circumstances where the employer could pay only the employer's share of FICA tax without also paying the employee's share.

**The ruling.** The IRS ruled that the Department is liable for payment of the employee portion of FICA tax with respect to the services performed by the transferred employees, irrespective of whether the FICA tax was collected from the employees. The IRS reasoned that under Code Sec. 3121(y), the employee portion of the FICA tax is paid to and collected by the federal agency from which the transfer was made in order to enable the federal agency to pay both the employer and employee portion of FICA taxes and include the wages on its Form 941, *Employer's Quarterly Federal Tax Return*. Further, the federal agency is liable for the payment of the employer and employee portion of FICA taxes under Code Sec. 3122.

*Additional income to employee.* The IRS also noted that if an employer pays the employee portion of FICA taxes without collecting the taxes from the employee, the amount of the FICA employee tax paid by the employer is includible in the gross income of the employee, and is treated as additional wages for employment tax purposes (including FICA and income tax withholding). The IRS cited Rev Rul 86-14, 1986-1 CB 304, to support this observation.

## SIFL Rates Increase in Second Half of 2011

The Standard Industry Fare Level (SIFL) formula may be used in certain instances to determine the value of a noncommercial flight for employment tax purposes (see Payroll Guide at ¶ 3595). The SIFL rates for the second half of 2011 (July 1 through December 31) have been issued. The terminal charge has increased to \$43.79 (previously, \$40.90). The rate for the first 500 miles of travel is now 23.95¢ per mile (previously, 22.37¢ per mile). The rate for miles 501 to 1,500 is now 18.26¢ per mile (previously, 17.06¢ per mile). The rate for miles traveled over 1,500 is now 17.56¢ per mile (previously, 16.40¢ per mile) [U.S. Department of Transportation website].

## Stateline

New laws and developments are reported from the following states:

### ALABAMA

**New Hire Reporting.** A federal district court has issued an order temporarily blocking implementation of the State's recently enacted law that requires all employers to begin using the federal E-Verify system sometime in 2012 (L. 2011, H56; see Payroll Guide Newsletter at ¶ 13.10). The court found that it lacked the time to adequately consider the numerous challenges to the law. The temporary injunction is in effect until Sept. 29, 2011, or until the court issues its ruling, whichever comes first [*Hispanic Interest Coalition of Alabama v. Bentley*, DC AL, Dkt. No. 5:11-cv-02484-SLB, 8/29/11].

**Withholding.** A refund program for the invalid Jefferson County occupation fee is under way. Employees who paid the fee during the period from Jan. 12, 2009 through Aug. 13, 2009 are entitled to a refund. A court-appointed "Settlement Administrator" is in charge. The deadline for employers to complete an *Employee Refund Data Form* to help the Administrator determine how much is owed to whom was extended from August 15 to September 15. The Administrator will send the employer a check and the employer will distribute that money to employees [Order from Circuit Court of Jefferson County Judge David Rains, August 2011].

### ALASKA

**Unemployment.** The Alaska Department of Labor and Workforce Development (DLWD) is advising employers that they will be eligible to offset their 2011 federal unemployment tax rate (6.2% in first half of 2011, 6% in second half of 2011) by 5.4% in state unemployment tax credits. Alaska does not have any delinquent federal unemployment insurance loans so its employers are eligible for the maximum 5.4% credit [DLWD web-

site, Unemployment Insurance Tax Newsletter, June 2011].

## CALIFORNIA

**Withholding.** There are new guidelines for amending a previously submitted Form 592, *Resident, and Nonresident Withholding Statement*. Taxpayers should send a new form to the Franchise Tax Board (FTB) with the correct information, check the "Amended" box at the top of the form, and include a letter explaining what changes were made and why [California FTB Tax News 08/29/2011, 08/29/2011].

School Employee Fund (SEF) employers must file both new Form DE 9C, *Quarterly Contribution Return and Report of Wages (Continuation)*, and Form DE 9423, *Quarterly Contribution Return for School Employers* [Employment Development Department, *Important Payroll Tax Changes for 2011*, 8/30/11].

## COLORADO

**Withholding.** The Colorado Department of Revenue (DOR) has announced that its new Revenue Online system is now available for businesses. Employers can access the system from computers, laptops, smartphones, and tablets. The new system will allow employers to file withholding tax returns, submit withholding annual reconciliation statements, and sign up as a withholding submitter on behalf of a business or client. Employers will also be able to: make a payment, view payment history, view letters from the DOR, close a business tax account, and set up a third party for login access to their tax account [CDOR TaxInfo Blog, *Revenue Online for Business Opens Monday, Aug. 29, 8/26/11*].

## CONNECTICUT

**Unemployment.** An employer must provide a separation packet (UC-62T/UC-61) to workers at the time of their separation from employment, regardless of the reason for their separation [Connecticut Department of Labor Employer Information Notice, September 2011].

