

Advanced IRS Forms Filing

Clark Fletcher
Internal Revenue Service
Bellevue
Clark.M.Fletcher@irs.gov
425 489-4042

Timothy Beard
Social Security Admin.
Seattle
Tim.Beard@ssa.gov
206 615-2125

December 8, 2011

Agenda

- W2/941 Reconciliation
- Error Avoidance
- Error Resolution
 - 941
 - W2
- Examples

Why Does It Matter?

- Inaccurate Wage And Tax Reporting May Inflate Tax Liability
 - Penalties And Interest
- Employees May Be Subject To Underreporting Enforcement
- Potentially Incorrect SS Benefits
- Negatively Impact Labor Relations
- Loss Of Public Confidence

Prevention Is the Best Defense

- Reconcile, Reconcile, Reconcile!
 - Each Payroll
 - Monthly
 - Quarterly
 - Year End
- Don't Forget AP
 - Taxable Fringe Benefits
 - "Non-Employees"

How Errors Are Discovered

- Internal Audit
- External Audit
- IRS/SSA Reconciliation
- Employees
 - Social Security Statement*
 - IRS Notices

IRS/SSA Reconciliation

- Compares Totals From W-2s With 941
 - Income Tax Withheld
 - Social Security Wages
 - Social Security Taxes
 - Social Security Tips
 - Medicare Wages And Tips
 - Medicare Taxes

Reconciliation Process

- W-2s *Less Than* 941: SSA Notice
- W-2s *More Than* 941: IRS Notice
- SSA Notices Mailed Nov-Feb For Prior TY
- Check Actual Data Sent To SSA & IRS And Reconcile Discrepancies
- Reply To Avoid IRS Penalty
- See “Employer Reconciliation Process” At www.socialsecurity.gov/employer

Corrective Steps

- 941
- 941X
 - Amends 941
 - Stand Alone Report
- W2s
 - Submit If Employee Omitted
- W2Cs
 - Use If Prior W2 Incorrect
- All May Be Necessary

W2Cs

- Can Correct ID Data Or Money Amounts
- If Money Corrections, Show Original Amount And Correct Figure
- No Deadline
- Electronic Filing Options
 - www.socialsecurity.gov/employer
 - File Upload
 - Fill-in The Form-W2C Online
 - All Open Years
- W3C Required If Use Paper Forms

Form 941 Corrections

Federal Insurance Contribution Act (FICA) Wages And Taxes

- Amounts are subject to adjustments within the three year statute of limitations period (4/15/20xx)
- Amounts are credited in year of earnings

Form 941 Corrections

Form 941-X Effective January 1, 2009
For All Prior Tax Periods

Stand-alone Processing Form

Only Process Available For Making Adjustments And Claiming Refunds (Overpayments)

Form 941 Corrections

PROCESSES CHANGES

Corrections Will Be Made To Both The Prior Tax Period Wages And Liability
Current Period Liability will not be Affected

Forms 843 And 941-C are Obsolete
Certifications Specific to 1) Adjustment Process or 2) Claims Process

Form 941 Corrections
Treasury Decision 9405 –
Amends The Regulations Under Sections 6205, 6402, 6413, and 6414 to Provide Process for Adjustments Or Claims and Changes Interest Due Dates

Form 941 Corrections
Corrections Of Underpayments
Not subject to Interest if:
1. Current Form 941 Is Timely Filed;
2. Liability Is Paid When Form 941-X Is Filed
3. Entry Of Date When Error Was Discovered; And
4. Provides Detailed Information To Support Correction

Form 941 Corrections
Corrections Of Underpayments
Underpayment Is Due When Form 941-X Is Filed
• EFTPS
• Check Or Money Order
• Credit Card (For Most Forms)
Timely Payment Will Satisfy The Deposit Obligations With Respect To The Adjustment

Form 941 Corrections

Exceptions To Interest-Free Treatment

- Prior Audit
- Knowingly Underreported
- Notice And Demand (Final Demand letter)
- Notice Of Determination Of Worker Classification (Letter 3523)

Form 941 Corrections

Misclassified Employees

- Employer failed to file a tax return for a Return Period solely because the Employer failed to treat any individuals as employees
- Employer can make an interest-free adjustment to report the tax due with respect to the reclassified workers.

