# Congress' present to payroll: Accelerated W-2 filing deadlines, parity for mass transit benefits and more

Congress has passed two amendments to H.R. 2029—the Protecting Americans from Tax Hikes Act of 2015, or PATH Act, which is the tax extenders bill, and an omnibus spending bill. The PATH Act accelerates the filing date for both paper *and* electronic Forms W-2s and 1099-MISC to Jan. 31, beginning with forms filed in 2017. It also extended several key payroll provisions.

**W-2/1099-MISC provisions**

In addition to pushing up the W-2/1099-MISC filing deadline, the PATH Act authorizes the IRS to issue regulations that will allow you to truncate employees' Social Security numbers (SSNs) on their W-2s. Payees' SSNs may already be truncated on Forms 1099-MISC.

Since you must file forms on the same day they're due to payees, the PATH Act establishes a safe harbor from penalties for failing to file correct forms and for failing to provide payees with correct statements. Under the safe harbor, you won't be liable for penalties if the error for any single amount is $100 or less ($25 or less in the case of errors involving tax withholding or backup withholding).

*Even better:* You don't have to send corrected forms to payees, unless they ask for them.

*Flip side:* You remain on the hook for penalties if payees request corrected statements. This provision is effective for forms required to be filed after Dec. 31, 2016.

This accelerated, combined filing deadline, however, doesn't apply to other information returns, such as the health care information returns—Forms 1095-C and 1095-B.

**Permanent tax extenders**

The PATH Act permanently extends three key payroll provisions:

- Parity between qualified parking benefits and mass transit benefits; parity is restored retroactive to 2015. For 2016, the monthly amount you may exclude from employees' incomes is $255
- The 20% employer wage credit for military differential pay. The credit has been expanded, so that it applies to employers of any size, rather than to employers of 50 or fewer employees. This provision is effective for tax years beginning after Dec. 31, 2015
- The current small business expensing limitation and phase-out amounts under tax code Section 179. The special rule that allows expensing for computer software is also permanently extended. The limitation and phase-out amounts are indexed for inflation, beginning in tax years after 2015.

### Long-term extenders

The PATH Act extends the Work Opportunity Tax Credit through 2019. For employees hired after Dec. 31, 2015, it also expands the eligible groups to include the long-term unemployed.

*Who are they:* Individuals who have been unemployed for 27 weeks or longer and who have received unemployment benefits.

### Cadillac tax delayed

The omnibus spending bill delays the onset of the 40% excise tax on high-cost health plans, called the Cadillac tax, which is a provision of the Affordable Care Act. The Cadillac tax will now be delayed two years, until 2020.

### Special payroll issues related to retroactive parity for mass transit benefits

Extending parity retroactively creates a nightmare for Payroll, if you provided mass transit benefits in excess of the 2015 monthly amount before it was retroactively increased, and you treated those amounts as taxable wages, which was the proper tax treatment at the time.

*Flip side:* If you stuck to the pre-retroactive monthly amount, you're off the hook, since your tax treatment was correct at the time.

If you provided mass transit benefits in excess of the pre-retroactively increased amount, employees will be overwithheld for 2015. It's useful to take a look back at what the IRS did regarding refunds of overwithheld FICA taxes related to the retroactive increase in the tax-free amount of mass transit benefits in the past, since it's likely that future guidance will closely track what it's done in the past.

*Important:* If the IRS is nimble enough to release guidance this year, you will need to refund the overwithheld income taxes and FICA taxes to employees. If the IRS issues guidance next year, you'll only be able to refund the excess FICA taxes and employees will deal with the overwithheld income taxes on their 2015 1040s.

For the fourth-quarter Form 941, the IRS created a special administrative procedure that applied to overwithheld FICA taxes only. Under this special procedure, you were required to do the following:

- If you hadn't yet filed your fourth-quarter Form 941, you had to repay or reimburse employees their overwithheld FICA taxes for the entire year before you filed your fourth-quarter Form 941. On the 941, you reduced fourth-quarter wages, tips and other compensation reported on Line 2, taxable Social Security wages reported on Line 5a (up to the taxable wage base) and Medicare wages and tips reported on Line 5c by the overwithheld amount for all quarters of the year. Using this special procedure eliminated the need to file Form 941-X. You didn't need to obtain statements from employees.
- If you had already filed your fourth-quarter Form 941, or you couldn't repay or reimburse all of your employees, the normal Form 941-X procedure applied: File Form 941-X for each quarter you're correcting, repay or reimburse employees first, and get their consent to file a claim on their behalf, before you file Form 941-X.

For W-2s, these steps were required:

- If you hadn't yet furnished employees with their W-2s by the time you paid them back, you accounted for the increased exclusion in Boxes 1, 3 and 5. If you repaid or reimbursed employees, you reduced the amount of withheld taxes reported in Boxes 4 and 6. The amount reported in Box 2 remained unchanged.
- If you hadn't yet filed your W-2s, and you repaid or reimbursed employees, you checked the Void Box at the top of each incorrect W-2 (Copy A), and prepared new W-2s for employees with the word

'CORRECTED' written on the top of copies B, C and 2.

- If you had already filed your W-2s, you had to issue Forms W-2c to employees, and file Forms W-2c/W-3c, to take into account the decreased FICA taxes.

A note to our loyal readers: This is the last blog post of 2015. Have a happy holiday season and New Year, and thank you for support.


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