

Reporter

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Summer 2016

A Newsletter for Employees

IRS alerts payroll and HR professionals to phishing scheme involving W-2s

Payroll and human resources professionals should beware of a phishing email scheme that claims to be from company executives and requests personal information on employees.

It's critical to recognize this scam and not fall for it. Cybercriminals who obtain this employee data could commit identity theft crimes including tax refund fraud, the Internal Revenue Service warns.

This phishing variation is known as a "spoofing" email. It will contain, for example, the actual name of the company chief executive officer. In this specific scam, the "CEO" sends an email to a company payroll office employee and requests a list of employees and information including SSNs.

The following are some of the details contained in the e-mails:

- Kindly send me the individual 2015 W-2 (PDF) and earnings summary of all W-2 of our company staff for a quick review.
- Can you send me the updated list of employees with full details (Name, Social Security Number, Date of Birth, Home Address, Salary).
- I want you to send me the list of W-2 copy of employees wage and tax statement for 2015, I need them in PDF file type, you can send it as an attachment. Kindly prepare the lists and email them to me asap.



This scheme already has claimed several victims. Payroll and human resources offices have mistakenly emailed payroll data to cybercriminals posing as company executives. These scam artists obtained Forms W-2, which contain Social Security numbers and other personally identifiable information.

The IRS also recently renewed a wider [consumer alert](#) for e-mail schemes after seeing an approximate 400 percent surge in phishing and malware incidents so far this tax season and other reports of scams targeting others in a wider tax community. **IRS**

What's new for filing 2016 Forms W-2 and W-3 series

New due date for filing with SSA. The due date for filing 2016 Forms W-2, W-2AS, W-2CM, W-2GU, W-2VI, W-3 and W-3SS with the SSA is now January 31, 2017, whether you file using paper forms or electronically.

Extensions of time to file. Extensions of time to file Form W-2 with the SSA are no longer automatic.

For filings due on or after January 1, 2017, you may request one 30-day extension to file Form W-2 by submitting a complete application on Form 8809, *Application for Extension of Time to File Information Returns*, including a detailed explanation of why you need additional time and signed under penalties of perjury.

The IRS will only grant the extension in extraordinary circumstances or catastrophe. See Extension to file for more information. This does not affect extensions of time to furnish Forms W-2 to employees. See *Extension of time to furnish Forms W-2 to employees* in the 2016 General Instructions for Forms W-2 and W-3, for more information. Form 8809 is available at IRS.gov.

Penalties increased. Higher penalties apply for:

- Failure to file correct Forms W-2 by the due date,
- Intentional disregard of filing requirements,
- Failure to furnish Forms W-2, and
- Intentional disregard of payee statement requirements.

The higher penalty amounts apply to returns required to be filed after December 31, 2016 and are indexed for inflation. See *Penalties* in the 2016 General Instructions for Forms W-2 and W-3, for more information.

New penalty safe harbor. Forms W-2 with incorrect dollar amounts may fall under a new safe harbor for certain de minimis errors. See *Penalties* in the 2016 General Instructions for Forms W-2 and W-3, for more information.

Same-sex marriage. For federal tax purposes, marriages of couples of the same sex are treated the same as marriages of couples of the opposite sex. The term "spouse" includes an individual married to a person of the same sex.

However, individuals who have entered into a registered domestic partnership, civil union, or other similar relationship that is not considered a marriage under state law are not considered married for federal tax purposes. For more information, see Revenue Ruling 2013-17, 2013-38 I.R.B. 201, available at https://www.irs.gov/irb/2013-38_IRB/ar07.html.

Notice 2013-61 provides special administrative procedures for employers to make claims for refunds or adjustments of overpayments of social security and Medicare taxes with respect to certain same-sex spouse benefits before expiration of the period of limitations. Notice 2013-61, 2013-44 I.R.B. 432 is available at https://www.irs.gov/irb/2013-44_IRB/ar10.html.

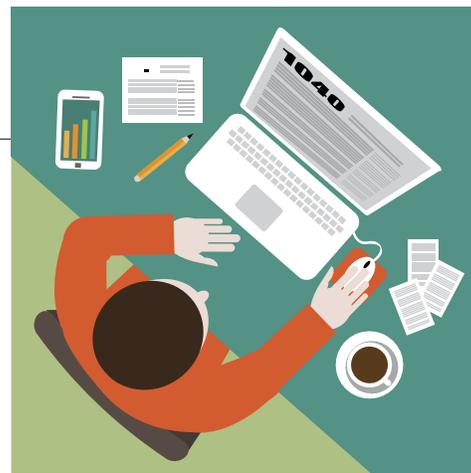
Third-party sick pay recap reporting. See Form 8922, Third-Party Sick Pay Recap, for more information about the new procedures for third-party sick pay recap reporting. Form 8922 is available on IRS.gov. 

