



2015

IRSNationwide

TaxFORUM

Employment Tax Updates



2015

IRSNationwide

TaxFORUM

Objective

At the end of this learning experience, you will be able to explain to your clients current hot topics in employment tax including BMF e-file, third party sick pay, HR 5771 legislative impact, independent contractor vs. employee, and VCSP.



Overview

- Tips vs. Service Charges
- COBRA Premium Subsidy Credit
- Voluntary Classification Settlement Program
- Additional Medicare Tax (AdMT)
- Modernized e-File system
- National Research Program
- Early Intervention Initiatives of FTD Alert System
- Provide overview of Outsourcing Payroll and Third Party Payers



2015

IRSNationwide

TaxFORUM



Tip Reporting Guidance

- Rev. Rul. 2012-18, 2012-26 I.R.B. 1032
Issued: July, 2013
Clarified long standing guidance on what constitutes tip vs. non-tip wages
- (IRC Section 3121)
- Reaffirmed that Rev. Rul. 59-252, 1959-2 C.B. 215, should be applied

2015

IRSNationwide

TaxFORUM



When Payments are Characterized as Tip Wages

All factors must be met:

- Payment must be made free from compulsion
- Customer must have the unrestricted right to determine the amount
- Payment should not be the subject of negotiation or dictated by employer policy
- Generally, customer has the right to determine who receives the payment.



2015

IRSNationwide

TaxFORUM



Employment Tax Treatment of Service Charges

Service charges or “auto-gratuities” distributed to an employee are FICA wages, not tips

- Must be reported as wages on Form W-2
- Must be subject to all applicable withholding
- Do not qualify for the 45B credit

2015

IRSNationwide

TaxFORUM



Distributed Service Charges

Common examples:

- Banquet Service Fee
- Resort or Cruise “Added Charge”
- Room Service Charge
- Large Party / Bottle Service Charge
- Contracted Luggage Assistance Charge
- Mandated Delivery Charge (Pizza/Grocery/etc.)



2015

IRSNationwide

TaxFORUM



COBRA Premium Subsidy Credit

- Very few employers remain eligible
- COBRA lines removed from Form 94X series for 2014 and forward
- To claim COBRA credit after 2013:
 - File original payroll return with no credit reflected
 - Wait two weeks
 - File amended employment tax return to claim credit



2015

IRSNationwide

TaxFORUM



Voluntary Classification Settlement Program (VCSP)

- Simple application and eligibility process
- Audit protection for past years
- Taxpayer agrees to prospectively treat a class or classes of workers as employees
- Taxpayer must include a list of workers' names and SSNs that are being reclassified
- Small payment required – just over 1% of compensation



2015

IRSNationwide

TaxFORUM

VCSP Eligibility



Eligible Businesses:

- Must have consistently treated workers as nonemployees
- Must have filed Forms 1099 for the class of workers for previous three years
- Must not be under Employment Tax examination by IRS, U.S. Department of Labor, or a state agency regarding worker classification
- Can be a tax-exempt organization or government entity



Additional Medicare Tax (AdMT) For Employers

- Applies to tax years beginning after December 31, 2012
- Withhold 0.9% AdMT on wages or compensation paid to an employee in excess of \$200,000 in the calendar year
- Line 5(d) for reporting AdMT withholding on Form 941
- Amount withheld reported with regular Medicare tax on Form W-2, Box 6

2015

IRSNationwide

TaxFORUM

AdMT Takeaways

- Employees cannot request withholding of AdMT, but may request additional income tax withholding on Form W-4
- Applies to tips if, when combined with wages, compensation is greater than \$200,000
- No employer match
- Form 8959 on Form 1040, Line 62
 - Reconcile AdMT liability
 - Reconcile AdMT withholding



2015

IRSNationwide

TaxFORUM



Modernized e-File (MeF)

- File Forms 940, 941, and 944 in single transmission file
- Receive complete information regarding location and type of each error identified
- Receive acknowledgement of transmissions processed on receipt in real time
- File balance due returns and authorize electronic funds withdrawals or credit card payment
- Continue to sign returns with IRS-issued Personal Identification Numbers (PINs)



