

# 2009

## YEAR END PAYROLL ISSUES SEMINAR



Feeley & Driscoll, P.C. | 200 Portland Street | Boston, MA 02114  
November 13, 2009 | [www.fdcpa.com](http://www.fdcpa.com)



**Why should payroll tax be  
important to you?**

# Penalty for Failure to Deposit Taxes

## Penalty Assessed Against:

- Company, Owners, Officers and/or Employees
- Trust Fund Taxes-Responsible person can become personally liable

## Amount of Penalty:

- Tax Penalty is 100% of the Payroll Tax Due
- 10% Penalty for Late Deposit



# A Framework for Payroll Taxes

- ❑ Establish Employer Liability for Payroll Taxes
- ❑ Determine Worker Classification
- ❑ Determine “Covered Employment”
- ❑ Determine Taxable Compensation
- ❑ Withhold Fed & State Income taxes and FICA
- ❑ Deposit Employee and Employer Payroll Taxes
- ❑ File Quarterly/Monthly Payroll Returns
- ❑ File Annual Payroll Returns



# Who are **NOT** Employees?

- Partners of Partnerships
- Members of Limited Liability Companies
- Independent Contractors



# Why the IRS Cares

- Retirement Benefits
- Fringe Benefits
- Social Security
- Unemployment
- Family Medical Leave Act
- Income Tax Withholdings
- Eliminates Business Expense Write-offs



# Employee vs. Independent Contractor

- Control vs. Independence
- Consistent Treatment
- Massachusetts Differences

(See **Exhibit 1**)



# Independent Contractor

- Form 1099-MISC.:
  - \$600 or more in calendar year payment for services
  - Reimbursed expenses of independent contractor included on 1099
  
- Incorporation exception not applicable to attorneys



# 2009 & 2010 U.S. Social Security Wage Bases

## Taxable Wage Base (Maximum Annual Taxable Compensation) Applicable To:

	<u>2009</u>	<u>2010*</u>
Social Security	\$106,800	\$106,800
Medicare	Unlimited	Unlimited

\* Possible changes in the future for healthcare surtax under the current administration

# 2009 & 2010 Social Security Rates

## Tax Rate (Employee and Employer Each)

### Applicable To:

	<u>2009</u>	<u>2010</u>
Social Security	6.20%	6.20%
Medicare	<u>1.45%</u>	<u>1.45%</u>
Total	7.65%	7.65%



# 2009 & 2010 Unemployment Wage Base

## Tax Rate (Employer Only) Applicable To:

	<u>2009 &amp; 2010</u>
Federal Unemployment (Gross Wages)	\$7,000 *
State Unemployment (Gross Wages)	\$14,000 **

\*At a rate of .008 (after credit for SUT)= \$56 per employee

\*\*Based on each employer's experience rate



# What is Gross Salary?

- Wages
- Bonus
- Taxable Fringe Benefits
- Stock in a Corporation or equity in partnerships or LLCs.

(Other Compensation **See Exhibit 2**)



# What is **NOT** Taxable Compensation?

## □ Certain Fringe Benefits:

- Employer Paid Health Insurance
- Employer Paid Retirement Contributions
- Education Expenses (not in excess of \$5,250)

(\* See Exhibit 3)

## □ Employee Contributions for:

- Cafeteria Plans
- 401(k) and 403(b) Contributions

## □ Qualified transportation expenses

## □ Reimbursed Expenses under “Accountable Plan”



# Disability Benefits

- If employer paid disability benefits received was on a *pre-tax* basis then the benefits received by the employee would be includible in taxable income.
- If employer paid disability benefits received was on an *after-tax* basis then the benefits received by the employee would be excluded from taxable income.



# Disability Benefits Procedural Requirements

For the benefits to be excludible from the taxpayer's income the following must be done:

- The employer has to amend the written plan, so that the employee may irrevocably elect to have the employer pay for the coverage on an after-tax basis.
- The election is irrevocable once the plan year begins, and must be made prior to the plan year in which it becomes effective.
- The plan can provide for an election that continues year after year or until the employee revokes the election.

