

AMERICAN PAYROLL ASSOCIATION

June 15, 2018

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2018-43) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
www.regulations.gov (IRS-2018-0010)

Re: Public Comments Invited on Recommendations for 2018-2019 Priority Guidance Plan, Notice 2018-43

Dear IRS/Department of the Treasury:

Thank you for allowing the American Payroll Association (APA) to comment on the 2018-2019 Priority Guidance Plan (Notice 2018-43). APA's comments focus on tax administration and employee understanding of federal tax requirements. Specific comments focus on requested recommendations in Notice 2018-43 about published administrative guidance. APA is also offering additional comments for purposes of awareness.

ABOUT APA

APA is a professional organization serving the interests of more than 21,000 payroll professionals nationwide. Our primary mission is to educate members about the laws and regulations that impact payroll operations, including tax administration. APA's advocacy goals center on reduced administrative burden for government, employers, and individual workers.

SPECIFIC COMMENTS ON THE PRIORITY GUIDANCE PLAN

Electronic Capabilities for Form 1099-MISC

Recently, the IRS published a Notice of Proposed Rulemaking regarding aggregation of information returns for purposes of meeting the mandatory electronic filing threshold (RIN 1545-BN36). A key goal of this rulemaking is to reduce the number of paper Forms 1099-MISC received by the IRS. APA recommends that the IRS issue guidance creating a free, direct-to-the-IRS e-filing service for Forms 1099-MISC to accommodate smaller employers without the resources to engage third parties in helping them file through the IRS's Filing Information Returns Electronically (FIRE) system. A free-filing service for original and corrected Forms 1099-MISC will increase accuracy and is a cost savings for employers and the IRS.

Electronic Capabilities for Filing the Amended Form 94x Series

APA is requesting electronic filing capabilities for amendments to the Form 94x series, *Employer's Federal Tax Returns*, related forms, and corresponding schedules to increase efficiency for both the IRS and employers. Including the principal form and all of the related schedules and forms is important because employers are less likely to file returns electronically if all components of the filing cannot be filed together. This also reduces processing time and the potential for lost information.

The accelerated deadline requiring employers to report Forms W-2, *Wage and Tax Statement*, to the Social Security Administration (SSA) by January 31 significantly increased the volume of Form W-2c filing. Because of the increase in Form W-2c filing, the volume of corrected Form 94x series and related forms and schedules filed with the IRS also rose dramatically.

Although an employer can upload a Form W-2c file electronically to the SSA, which is then transmitted electronically to the IRS, the corresponding Form 94x series corrections must be filed on paper with the IRS. The lag time between these two filings (electronic and paper) creates an unnecessary administrative and cost burden for payroll departments and employers.

Electronic Capabilities for Levies

APA supports system modernization initiatives undertaken by the IRS and Treasury Department. Of particular interest is the electronic delivery of IRS tax levies to employers and the capability for employers to submit electronic payments to the IRS for amounts withheld from their employees through required payroll deductions.

Currently, employers receive IRS paper documents (Form 668-W, *Notice of Levy on Wages, Salary, and Other Income*) in the mail and are required to submit levy payments by paper check each pay period to the IRS. This manual process is very labor intensive for employers, particularly for midsized and larger employers that receive tens of thousands of these withholding orders and submit hundreds of millions of dollars in payments to the IRS each year.

APA is requesting a new e-levy system that would utilize current methodologies and processes that already exist within another government agency. For example, through a program at the federal Office of Child Support Enforcement in partnership with state agencies, electronic Income Withholding Orders for Child Support (e-IWO) are received by employers and electronic payments are made by electronic funds transfer. Both of these highly automated processes have been successfully used nationwide and save employers and state agencies countless amounts of time and resources by relying on current and proven technology to streamline, control, and enhance the current process.

The IRS has undertaken a facsimile pilot program regarding tax levies, but this is not the system-to-system approach preferred by employers. Employers must still print and process a levy

as though it arrived in the mail. In fact, the IRS could greatly benefit from a fully integrated electronic system that would reduce the cost of managing levies.

Continuing Items from Earlier Years

The following issues are still pending before the IRS and require resolution:

- Guidance on employer-provided meals under IRC §§ 119 and 132,
- Guidance on procedures under IRC § 7436 for IRS determination of employment versus independent contractor status,
- Finalization of regulations proposing the permissible truncation of employees' Social Security numbers on Form W-2, *Wage and Tax Statement*,
- Finalization of proposed regulations governing cafeteria plans under IRC § 125,
- Finalization of proposed regulations governing the inclusion of income from nonqualified deferred compensation plans under IRC § 409A, and
- Guidance under IRC § 6053 regarding tips.

ADDITIONAL COMMENTS

Improved Outreach and Guidance

APA greatly appreciates the increased outreach undertaken by the IRS regarding the Tax Cuts and Jobs Act. However, messaging, guidance, regulations, and forms and related instructions are not always written in a manner appropriate for employers and employees to understand. This difficulty can increase exponentially if there is a time gap between when employees make changes to withholding at their places of work and the consequences of that action. For example, if an employee completes a new Form W-4, they may not see the full effect of the changes until filing a Form 1040, *Individual Income Tax Return*, many months later when it may be too late to avoid penalties for underwithholding.

An undue and unnecessary burden is placed on employers and payroll departments when employees do not understand withholding and filing requirements. Although employers and payroll departments cannot offer tax advice, they can serve as an advocate for the IRS to distribute information and direct employees to IRS resources. However, directing employees to IRS guidance and resources is ineffective if employees only read part of the requirements or stop reading when they don't understand.

APA recommends that the IRS and Treasury Department work more closely with stakeholders on outreach and guidance language well before the agencies have finalized information. APA acknowledges that some agency activities cannot be shared in advance of final agency decisionmaking, yet, to the extent possible, we would like to be of greater assistance in developing instructions and guidance that are easier for employees.

APA continues to enjoy an excellent working relationship with the IRS and Treasury Department to ensure compliance with tax policy and administration. With 70.1 percent of tax collections coming from wage withholding and employer taxes (*2017 IRS Data Book*), IRS implementation of U.S. tax policy is extremely important to APA and its members.

Sincerely,

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