**Withholding.** The Connecticut Department of Revenue Services (DRS) extended the August 31 through September 13 filing deadlines for filing certain business taxes (including withholding taxes) to *Sept. 13, 2011*, to help taxpayers impacted by Hurricane and Tropical Storm Irene. Filing extensions will be granted to taxpayers in counties subject to federal or state declarations of emergency or disaster. Taxpayers mandated to pay by electronic funds transfer must have initiated payment by 4:30 p.m. on September 12 to be considered timely. Electronic returns must have been filed and paper returns must have been postmarked by midnight, Sept. 13, 2011, to be considered timely. Employers impacted by Irene who receive a late filing notice from the DRS for an

August 31 through September 13 filing deadline should call (860) 297-5962. The DRS subsequently announced further filing relief for certain tax returns, but that relief did not apply to withholding taxes [DRS E-Alert, *Taxpayer filing deadlines extended until September 13, 8/31/11*].

## IDAHO

**Unemployment.** The State has repaid its federal unemployment insurance loans. As a result, employers will not have to pay an interest assessment and their 2011 federal unemployment tax rate will not increase [Idaho Department of Labor News Release, *Idaho Repays Federal Unemployment Benefit Loan, 9/1/11*].

## ILLINOIS

**Wage Payment.** New legislation requires state agencies, other than legislative or judicial branches of state government, to pay their employees by direct deposit. Expense reimbursements also must be paid by direct deposit. This rule does not apply to state employees covered by a collective bargaining agreement, if the agreement does not require the direct deposit of their paychecks. If direct deposit is required but isn't used, employees receiving the payment may be subject to a \$2.50 processing fee that will be withheld from their payment [L. 2011, H3449].

## IOWA

**Unemployment.** Unemployment tax rates for experienced employers in the 2012 tax year will be determined under tax table four (tax table three is in effect in 2011). Rates will continue to range from 0% to 9%, but the tax rates in certain rate classes will be lower. The Iowa Workforce Development (IWD) expects employers to see approximately \$96 million in tax savings. The new employer rate for non-construction employers will decrease from 1.9% to 1.5% in 2012 [IWD News Release, *Iowa's Employer Unemployment Insurance Tax Tables Improve for 2012, Tax Tables Move in a Positive Direction, 9/2/11*].

## KENTUCKY

**Unemployment.** The Kentucky Office of Employment and Training (OET) is advising employers that they will pay federal unemployment tax (federal Form 940) for the 2011 tax year at a higher tax rate than in previous years due to the State's failure to repay its outstanding federal loans for two consecutive years. Most employers are allowed to claim 5.4% in state unemployment tax credits against their FUTA tax rate if they timely pay their state unemployment taxes. Kentucky employers will only be able to claim a maximum of 5.1% in state unemployment tax credits against the FUTA tax rate in the 2011 tax year [OET Letter to Employers, 8/26/11].

## MARYLAND

**Wage Payment.** *Effective Oct. 1, 2011*, county or municipal employers may require most new employees to receive their wages by direct deposit. Employees must be given an EFT authorization form, and employers can then deposit the wages in the employee's personal account. Employees must be provided with a direct deposit statement. Direct deposit may not be required for employees hired before Oct. 1, 2011. Employees without a personal bank account are allowed to opt out of direct deposit [L. 2011, H233].

**Withholding.** Maryland is extending the September 15 tax filing deadline to *September 22* for Hurricane Irene victims, including the deadline for filing the August withholding return. The extension does not apply to tax payments. The affected taxpayer or tax preparer must be located in an area that was under an evacuation order or a severe weather warning because of Hurricane Irene, "even if the preparer is located outside of the federally declared disaster areas" [Comptroller of Maryland News Release, *Comptroller Franchot Announces Filing Extension for Taxpayers, Preparers Impacted by Hurricane Irene*].

## MISSOURI

**Unemployment.** The Missouri Department of Labor and Industrial Relations (DLIR) is advising employers that they should expect a 0.3% credit reduction on their 2011 federal unemployment tax (FUTA) returns because of Missouri's failure to repay its outstanding federal loans for two consecutive years. The net FUTA tax rate for Missouri employers will be 1.1% in the first half of 2011, and 0.9% in the second half of 2011, unless Missouri repays its federal loans by Nov. 10, 2011 [DLIR website, Unemployment Insurance Notices, *FUTA Tax Credit Reduction*].

Employers do not have to pay the automation surcharge (see Payroll Guide at ¶ 13,705) beginning in 2012. Employers who were subject to the surcharge in 2011 paid it with their first quarter unemployment tax return [DLIR website, Unemployment Insurance Notices, *2011—Last Year of the Automation Surcharge*].