2015

IRSNationwide

TaxFORUM



National Research Project (NRP)

- Statistical sample of 2008 – 2010 returns
- Sample size: 6,000
- Percent complete: 99%
- Issues identified
 - 1120S Officers' Compensation
 - Fringe Benefits
 - Delinquent Forms 1099
 - Worker Classification



2015

IRSNationwide

TaxFORUM



Early Intervention Initiatives

Federal Tax Deposit Alert system



2015

IRSNationwide

TaxFORUM

- FTD Alert Soft Letter Notice Expansion
 - Tests impact of alternate Alert treatments (soft notices and Revenue Officer visits) and expands the number of treatments
 - Implementation: December, 2014

Continued

- FTD Alert X Coded Pilot
 - Tests whether accelerating the timing of Alerts increases impact and identifies which taxpayers benefit most from Alerts
 - Implementation: April, 2015
- EFTPS Early Alerts
 - Modifies the FTD payment platform to create a near real-time system to identify variances in FTDs that will enable/expand treatment streams
 - Implementation: 2016



2015

IRSNationwide

TaxFORUM



Early Intervention Initiatives Benefits

- Expand early intervention program, educate taxpayers and modify taxpayer behavior to enhance compliance
- Improve Collection case selection and assignment
- Enable data-driven decisions regarding taxpayer contacts

2015

IRSNationwide

TaxFORUM



Outsourcing Payroll

Many employers outsource some or all of their payroll and related tax duties to third-party payroll service providers.

Third party payer services include:

- Withholding social security, Medicare and income tax from wages
- Timely submitting Federal Tax Deposits
- Preparation and timely filing of payroll tax returns
- Preparation and timely filing of information returns

2015

IRSNationwide

TaxFORUM



Third-Party Payer Arrangements



2015

IRSNationwide

TaxFORUM

- Payroll Service Providers (PSPs)
- Reporting Agents (RAs)
- Section 3504 Agents
- Professional Employer Organizations (PEOs)



Risks of Using Third Party Payers

In rare instances use of a third party payer can expose a business to risk of:

- Payroll tax fraud
- Late or Unfiled tax returns
- Underreported tax liabilities
- Late or Undeposited tax payments
- Limited notification if a problem arises



2015

IRSNationwide

TaxFORUM



2015

IRSNationwide

TaxFORUM

Initiatives to Mitigate Risks of Using Third Party Payers

- Dual Notice – Risks associated with Address Changes
- Electronic Federal Tax Payment System (EFTPS) Enhancements
 - Inquiry PINs
 - Email confirmation of scheduled payments



Initiatives to Mitigate Risks of Using Third Party Payers

- Creation of Form 14157, Return Preparer Complaint
 - Used by taxpayers to report suspected fraudulent activity and abusive tax schemes
- Federal Tax Deposit Alerts
 - Early Intervention Initiatives
- Trust Fund Recovery Penalty - IRC § 6672

2015

IRSNationwide

TaxFORUM



Guidance for 2015

Notice 2015-2

Employer provided transit benefits retroactive increase for 2014

Notice 2015-6

Form 8922 and third party sick pay recap reporting

Notice 2015-15

Proposed Revenue Procedure that clarifies basic requirements for a request for a consent for claims for refund

Announcement 2015-8

Application of Quality Stores Supreme Court Decision to Claims for Refund of employment taxes paid with respect to severance payments



2015

IRSNationwide

TaxFORUM



2015

IRSNationwide

TaxFORUM

Hot Topics on IRS.gov	Search Word(s)
Affordable Care Act	ACA
Annual Filing Season Program	Filing season program
Continuing education for tax pros	tax pros
E-Services – online tax tools	eservice
Identity theft	ID theft
Practitioner events on IRS.gov	Practitioner events
Tangible Property Regulations	Tangible
Third party reporting information center	Third party
SB/SE Tax Calendar	Tax calendar