



2011

YEAR END PAYROLL ISSUES SEMINAR

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HIRE Act Tax Incentives

- Employers who hired unemployed workers after Feb. 3, 2010, and before Jan. 1, 2011 may have qualified for exemption from the employer's 6.2% share of Social Security tax on wages paid to these workers after March 18, 2010.
- Eligible workers are individuals who were unemployed for 60 days or more prior to hire date

HIRE Act Tax Incentives

- Businesses may also NOW claim a new hire retention business credit of up to \$1,000 per worker on their 2011 CORPORATE income tax return IF RETAINED FOR AT LEAST ONE YEAR.
- The new law requires that the employer get a statement from each eligible new hire certifying that he or she was unemployed during the 60 DAYS before beginning work OR worked no more than 40 hours for anyone during the 60-day period. This statement is Form W-11. (Exhibit 1)
- Form W-11 needs to be filled out and signed by the worker.



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
- 2% - 15% Penalty for Late Deposit

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
- Income Tax Withholdings

Employee vs. Independent Contractor

- Control vs. Independence
 - ▣ Make sure there is a written plan.

- Consistent Treatment

- Massachusetts Differences

(See **Exhibit 2**)

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

New Development

Voluntary Classification Settlement Program

- ❑ Old Section 530 relief – only applied during audit
- ❑ New VCSP – outside of audit
- ❑ When treating workers or class of workers as independent contractors

Eligibility:

- ❑ Consistently treated as independent contractor
- ❑ Filed all 1099s
- ❑ Not under IRS/DOL audit
- ❑ Must prospectively treat as employees

New Development

Voluntary Classification Settlement Program

Benefits:

- Penalty is 10% of employment taxes
 - FICA 10.28% & Medicare 3.24%
- No interest assessed
- SOL extended for 3 years

Handouts/References:

- Form 8952 & instructions – (see Exhibit #1)
- IRS Announcement 2011-64 (10/11/11)
- IRS News Release 2011-95 (9/21/11)

New Development

Voluntary Classification Settlement Program

Issues & Concerns:

- Prior years for DOL, states, and employee suits
- IRS & DOL have memorandum of understanding to share information on misclassification issues...will VCSP information be shared?
- Minimum wage & OT violations
- State unemployment tax & worker's compensation
- Employee benefits including ERISA

2011 & 2012 U.S. Social Security Wage Bases

Taxable Wage Base (Maximum Annual Taxable Compensation)

Applicable To:

	<u>2011</u>	<u>2012</u>
Social Security	\$ 106,800	\$ 110,100
Medicare	Unlimited	Unlimited

2011 & 2012 Social Security Rates

Tax Rate (Employee)

Applicable To:

	<u>2011</u>	<u>2012</u>
Social Security	4.20%	6.20%
Medicare	<u>1.45%</u>	<u>1.45%</u>
Total	5.65%	7.65%

*Effective 2013, Medicare tax will increase to 2.35% for “high income” individuals

2011 & 2012 Social Security Rates

Tax Rate (Employer)

Applicable To:

	<u>2011</u>	<u>2012</u>
Social Security	6.20%	6.20%
Medicare	<u>1.45%</u>	<u>1.45%</u>
Total	7.65%	7.65%

2011 & 2012 Unemployment Wage Base

Tax Rate (Employer Only) Applicable To:

2011 & 2012

Federal Unemployment (Gross Wages)	\$7,000 *
Mass Unemployment (Gross Wages)	\$14,000 **

*At a rate of .008 = \$56 per employee

**Based on each employer's experience rate

What is Gross Salary?

- Wages
- Bonus
- Taxable Fringe Benefits
- Stock Options

(Other Compensation **See Exhibit 3**)



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 4)

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

Qualified Parking & Pass Limitations

Qualified Transportation Fringe:

□ <u>Federal</u>	<u>2012</u>
Vehicle/Transit Pass Limit	\$125/month
Qualified Parking Limit	\$240/month
□ <u>Mass*</u>	
Vehicle/Transit Pass Limit	\$125/month
Qualified Parking Limit	\$240/month

*Assuming MA follows Federal rules

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

	<u>Non- 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

Type of Reimbursements

For Use Of Employee's Auto:

- Mileage, Tolls, Parking:

<u>1/1 – 6/30/11</u>	<u>7/1 - 12/31/11</u>	<u>2012</u>
51.0	55.5	55.5

- Travel (Airfare, Cabs)
- Meals, Lodging (Per Diem **Exhibit 6**)

Substantiation of Business Expenses by Employees

- Complete Monthly Expense Report and require inclusion of receipts

(See Exhibits 7 through 13)

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 < \$195k
- Annual Lease Value--Owner and EE > \$195k

(See Exhibit 7-13)



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

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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

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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
34,000 to 35,999	9,250
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

Group Term Life Insurance Fringe Benefit

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

<u>Age</u>	<u>Cost</u>
Under 25	5¢
25 through 29	6¢
30 through 34	8¢
35 through 39	9¢
40 through 44	10¢
45 through 49	15¢
50 through 54	23¢
55 through 59	43¢
60 through 64	66¢
65 through 69	\$1.27
70 and above	\$2.06

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;
 - 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 14](#))
- 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

Non-resident Withholdings

- ❑ **Massachusetts, Rhode Island and Vermont require withholdings from residents and nonresidents performing services within their States without any exceptions.**
- ❑ Nonresident individuals who work in the State of **Maine** are not subject to the State's withholding laws if they perform services in the State for 10 days or fewer.
- ❑ **The State of New York** does not require withholding on wages paid for services performed in the State for a short time and if the wages will not exceed the employee's personal exemption.
- ❑ **California** measures their withholding liability for nonresident individuals on a specified dollar amount earned in the State.



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 15**)

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 16**)

Child & Medical Support Withholding

- Employers are required to withhold state ordered child support and medical support for that child

(See **Exhibit 17**)

Reporting of Benefits on W-2s

22222		Void <input type="checkbox"/>	a Employee's social security number		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number (EIN)			1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and ZIP code			3 Social security wages		4 Social security tax withheld	
			5 Medicare wages and tips		6 Medicare tax withheld	
			7 Social security tips		8 Allocated tips	
d Control number			9		10 Dependent care benefits	
e Employee's first name and initial		Last name	Suff.	11 Nonqualified plans		12a See instructions for box 12
f Employee's address and ZIP code			13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b	
			14 Other		12c	
					12d	
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 Locality name	

Form **W-2** Wage and Tax Statement

2011

Department of the Treasury—Internal Revenue Service
For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D.

Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable.

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

(See Exhibit 18 & 19)



IRS Grants Relief to Businesses

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

W-4 for 2011

- When First Hired
- Changes in Personal Situation
- Nanny tax

(See [Exhibit 21](#), [22](#), [23](#))

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

Year-End Payroll Activities

(See [Exhibit 24](#) 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 25** for details)

Employment Tax Audits

- In early 2010, the IRS announced that it expects to expand its auditing activities by embarking on a 3-year campaign that will audit 6,000 businesses both big and small.
- While some companies deliberately mis-classify their workers in order to escape offering health insurance and 401K plans to their employees, some business owners are flat out confused as to how to correctly classify their employees

List of Handouts

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

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