# Qualified Parking & Pass Limitations

## Qualified Transportation Fringe:

□ <b><u>Federal*</u></b>	<b><u>2010</u></b>
Vehicle/Transit Pass Limit	\$230
Qualified Parking Limit	\$230
Bike Commuter Limit	\$ 20
(New as of 2009)	
□ <b><u>Mass*</u></b>	
Vehicle/Transit Pass Limit	\$230
Qualified Parking Limit	\$230

\*Estimated as numbers have not yet been adjusted for inflation

# Employee Expense Reimbursement

## General Rule (Non Accountable Plan/No Substantiation):

Taxable To Employee, Added To W-2

## Accountable Plan/Substantiation:

- ▣ Reimbursement is Taxable On Excess
- ▣ Must Be A Written Plan



# Accountable Plans

## Employees must meet all of 3 rules:

- Incurred expense while performing services
- Account to employer within a reasonable time (60 days)
- Returned amounts in excess of expense within a reasonable time (120 days)



# Non Accountable vs. Accountable

	<b>Non-</b>	
	<u>Acct.</u>	<u>Acct.</u>
Expense Allowance	\$3,600	\$3,600
<input type="checkbox"/> Amount Substantiated	<u>0</u>	<u>2,400</u>
<input type="checkbox"/> W-2 Amount	\$3,600	\$1,200

Note: W-2 Amount Subject to FICA,  
Medicare and Income Taxes



# Revenue Ruling 2005-52

- Rev. Rul. 2005-52 deals with tool allowances paid to employees by employers.
  - These allowances cannot be considered to be provided under an accountable plan.

(See **Exhibit 4** )



# Type of Reimbursements

## For Use Of Employee's Auto:

- Mileage, Tolls, Parking:

2009

2010

58.5

58.5 (As of now)

- Travel (Airfare, Cabs)
- Meals, Lodging (Per Diem **Exhibit 5**)

# Substantiation of Business Expenses by Employees

- Complete Monthly Expense Report and require inclusion of receipts

(See Exhibits 6 through 12)



# Taxable Fringe Benefits

- Personal Use of Company Owned Auto
- Transportation Benefits
- Group Term Insurance
- Shareholders Health Insurance (S Corps Only)
- Officer's Life and Disability Insurance



# Personal Use of Company Owned Auto

- Commuting Value--EE < \$175k
- Annual Lease Value--Owner and EE > \$175k

(See Exhibit 6-12)



(Note: Subject to FICA, Medicare and Income Taxes)

# Annual Lease Value Calculation

## Personal Use of Company Owned Auto

- A uses a corporate owned vehicle. The fair market value of the vehicle is \$35,000. A determines the personal use of the auto to be 20%.

Annual Lease Value for a \$35,000 auto	\$9,250
Personal use percentage (From Log)	<u>20%</u>
Amount includible in A's W-2 gross income	\$1,850

# Annual Lease Value Table

## Automobile Fair Market Value

- \$0 to 999
- 1,000 to 1,999
- 2,000 to 2,999
- 3,000 to 3,999
- 4,000 to 4,999
- 5,000 to 5,999
- 6,000 to 6,999
- 7,000 to 7,999
- 8,000 to 8,999
- 9,000 to 9,999
- 10,000 to 10,999
- 11,000 to 11,999
- 12,000 to 12,999
- 13,000 to 13,999
- 14,000 to 14,999
- 15,000 to 15,999
- 16,000 to 16,999
- 17,000 to 17,999
- 18,000 to 18,999

## Annual Lease Value

- 600
- 850
- 1,100
- 1,350
- 1,600
- 1,850
- 2,100
- 2,350
- 2,600
- 2,850
- 3,100
- 3,350
- 3,600
- 3,850
- 4,100
- 4,350
- 4,600
- 4,850
- 5,100



# Annual Lease continued

## Automobile Fair Market Value

## Annual Lease Value

19,000 to 19,999	5,350
20,000 to 20,999	5,600
21,000 to 21,999	5,850
22,000 to 22,999	6,100
23,000 to 23,999	6,350
24,000 to 24,999	6,600
25,000 to 25,999	6,850
26,000 to 27,999	7,250
28,000 to 29,999	7,750
30,000 to 31,999	8,250
32,000 to 33,999	8,750
<b>34,000 to 35,999</b>	<b>9,250</b>
36,000 to 37,999	9,750
38,000 to 39,999	10,250
40,000 to 41,999	11,250
44,000 to 45,999	11,750



# Annual Lease continued

## Automobile Fair Market Value

## Annual Lease Value

46,000 to 47,999	12,250
48,000 to 49,999	12,750
50,000 to 51,999	13,250
52,000 to 53,999	13,750
54,000 to 55,999	14,250
56,000 to 57,999	14,750
58,000 to 59,999	15,250

For vehicles having a fair market value in excess of \$59,999, the Annual Lease Value is equal to:  $(.25 \times \text{the fair market value of the automobile}) + \$500$ .