Form 941 Corrections

Misclassified Employees – Form 941 not filed

1. Prepare Form 941 w/zero amounts
2. Write "Misclassified Workers" across the top of the form
3. Prepare Form 941-X w/reportable amounts
4. Make EFTPS to correct quarter
5. File Form 941 w/Form 941-X attached

Form 941 Corrections

Corrections Of Overpayments

Employer choice to file:

1. an adjusted current quarter Form 941*; or
2. Claim for refund or adjusted employment tax return on Form 941-X, depending on when the original Forms 941 were filed.

(*Note: Method#1 Is For Errors Discovered In A Prior Payroll Period Within The Same Tax Quarter)

Form 941 Corrections

Corrections of Overpayments

Refund Claims Subject To 90-day Rule

- "Presumptive" due date For Forms 941 – 4/15/XXXX\
- Period Of Limitation – 3 years after return was filed OR 2 years after tax was paid
- Claim MUST be filed on, or after, January 15th

Form 941 Corrections

Example – Claim for Refund:

On 1/10/2011, a wage overpayment Is discovered on 4th quarter of 2008 and the employees are notified.

On 1/31/2011, the employees submit written certifications and receive their overpaid FICA taxes and W-2Cs.

Form 941-X must be filed as a Claim for Refund and can not be used as an off-set to the 4th quarter of 2010 Form 941's Liabilities.

Form 941 Corrections

Example 1 (Wage Overpayments)

On December 24, 2010, a wage overpayment error is discovered on the October 25, 2010 payroll.

Remedy?

Form 941 Corrections

Example 1 (Wage Overpayments)

Remedy: Upon repayment of wages in the same tax quarter, adjust current payroll wages to report the correct amounts of tax (internal adjustment).

W2: No affect

Form 941 Corrections

Example 2 (Wage Overpayments)

On October 24, 2011, a wage overpayment error is discovered on the March 25, 2011 pay period.

Remedy?

Form 941 Corrections

Example 2 (Wage Overpayments)

Remedy: Upon repayment of the wages in same tax year, prepare Form 941-X to reflect the correct wages and taxes paid in the prior tax quarter.

W2: No affect

Form 941 Corrections

Example 3 (Wage Overpayments)

On February 1, 2012, a wage overpayment was discovered in the December 24, 2011 pay period

Remedy?

Form 941 Corrections

Example 3 (Wage Overpayments)

Remedy: Upon repayment of the wages in subsequent tax year, prepare Form 941-X to reflect the correct FICA* wages and taxes for each prior tax quarter

**Because employee had use of the money in a prior tax year, the FITW wages and taxes are NOT corrected. The employee can claim repaid wages on the Forms 1040.*

Form 941 Corrections

Example 3 (Wage Overpayments)

W2: Only FICA wage and tax adjustments are permitted as a prior tax year adjustments

- Reconcile amounts on Forms W-2C, W-3C, and 941-X
- Issue and file Forms W-2C, W-3C, and 941-X

Form 941 Corrections – No Certificates

Example 4 (Wage Overpayments)

W2: Adjust FICA wages but do not adjust employee's FICA taxes

- Reconcile wage amounts on Forms W-2C, W-3C, and 941-X
- Issue and file Forms W-2C and W-3C
- File 941-X to recover employer's FICA taxes only

Form 941 Corrections

Wage Overpayments Summary

Corrections completed and reported in the same tax quarter or same tax year should not affect any of the amounts reported on Forms W-2

Why?

Form 941 Corrections

Wage Overpayments Summary

Current Tax Quarter

- Internal Adjustment: all wages and taxes

Prior Tax Period

- Same Tax year: 941-X, all wages and taxes
- Prior Tax Year: 941-X, W2-C, and W-3 FICA Wage and tax adjustments

Form 941 Corrections

Wage Underpayments

Wages are subject to Federal Income Tax Withholding when made available to the employee, immaterial of the year in which the services were performed by the employee upon which the wages were based.