## NEW HAMPSHIRE

**Unemployment.** The New Hampshire Department of Employment Security (DES) anticipates that the 1.0% emergency power surcharge will remain in effect through the second quarter of 2012. The rate is expected to be reduced to 0.5% in the third quarter of 2012, and to 0% in the fourth quarter of 2012. The DES also expects negative balanced employers to continue to pay the 1.5% inverse surcharge, in addition to the emergency power surcharge, in all four quarters of 2012. See Payroll Guide at ¶ 14,105 for further information on these assess-

ments. The DES does not expect employers to receive a fund balance reduction in 2012 [DES website, *Schedule of Quarterly Fund Balance Reductions and Surcharges*].

## NEW JERSEY

**Withholding.** The New Jersey Division of Taxation (DOT) is following the federal tax relief guidelines provided in IRS announcements NJ-2011-42 and IR-2011-88, issued on Sept. 1, 2011, for victims of Hurricane Irene (see Article 19.13). The relief is available to taxpayers who reside or have a business in the New Jersey counties designated presidential disaster areas. Affected taxpayers now have until *Oct. 31, 2011*, to file any New Jersey tax return administered by the DOT, and to submit payments for any return and/or payment which has either an original or extended due date between Aug. 27, 2011 and Oct. 31, 2011 [DOT Notice, *Tax Relief for Victims of Hurricane Irene in New Jersey*, 9/2/11].

## NEW MEXICO

**Unemployment.** The New Mexico Department of Workforce Solutions has told *RIA* that the taxable wage base for unemployment tax purposes will increase from \$21,900 to \$22,400 in 2012.

## NEW YORK

**Employer Tax.** Effective for payrolls paid on or after *July 24, 2011*, employers subject to the Metropolitan Commuter Transportation Mobility Tax (MCTMT) should be reducing their payroll expense by the value of health benefits treated as domestic partner health benefits for federal tax purposes that are provided to a same-sex married employee who is a covered employee for MCTMT purposes. This rule only applies if the value of these benefits when provided to a different-sex married spouse wouldn't be subject to Social Security tax [New York State Department of Taxation and Finance website, *Metropolitan Commuter Transportation Mobility Tax Information Regarding Same-Sex Married Individuals*].

**Withholding.** The New York State Department of Taxation and Finance (DTF) is postponing certain tax filing and payment deadlines for Hurricane Irene victims in the counties declared federal disaster areas by President Obama (see Article 19.13). The relief extends to taxpayers residing in, or having their principal place of business in, these counties. The deadline for filing any return due between Aug. 26, 2011 and Oct. 30, 2011 has been extended to *Oct. 31, 2011*. Employers will not be subject to penalties on withholding tax remittances made on Form NYS-1, *Return of Tax Withheld*, that would normally be due between Aug. 26, 2011 and Sept. 11, 2011, if the remittance was made by *Sept. 12, 2011*. With respect to withholding tax or Metropolitan Commuter Transportation Mobility Tax (MCTMT) remittances required to be made by employers through the PrompTax

system during the period between Aug. 26, 2011 and Sept. 11, 2011, penalty relief will apply as long as the remittance was made by *Sept. 12, 2011*. Taxpayers adversely affected by the storm do not need to apply for a waiver or an extension to obtain the above relief [DTF Notice N-11-8, *Announcement Regarding Hurricane Irene*, September 2011].

The Offer in Compromise program allows the Department of Taxation and Finance (DTF) to settle tax debt cases with taxpayers who would suffer an undue economic hardship if they paid their debt in full. Only individuals may apply for this relief. The relief is available on business debts for which the taxpayer is personally responsible [DTF Offer in Compromise Program, 8/30/11].

## NORTH CAROLINA

**Unclaimed Wages.** *Effective Oct. 1, 2011*, unpaid and unclaimed salaries, wages, and other compensation that remain unclaimed for more than one year are presumed abandoned (two years prior to Oct. 1, 2011). The North Carolina Department of State Treasurer (DST) will not enforce the above change in the abandonment period until the 2012 reporting cycle (reports due Nov. 1, 2012 for all employers other than life insurance companies) to allow holders the opportunity to make needed changes to reporting software, procedures, etc. Holders are encouraged (but not required) to make this change beginning with their Nov. 1, 2011 report [DST Notice, *Unclaimed Property Legislative Changes*, 6/28/11].