# Group Term Life

- Amount > \$50,000
- Age
- GTL Amount vs. Premium Paid
- Subject to FICA, Medicare and Income Taxes



# Calculation of Fringe Benefit

X Corporation pays premium on a \$70,000 group term life insurance policy on the life of its president A. A is 50 years old. The IRS established uniform cost \$1,000 of group term coverage is \$2.76 (\$.23 X 12). The cost of the policy includible in A's gross income is computed as follows:

Total insurance coverage	\$70,000
“Tax free insurance coverage”	<u>(50,000)</u>
Insurance coverage subject to tax	<u>20,000</u>
Excess Coverage / \$1,000 = \$20,000 / \$1,000 =	.....20
Group term coverage premium (\$.23x12)	X <u>2.76</u>
Taxable cost of policy includible in A's	
W-2 gross income (20 x \$2.76)	\$55.20
Actual Premium Paid (\$253.72 x (2/7))	\$72.49

# Group Term Life Insurance Fringe Benefit

Cost Per \$1,000 of Protection for One-Month Period

<u>Age</u>	<u>Cost</u>
Under 30	6¢
30 through 34	8¢
35 through 39	9¢
40 through 44	10¢
45 through 49	15¢
<b>50 through 54</b>	<b>23¢</b>
55 through 59	43¢
60 through 64	66¢
65 through 69	\$1.27
70 and above	\$2.06



# Special Rules

---

## Special Rules Can Apply

Certain Expenses are includible as Salary;  
Others are excluded



# Additional Wages for Owners

- 2% S Corp. Shareholder Health Insurance must be included in the W-2 box 1 and box 14, subject to Federal and State income tax; however, it is not subject to FICA/Medicaid and should not be included in box 2&3
  - Available as a deduction on the shareholder's personal income tax return.
- Officers' Life & Disability Premiums
  - Subject To All Three Withholdings
  - Tax insurance disability premium should make future disability benefit non-taxable

# Multi-State Withholding

- US workforce is more mobile and it is not uncommon to find employees that work in several states for one employer in a single year
- In which state do you withhold?
  - The Default Rule
    - Where services are performed
  - Rule One
    - Residency
  - Rule Two
    - Reciprocity
  - Rule Three
    - Resident/Nonresident Taxation Policy



# Work State vs. Resident State

- Step One
  - ▣ Determine state of residence
    - Not necessarily “home” state
      - Resident by either being domiciled in the state or spending more than a certain number of days in the state
- Step Two
  - ▣ Reciprocal agreement:
    - Allows you to withhold in the state of residence instead of where services are performed (See [Exhibit 13](#))
- Step Three
  - ▣ Resident/Non-Resident taxation policies
    - If resident of one state, performing services in another and no reciprocal agreement, you must consider the laws of both states.
      - State of residence is important in this determination

# Payroll Taxes For Workers Abroad

- Must withhold taxes, including FICA (Social Security & Medicare)
- Tax Treaty Exclusions- Depends on the country
- Section 911 Exclusion
  - Employee must complete Form 673 to exclude Federal Income Tax Withholding on Foreign Earned Income & Housing Exclusion wages
  - FICA Taxes must generally still be withheld

(See **Exhibit 14**)



# Federal Tax Levies Withholding

- If an employer receives a Notice of Levy on Wages, Salary, and Other Income, the employer **MUST** withhold certain amounts from employee wages
- Only bankruptcy orders & child support take precedence over these federal tax levies
- Failure of the employer to remit wages to the IRS subject to levy results in liability to the employer for the wages withheld, plus penalties and interest

( See **Exhibit 15** )