Form 941 Corrections

Wage Underpayments

Wages are subject to FICA Taxes when made available to the employee, Immaterial of the year in which the services were performed by the employee upon which the wages were based *BUT*

Special SSA reporting rules for Back Pay Under Statute.

Form 941 Corrections

Wage Underpayments

Back pay

- Statutory - Settled under a statute* to enforce worker's protection laws (i.e., FLSA, NLRA, ADEA, ADA, Etc.)
- Non-statutory - Settled under any other basis

**statutes may arise from state or federal legislation*

Form 941 Corrections

Wage Underpayments

Non-statutory Back Pay

- Treat as supplemental wages for Federal Income Tax and FICA tax purposes
- Include in current quarter's Form 941 wages
- Issue and file W-2/W-3 or W-2C/W-3C (even if no longer employed)

Form 941 Corrections

Wage Underpayments

Back Pay Under A Statute

- SSA Credits Contributions When Earned
- IRS Credits Income When Received

Back Pay Under A Statute

SSA Special Reporting Rules

- Detail Of payments earned by employee(s) in the prior year
- Individual or consolidated report
- SSA-131
- IRS Pub. 957

Form 941 Corrections

Wage Underpayments Back Pay Under Statute

- Treat As supplemental wages for Federal Income Tax and FICA Tax purposes
- Include in current quarter's Form 941 wages
- Issue and file W2

Form 941 Corrections

Wage Repayments

- Treat As Wage Overpayments

Form 941 Corrections

Exercise:
A class-action lawsuit was filed by a labor union on 3/31/2009 on behalf of its older employees claiming age discrimination. On 1/31/2011, the Agency settled the lawsuit for \$60,000 and, in the spirit of goodwill, settled a long-standing grievance for \$10,000 for lost overtime pay in 2008.

What are the reporting requirements?

Form 941 Corrections

Answer:

- Treat As Wages On Current Quarter's Form 941
- File special report with SSA for employees subject to the age discrimination settlement

EXAMPLE - REPORTING PRIOR PERIOD CORRECTION ON FORM 941-X

- Employer over-reported Social Security wages by \$4,500 on Form 941 for the 4th Quarter 2008, due to a transposition error.
- Error discovered on 2/11/2009
- Employer checks the Box In Part 1 Line 1 of Form 941-X For "Adjusted Employment Tax Return".
- Employer wants to claim the \$558 as a credit for the 1st Quarter 2009.

Form 941 Corrections

SUMMARY
Form 941-X is a stand-alone form used to:

1. Claim a credit on the current quarter's Form 941 for an overpayment of wages in a prior tax period;
2. File a claim for a refund of an overpayment of wages in a prior tax period; or
3. Report taxes on under-reported wages in a prior tax period

Form 941 Corrections

SUMMARY

Corrections spanning one tax year or more usually require the issuance of amended Forms W-2 because of changes to the employee's social security earnings

Form 941 Corrections

Example 1:
On January 10, 2011, an arbitrator awards back pay to employees brought under an union contract provision that spans the past three years.

How is the back pay reported?
Is Form 941-X required?

Form 941 Corrections

Example 2:

On December 1, 2010, a state agency settled a complaint brought under the American Disabilities Act and paid an employee back wages for a denied promotion in the prior year.

How is the back pay reported?
Is Form 941-X required?

Form 941 Corrections

Example 3:

During a state audit, an over-reporting of wages for the 2009 was discovered on September 1, 2010. The employee agreed to repay the wages in installments via a payroll deduction agreement.

What actions are required?

Resources

IRS

- Federal, State And Local Government
 - www.irs.gov/govt/fslg
- Tax-Exempt/Government Entities Hotline
 - 1-877-829-5500
- Martinsburg Computing Center
 - www.mccirp@irs.gov
 - 1-866-455-7438
- Publications And Forms
 - www.irs.gov
 - 1-800-829-3676

Resources

SSA

- State And Local Government Employers
 - www.socialsecurity.gov/slge
- www.socialsecurity.gov/employer
 - Employer Reporting Service Center
 - 800 772-6270