IRS focuses on improving the taxpayer experience

As the weather gets hotter, there's no need for your temperature to rise trying to comply with your federal tax responsibilities. The IRS wants to make processes as easy as possible and has several **initiatives** aimed at improving the taxpayer experience by reducing taxpayer burden. But what would help you? The IRS would like to hear your ideas on how to improve the taxpayer experience through burden reduction.

If you have ideas about how to simplify reporting requirements, streamline IRS procedures, shorten forms or more, share them today!

Use Form 13285A, Reducing Tax Burden on America's Taxpayers, to submit your ideas. Visit the Taxpayer Burden Reduction website for more information. 



Do you owe taxes?

The IRS offers several payment options for you to pay immediately or to make arrangements to pay in installments. If you receive a bill from us, don't ignore it. A delay may cost you more in the long run. The longer you wait, the more interest and penalties you may have to pay. It's simple to make payments using IRS electronic payment options.

You can pay your tax bills directly from your checking or savings account free with IRS **Direct Pay**. You receive instant confirmation that you made your payment. With Direct Pay, you can schedule your payment up to 30 days in advance. You can change or cancel your payment two business days before the scheduled payment date.

You can pay your taxes by **debit or credit card** online, by phone or with your mobile device. Your payment will be processed by a payment processor. The IRS does not charge a fee but convenience fees apply and vary by processor.

If you prefer to pay with your mobile device, use the **IRS2Go** app to pay with either Direct Pay or debit or credit card. IRS2Go is the official mobile app of the IRS. You can download IRS2Go from Google Play, the Apple App Store or Amazon.

If you're unable to pay your tax debt immediately, you may be able to make monthly payments. Before applying for any payment agreement, you must file all required tax returns. You can apply for an installment agreement with the **Online**

Payment Agreement tool.

Who's eligible to apply for a monthly installment agreement online?

- Individuals who owe \$50,000 or less in combined tax, penalties and interest and have filed all required returns
- Businesses that owe \$25,000 or less in combined tax, penalties and interest for the current year or last year's liabilities and have filed all required returns

If you owe taxes, pay as much as you can as soon as possible to minimize interest and penalties. Visit IRS.gov/payments for all payment options. 

Use Voluntary Correction Program submission kit to correct information

This kit is for plan sponsors that maintain a pre-approved defined contribution plan but failed to adopt a new plan document by April 30, 2016 and are correcting the failure by adopting a pre-approved defined contribution retirement plan that reflects the provisions of the Pension Protection Act (PPA).

Note: Refer to a separate IRS submission kit if the plan sponsor also failed to adopt an updated pre-approved plan document by April 30, 2010 designed to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). This kit provides instructions in terms of completing of completing specific Form 14568-B items and the additional documents needed for a complete VCP submission.

IRS approval of a submission filed in accordance with this kit is not enough to restore the tax-favored status of your retirement plan if there were other failures in addition to the failure to timely adopt an PPA restated pre-approved plan document.

Other failures could include failing to amend the plan for major legislation before PPA, or failing to timely adopt required amendments for subsequent tax law changes or failing to operate the plan in accordance with its written terms. You'll need to take additional steps to correct any other failures. The Correcting Plan Errors page has resources to help you correct other errors with your plan.

Background

Sponsors of pre-approved defined contribution retirement plans were generally required to sign new plan documents, generally on or before April 30, 2016, that incorporated changes required by the Pension Protection Act (PPA). Defined contribution plans include profit-sharing plans, 401(k) plans, and money purchase pension plans. Pre-approved plans are plan documents that have been approved by the IRS and are sold to plan sponsors through law firms, banks, brokers, other financial institutions or plan administrators. The IRS issued favorable opinion letters approving these plans to the authors of these pre-approved plan documents in March of 2014 (or shortly after March 31, 2014).

Some plan sponsors have a later adoption deadline. If a plan sponsor wishes to convert an existing individually designed plan into a current defined contribution pre-approved plan they have until April 30, 2017 to adopt the pre-approved defined contribution plan.

If you, the plan sponsor, did not sign a restated defined contribution plan document as required on or before the April 30, 2016 deadline, your retirement plan is no longer entitled to tax-favored treatment. There is the possibility that the loss of tax-favored treatment may reduce your deduction for contributions paid to the plan, and would not allow your employees' to accumu-

late retirement savings, as the plan is no longer eligible for tax-favored treatment. While not required by the IRS or the federal tax code, the financial institution holding the plan assets may refuse to make distributions. If they did make distributions, such distributions would be taxable and would not be eligible for tax-free rollover.