# Child & Medical Support Withholding

- Employers are required to withhold state ordered child support and medical support for that child
- Uniform Interstate Family Support Act (UIFSA) requires that employers comply on out of state orders as well

(See **Exhibit 16**)



# Reporting of Benefits on W-2's

22222		Void <input type="checkbox"/>		a. Employee's social security number		For Official Use Only ▶ OMB No. 1545-0048	
a. Employer identification number (EIN)				1 Wages, tips, other compensation		2 Federal income tax withheld	
				3 Social security wages		4 Social security tax withheld	
c. Employee's name, address, and ZIP code				5 Medicare wages and tips		6 Medicare tax withheld	
				7 Social security tips		8 Allocated tips	
d. Control number				9 Advance EIC payment		10 Dependent care benefits	
				11 Nonqualified plans		12a See instructions for box 12	
e. Employee's first name and initials		Last name		Suff.		12b	
						12c	
f. Employee's address and ZIP code		13 13(a) Any employer		14 Other		12d	
						12e	
15 State Employer's state ID number				16 State wages, tips, etc.		17 State income tax	
18 Local wages, tips, etc.				19 Local income tax		20 Local name	

Form **W-2** Wage and Tax Statement **2009** Department of the Treasury—Internal Revenue Service  
 Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable.  
 For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D.  
 Cat. No. 10-30D

Do Not Cut, Fold, or Staple Forms on This Page — Do Not Cut, Fold, or Staple Forms on This Page

(See Exhibit 17 & 18)



Visit us on the web: [www.fdcpa.com](http://www.fdcpa.com)

Or Call: 888-875-9770

# Retirement Plan Distribution Reporting

- Generally, Plan Administrator Prepares
- Issue Form 1099-R To Employee & IRS
- Issue Notification Of Distribution Options to Employee



# Electronic Federal Tax Payment System (EFTPS)

- Penalty: 10% Of ALL Deposits not E filed
- Threshold > \$200,000 Of all taxes
  - If threshold is met in a calendar year, EFTPS is required in the second succeeding calendar year
- Phone#: 1-800-945-8400
- Web site: [www.eftps.gov](http://www.eftps.gov)

(See Exhibit 19)



# Massachusetts Electronic Filing Requirements

- In MA, all corporations must file their returns and pay their income taxes electronically if gross income is more than \$100,000.
  - ▣ Effective for payments made on or after January 1, 2005
- Partnerships with gross income of \$50,000 or more, \$50,000 or more in ordinary loss or with 25 or more partners must file electronically.
  - ▣ Effective January 1, 2005
- All pension payments must file and pay electronically.
  - ▣ Effective January 1, 2005
- All new businesses (as of September 1, 2003) must file and pay electronically.
  - ▣ Effective January 1, 2004



# Massachusetts Electronic Filing Requirements Continued

- Employers with 50 or more employees must submit wage reports electronically.
  - ▣ Effective January 1, 2005
  
- For wage withholding, room occupancy and sales/use taxes must be filed and paid electronically if the total is \$10,000 or more for the previous year.
  - ▣ Effective January 1, 2004
  
- A business filing entity must register for the E-file program, the registration procedure can be found at the Webfile for business link at <https://wfb.dor.state.ma.us/webfile/>. There is a \$100 penalty for failure to file, report or pay electronically. Failure to use the electronic method will be deemed a failure to file.



# IRS Grants Relief to Businesses

- Businesses may designate their estimated income tax overpayments as employment tax deposits - **helps cash flow**



# W-4 for 2009

- When First Hired
- Changes in Personal Situation
- Bonus Withholding Minimum:
  - Federal 25% (could be under withheld and may need to withhold more)
  - Massachusetts 5.3%
- Nanny tax

(See Exhibit 20, 21, 22)



# Payroll Forms-Federal

## Quarterly Reports

- 941
  - Due
    - 1/31
    - 4/30
    - 7/31
    - 10/31

## Annual Reports

- W-2
  - Due - 1/31
- W-3
  - Due - 2/28
- 940
  - Due - 1/31
- 1099
  - Due - 1/31
- 1096
  - Due - 2/28



# Payroll Forms-Federal

## Quarterly Reports

- DET Form 1
- WR-1
- M-941/M-942

## Annual Reports

- Copies of 1099/1096
  - Due 2/28

### All Forms Due:

1/31

4/30

7/31

10/31

47



# Year-End Payroll Activities



(See **Exhibit 23** for details)



# New IRS Web Tool

## IRS Retirement Plans Navigator

<http://www.retirementplans.irs.gov/>

- A side-by-side chart compares all the main features of these plans, including details on how the plan is set up and operated, maximum contributions, and accessibility features (i.e., whether loans and hardship withdrawals are allowed).
- Clicking on one of the types of plans covered calls up a list of its essential features, plus links for more information on how the plan works, operating it and correcting errors.