**Withholding.** The North Carolina Department of Revenue (NCDOR) is offering tax relief to Hurricane Irene victims in North Carolina counties that have been declared federal disaster areas (see Article 19.13). The relief is similar to that granted by the IRS and includes the waiver of late filing and payment penalties for businesses that had a filing and/or payment requirement for any North Carolina tax due between Aug. 24, 2011 and Oct. 30, 2011, as long as the return is filed and the tax paid by *Oct. 31, 2011*. Taxpayers are advised to include Form NC-5500, *Request to Waive or Reduce Penalties*, with the late payment or return and to check the box on the form that says "natural disaster," as well as filling in all the required information on the form. The NCDOR is also suspending forced collection actions until October 31 for taxpayers in the declared disaster areas, including the issuance of garnishments, tax warrants, and certificates of tax liabilities [NCDOR *Tax Relief for Victims of Hurricane Irene*, 9/1/11].

## OREGON

**Time Off.** *Effective Jan. 1, 2012*, employers are prohibited from requiring employees to use vacation, sick, or annual leave to serve on a jury. Employees must be allowed to take leave for jury duty without pay [L. 2011, H3034].

## SOUTH CAROLINA

**Withholding.** The South Carolina Division of Revenue (SCDOR) is following the federal tax relief guidelines for victims of Hurricane Irene. The relief applies to: (1) taxpayers located in the federal disaster areas (see Article 19.13); (2) taxpayers who have businesses in South Carolina and offices in the federal disaster areas whose operations have been affected by Hurricane Irene; (3) taxpayers whose tax records are located in the federal disaster areas; (4) taxpayers whose returns are prepared by tax professionals in the federal disaster areas; and (5) relief workers. Taxpayers must write "Hurricane Irene" at the top of the return, or if applicable, check the box referencing a disaster on the form and write "Hurricane Irene" beside the check box. Taxpayers should notify the DOR if they receive penalties for filing returns or paying taxes late. The SCDOR told *RIA* that the one week federal extension of September 15 deadlines to September 22 also applies to the September 15 deadline for Form WH-1601, *SC Withholding Tax Payment* [South Carolina Information Letter 11-15, 09/08/2011].

## TENNESSEE

**Garnishment.** There is now an "On-Line Garnishment Answers Interactive Form" on the Shelby County Court of General Sessions website where employers may answer non-monetary garnishment questions. The Shelby County Court of General Sessions Court will be adding an online feature for the completion of monetary answers soon.

**Unemployment.** A spokesperson for the Tennessee Department of Labor and Workforce Development (DLWD) has told *RIA* that fiscal year 2012 unemployment tax rate notices are now being mailed out to employers. Industry-specific new employer rates have also been determined for the July 1, 2011 to June 30, 2012 fiscal year. New construction employers pay 8.6%. New manufacturing sector 31 employers (food, beverage, and tobacco products, as well as textiles, leather, and apparel products) pay the standard 2.7% new employer rate. New manufacturing sector 32 employers (wood, petroleum, coal, and nonmetallic mineral products) pay 6.6%. New manufacturing sector 33 employers (metal products, machinery, computer and electronic products, electrical equipment, appliances, transportation equip-

ment, and furniture manufacturing) pay 9.1%. New mining and extraction employers pay 6.6%. The above rates include the 0.6% temporary additional premium fee.

## TEXAS

**Unclaimed Wages.** Currently, employers must file a verified report of unclaimed wages and remit payment to the State Treasurer by November 1 of each year for wages presumed abandoned as of June 30 of that year. *Effective Jan. 1, 2013*, employers must file a verified report and remit payment to the State Treasurer by July 1 of each year for wages presumed abandoned as of March 1 of that year [Texas Comptroller of Public Accounts, *Unclaimed Property Texas Updates*, 8/11].

## VERMONT

**Withholding.** The Vermont Department of Taxes (VDOT) is offering tax relief to Tropical Storm Irene victims in Vermont counties that have been declared federal disaster areas (see Article 19.13). Withholding return and remittance deadlines will be extended upon a showing of hardship. Hardship extensions will be automatically granted where recognized by the IRS. Employers may also call the VDOT at (802) 828-2551 to request an extension of the deadline [VDOT Notice, *Tax Relief for Victims of Tropical Storm Irene in Vermont*].

## VIRGINIA

**Withholding.** Governor McDonnell has authorized the Virginia Tax Commissioner to provide a one week filing and payment extension to individuals and businesses affected by Hurricane Irene. Withholding tax returns and payments for these taxpayers that have a due date, or an extended due date, of Sept. 15, 2011 will now be due on *Sept. 22, 2011*. The Virginia Department of Taxation will abate interest and any late filing or late payment penalties that would otherwise apply. Additional extensions and penalty waivers may be granted in hardship cases [Virginia Tax Bulletin 11-9, 09/06/2011; Virginia Public Document Ruling 11-156, 09/06/2011].

## WYOMING

**Unemployment.** A spokesperson for the Wyoming Department of Workforce Services (DWS) has told *RIA* that the taxable wage base for unemployment tax purposes will increase from \$22,300 to \$23,000 in 2012.



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