You can restore the tax-favored status of your plan by adopting a restated PPA pre-approved plan document and filing a submission for a Voluntary Correction Program (VCP) compliance statement with the IRS. If your submission is approved, the IRS will treat the plan as entitled to tax-favored status. Your deduction is protected, and plan participants continue to build up their retirement savings on a tax-deferred basis. A copy of the VCP compliance statement, signed on behalf of the IRS will be returned to you. Keep it with the signed plan document.

Before making a VCP submission to the IRS, plan sponsors may want to check with the law firms, banks, brokers, other financial institutions or plan administrators that created the pre-approved defined contribution plan to see if they will be making a special request for a closing agreement on behalf of all adopters who missed the deadline. Refer to this other [Article, Correct the Failure to Adopt the Pre-approved Plan by the Applicable Deadline](#) for additional details. If they are then no individual VCP submission is required. If they are not then you, the plan sponsor is responsible for making an individual VCP submission to the IRS.

Learn what [items need to be submitted](#). 

IRS news is just a click away

Get IRS news in your inbox by subscribing to free [e-newsletters](#) including:

- [e-News for Payroll Professionals](#) for information about federal payroll reporting such as legislative changes, news releases, special announcements and employment tax procedures.
- [e-News for Small Businesses](#) for information of interest to small business owners and self-employed individuals such as important tax dates, reminders and tips, news releases and special announcements. 

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Comments may be sent to Gwen Dawson-Green, Editor,
Gwen.D.Dawson-Green@irs.gov

Mail: Internal Revenue Service
Small Business/Self-Employed Communications and Stakeholder Outreach
Room 1010, Product Development Group
1100 Commerce Street MC 1019 DAL
Dallas, TX 75242-1027

e-mail: SSA.IRS.REPORTER@irs.gov

Aiding employees facing hardships – options and tax ramifications

Many employers have encountered situations where an employee, who is dealing with an emergency, has exhausted available leave but still needs a paycheck. One way an employer may help an affected employee is through a leave-sharing plan. Employers may establish plans for employees dealing with medical emergencies or a “major disaster.” To properly administer these plans, employers must be aware of the tax implications for employees who donate their leave to the plans and for those who use the donated leave.

Similarly, employers that make loans to their employees must also be careful of the tax treatment of those loans. For employers with employees who are called to active military duty, there are special rules where the employer makes differential wage payments.

Medical emergencies

Under an employer’s leave-sharing plan, employees can donate a certain number of paid leave days, which are then “deposited” in a leave bank. Employees who participate in the plan and have medical emergencies can use paid leave from the bank when their own paid leave has been exhausted. Employers can restrict the number of days deposited or used for medical emergencies.

Compensation paid to employees using paid days from the leave bank is wages subject to federal income tax withholding and social security, Medicare, and FUTA taxes. Employees who donate paid leave days and then do not use any of the banked days do not receive any wages related to the amount of leave they donated, but they also cannot deduct the compensation donated from their income [Rev. Rul. 90-29, 1990-1 CB 11].

In the event of a medical emergency, donated amounts received are not taxable wages to the donor employee but instead are considered taxable wages to the recipient employee unless some other provision of the Internal Revenue Code specifies otherwise. Donating employees also may not deduct the value of the donated leave from their income.

Major disasters

In addition to a leave-sharing program for medical emergencies, employers may also institute a plan for employees who are affected by a major disaster. IRS Notice 2006-59 [2006-28 IRB 60] provides for a similar treatment of donated leave in the event of a federally declared disaster. Disasters as declared by state and local authorities do not qualify for this exception.

Under a major disaster leave-sharing plan, both the donor and the recipient must be current employees. Donors do not have wages or compensation with respect to the deposited leave, provided that the plan treats payments made by the employer to the employees using the leave as wages for purposes of federal income tax withholding and social security, Medicare, and FUTA taxes. The donor cannot claim an expense, charitable contribution, or loss deduction on account of the deposit of the leave or its use by the recipient.

IRS Notice 2006-59 also provides the following specific requirements that a valid major disaster leave-sharing plan must include:

1. The plan allows a leave donor to deposit accrued leave in an employer-sponsored leave bank for use by other employees who have been adversely affected by a major disaster. For purposes of the plan, an employee is considered to be adversely affected by a major disaster if the disaster has caused severe hardship to the employee or a family member of the employee that requires the employee to be absent from work.