(See [Exhibit 24](#) for details)



# Employment Tax Audits

- IRS announced its plans to conduct Employment Tax Audit of 6,000 Businesses over the next several years.
- The audits will occur under the umbrella of the IRS's National Research Program on employment taxes.
  - ▣ The program will focus on four areas:
    - Worker classification,
    - Non-filers,
    - Fringe benefits,
    - Officer compensation.
- The IRS will examine businesses organizations of all types, including pass-through entities.

(See **Exhibit 25** for details)



# Mass Healthcare Reform Act

- On July 1, 2007, most Massachusetts residents 18 and older were required to have health insurance.
- Employers are required to contribute to the solution. The new legislation requires that employers "play or pay."

(See [Exhibit 26](#))

# Mass Healthcare Reform Act

- Employers with 10 or fewer employees
  - ▣ No requirements or need to pay a “Fair Share” fee per employee.
  - ▣ Can opt to purchase or make insurance available to employees through the Connector.
- Employers with 11- 50 employees
  - ▣ Must provide health insurance coverage or pay a “Fair Share” fee of up to \$295 annually per employee
    - The fee will be pro-rated for temporary or seasonal employees.
  - ▣ Required to offer a Section 125 “cafeteria plan” to their employees
  - ▣ Can purchase or make insurance available to their employees through the Connector.
  - ▣ May be subject to the free-rider penalty.
- Employers with 51 or more employees
  - ▣ Same as employers with 11- 50 employees.
    - Except: Employers in this range can purchase or make insurance available through the Connector for part-time or seasonal workers ONLY.



# Federal Health Care Reform

- November 7, the House of Representatives (220-215) approved H.R.3962, the Affordable Health Care for America Act. The House bill faces tough opposition in the Senate, which is considering its own version of health care reform.
  - 5.4% surtax on AGI over \$500,000 (\$1 million MFJ);
  - A tax on individuals who don't have acceptable health care coverage;
  - A change preventing nontaxable reimbursements from health flexible spending accounts, health reimbursement arrangements, and health savings accounts for a medicine or drug unless it is prescribed or is insulin;
  - A \$2,500 cap on health flexible spending arrangements in cafeteria plans;
  - A boost in the penalty for nonqualified distributions from health savings accounts to 20%;
  - Employers who offer coverage would contribute at least 72.5% of premiums for workers, 65% for families.
  - Employers not offering qualified coverage would pay a payroll tax equal to 8% of their payroll to help cover expenses of employees who seek coverage



# List of Handouts

---

1. Employee/Independent Contractor Factors
2. Items of Non-payroll Compensation
3. Employee's Income/Exclusion for Employer-provided Educational Assistance
4. IRS Revenue Rulings
5. Per Diem Rates
6. Employee Personal Automobile Usage
7. Monthly Statement for Employees Receiving Auto Expense Reimbursement
8. Handout Sample of an Expense Report
9. Personal Use of Company Owned Auto
10. Fringe Benefit Compensation Value for Employer-provided Auto
11. Handout Sample of Mileage for Employee Business Auto Use
12. Written Policy Statement
13. State Tax Reciprocal Agreements
14. Payroll Taxes and Withholding Requirements for U.S. Citizens and Resident Aliens Working Abroad
15. Federal Tax Levies
16. Child and Medical Support Withholding Orders
17. Copy of W-2
18. W-2 Preparation
19. EFTPS Payment Instruction Booklet
20. Copy of W-4
21. Employee Payroll Information Sheet
22. Payroll Change Form
23. Year-End Payroll Activities
24. IRS Pension Plan Tool & Pension Plan Limits 2010
25. Employment Tax Audits Tips Article
26. Massachusetts Healthcare Reform Information
27. Copy of W-9