2. The plan does not allow a leave donor to deposit leave for transfer to a specific leave recipient.

3. The amount of leave that may be donated by a leave donor in any year generally does not exceed the maximum amount of leave that an employee normally accrues during the year.

4. A leave recipient may receive paid leave (at his or her normal rate of compensation) from leave deposited in the leave bank. Each leave recipient must use this leave for purposes related to the major disaster.

5. The plan adopts a reasonable limit, based on the severity of the disaster, on the period of time after the major disaster occurs during which a leave donor may deposit the leave in the leave bank, and a leave recipient must use the leave received from the leave bank.

6. A leave recipient may not convert leave received under the plan into cash in lieu of using the leave. However, a leave recipient may use leave received under the plan to eliminate a negative leave balance that arose from leave that was advanced to the leave recipient because of the effects of the major disaster. A leave recipient also may substitute leave received under the plan for leave without pay used because of the major disaster.

7. The employer must make a reasonable determination, based on need, as to how much leave each approved leave recipient may receive under the leave-sharing plan.

8. Leave deposited on account of one major disaster may be used only for employees affected by that major disaster. Except for an amount so small as to make accounting for it unreasonable or administratively impracticable, any leave deposited under a major disaster leave-sharing plan that is not used by leave recipients by the end of the employer-specified time limit must be returned within a reasonable period of time to the leave donors (or, at the employer’s option, to those leave donors who are still employed by the employer) so that the donor will be able to use the leave. The amount of leave returned to each leave donor must be in the same proportion as the amount of leave donated by the leave donor bears to the total amount of leave donated on account of that major disaster.

Loans to employees

In addition to a leave-sharing program, an employer may also decide to make a loan to an employee. If the loan is made with an interest rate below the applicable federal interest rate, it is a below-market, compensation-related loan. The amount representing the difference between the interest charged to the employee and the applicable federal interest rate must be included in the income of the employee on any day in which the

combined amount of all outstanding loans between the employer and the employee is more than \$10,000.

The taxable amount is not subject to federal income tax withholding, but must be reported on the employee’s Form W-2. The taxable amount is subject to social security, Medicare, and FUTA taxes. If the employer forgives the debt, or for any other reason the employee is not expected to repay the loan, the entire balance of the loan becomes income subject to federal income tax withholding and social security, Medicare, and FUTA taxes in the year the debt is forgiven. Loans made to employees in connection with a job-related relocation to facilitate the purchase of a new residence (e.g., mortgage or bridge loans) may be tax-exempt if the move qualifies for the moving expense deduction.

Military differential pay

When an employee is on active military duty, an employer may pay the employee the difference between the pay received from the military and the pay that the employee would have received at the civilian job.

These payments are known as differential wage payments and receive special tax treatment. Under the Heroes Earnings Assistance and Relief Tax Act (Pub. L. 110-245, IRC §3401(h)), “differential wage payments” made to employees are wages for purposes of federal income tax withholding. The payments are taxed as supplemental wages because they are not payments for services for the civilian employer in the current payroll period. A differential wage payment is defined as any payment that:

- Is made by an employer to an employee for any period during which the employee is performing service in the uniformed services while on active duty for more than 30 days.
- Represents all or a portion of the wages that the employee would have received from the employer if the employee were performing services for the employer.

However, this change in the law does not apply to the social security, Medicare, and FUTA tax treatment of amounts paid to an employee who is serving in the military. For purposes of these taxes, compensation is governed by the following rules:

- If the supplemental military pay is provided while the employee is on temporary assignment with the state National Guard or the Armed Forces Reserve, it is wages subject to social security, Medicare, and FUTA taxes.
- If the supplemental military pay is provided while the employee is on active service with the U.S. Armed Forces or on an indefinite assignment with the state National Guard, the IRS treats the employment relationship as broken and the compensation is not subject to social security, Medicare, or FUTA taxes. **APA**

Stay in compliance with APA's Payroll Tax Forum

Payroll is one of the most regulated aspects of any business. The cost of noncompliance is steep. By attending an American Payroll Association (APA) Payroll Tax Forum, a one-day course offered in 18 cities nationwide, June 13 - 24, 2016, you can avoid penalties by learning about the latest payroll-related changes from Congress and federal agencies such as the IRS, SSA, DOL, and the Department of Homeland Security. If you are unable to attend a one-day

seminar, APA also offers a four-part live webinar (June 22 to July 1), or as a webinar on demand, which will be available in July.

Topics include: the health insurance data reporting required by the Affordable Care Act, the taxation and reporting of executive employee compensation, preparing for the increase to the white collar exemption minimum salary requirement, and planning for the accelerated W-2 and 1099 filing due dates.

The class also includes a review of recent legislative and regulatory changes, a review of the annually adjusted wage bases and benefit limits, and a discussion of revisions to IRS forms and publications. Payroll directors and managers, tax and compliance officers, controllers, CFOs, treasurers, and anyone else involved in your organization's payroll should not miss this opportunity. For more information, visit the APA [website](#). **APA**

New Employer Shared Responsibility Provision Estimator tool is now available

The [Taxpayer Advocate Service](#) developed the [Employer Shared Responsibility Provision \(ESRP\) Estimator](#) to help employers understand how the provision works and how it may apply to them.

The provision applies to [applicable large employers \(ALEs\)](#). Generally, this refers to employers that had an *average of at least 50 full-time employees*, including full-time equivalent employees (FTEs), during the preceding calendar year.

If you are an employer, you can use the estimator to determine:

- The number of your full-time employees, including FTEs,
- Whether you might be an ALE, and
- If you are an ALE, an estimate of the *maximum* amount of the potential liability for the employer shared responsibility payment that could apply to you based on the number of full-time employees that you report if you fail to offer coverage to your full-time employees.

Please note that this tool will only provide the above information for tax year 2016. Due to the various [Transition Relief](#) rules applicable in 2015, this tool cannot be used for tax year 2015. For information about

these rules and how to determine the payment for 2015, see the [ESRP Regulations](#).

The estimator will not report a payment estimate to the IRS or interact with your tax return or tax account information. It is intended solely as a guide to help you understand the Employer Shared Responsibility Provision. You will not report or include any ESRP payment with any tax return you may file. Instead, each year based on information from your and your employees' tax returns, the IRS will calculate the potential ESRP payment and contact you to inform you of any potential liability. You will then have an opportunity to respond before any assessment or notice and demand for payment is made.

So try this tool, anytime, to help you determine whether you are considered an ALE and whether you might be liable for a payment. It could help you plan better and possibly avoid a payment later. You can also use it anytime you have employee changes to see if those changes will affect your employer status under the ESRP provisions, so you won't be surprised later.

Another Small Business Health Care Tax Credit (SBHCTC) Estimator tool is designed just for small businesses.

If you're a small business, whether for-profit or non-profit, and you provide health insurance to your employees, you should make sure you are taking full advantage of the [SBHCTC](#) this year and in the future.

Your small business may be eligible for this credit if you:

- Employ fewer than 25 FTE employees for the tax year,
- Pay average wages of less than \$50,000 per FTE (as adjusted for inflation beginning in 2014) per year, and
- Pay at least half of employee health insurance premiums under a qualified health plan offered through a [Small Business Health Options Program \(SHOP\) Marketplace](#) or qualify for an exception to this requirement. However, the [exceptions](#) are extremely limited.

To determine if you are eligible to take advantage of the credit, use the Taxpayer Advocate Service's [Small Business Health Care Tax Credit Estimator](#). This tool will walk you through the required calculations to help you determine if you may claim the credit and get an estimate of the amount of credit allowed.

Additional ACA resources for large and small business can be found on [IRS.gov](#) using the search word "ACA". **IRS**

Increasing electronic payments to child support agencies benefits families and employers

E-mails to employers, presentations at conferences, and employer outreach are all part of the successful efforts employed by state child support agencies and the federal Office of Child Support Enforcement to promote electronic payments, or Electronic Funds Transfer (EFT), for child support. The American Payroll Association has also partnered with the child support community by including a session with information about e-payments at its annual conferences attended by more than 2,000 payroll professionals.

Annually, states provide statistics on the percent of collections that employers, Unemployment Insurance

(UI) agencies, other states, and direct payers remit electronically. In 2004, the average was 33.1 percent, and in 2015 the percentage has almost doubled to 64.7 percent. The national EFT percentage increases yearly and increased by 4.5 percent from 2014 to 2015. [Sixteen states](#) passed legislation or regulations requiring employers to remit their child support payments electronically, and these states report a higher percentage of collections through EFT. When employers remit child support payments electronically, it saves time and money, increases accuracy, and most importantly the child support gets to the families faster.

Increasing the number of electronic child support payments helps the child support community's effort to streamline collections and get money to families more quickly. For more information about converting to electronic payments for child support, [contact your state child support enforcement agency](#) or [visit Electronic Payments](#).

If you have questions, please contact Robyn Large at robyn.large@acf.hhs.gov. **HHS**