

An employer's guide to the President's fiscal year 2015 budget



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On March 4, 2014, the [Administration's Fiscal Year 2015 Budget](#) was released to Congress, less than a week since the House Ways and Means Committee published a discussion draft on proposed tax reforms. (See *EY Payroll Newsflash*, Vol. 15, #42, 2-28-2014.)

From an employer's perspective, the 2015 budget is very similar to previous years except for the noteworthy additions of an accelerated due date for filing information returns (e.g., Forms W-2 and 1099-MISC), provisions that further eliminate the filing of paper tax returns, and an expansion of income subject to the self-employment tax. (*General Explanations of the Administration's Fiscal Year 2015 Revenue Proposals*, 3-4-2014.)

A matrix summarizing the employer provisions of this year's budget begins on [page 4](#).



January 31 deadline for filing Forms W-2 and 1099

In 2011, as a response to the increase in tax refund scams, the IRS unveiled its vision for a "Real Time Tax System," where Forms W-2 and 1099 are available at the start of the tax filing season. Under the current system, individual taxpayers receive their information statements on January 31, but information returns aren't due until as late as March 31. This filing regime forces the IRS to use a look-back method for matching Forms W-2 to individual tax returns.

Throughout 2012, the IRS solicited commentary from stakeholders about the feasibility of accelerating the filing deadline for information returns to January 31. Business groups, such as the National Payroll Reporting Consortium (NPRC) identified numerous challenges businesses would face in meeting this earlier filing deadline, including the likely increase in Forms W-2c because of eliminating the essential gap between when employees receive their information statements and when information returns are filed.

Click [here](#) for a copy of NPRC's feasibility white paper.

The 2015 budget proposal is the first since 2011 in which the Administration makes a formal proposal to change the due date for filing information returns. Specifically, Forms W-2 would be due to the Social Security Administration and Forms 1099 to the IRS no later January 31, whether filed on paper or electronically.

At the same time, it is also proposed that the Treasury and IRS be given latitude to lower the 250-return threshold at which electronic filing is mandatory.

Unemployment insurance

Similar to last year, the Administration is proposing to address the continued insolvency of state unemployment insurance (UI) trust funds by raising the federal unemployment insurance (FUTA) wage base to \$15,000 starting in 2017 and indexing it each year thereafter based on wage growth. The purpose of this proposal is to force more than 30 states to increase UI tax by raising their UI wage base to the \$15,000 federal minimum.

In 1976, a temporary 0.2% surtax was added to the federal unemployment insurance (FUTA) rate. The surtax was extended numerous times until it was allowed to lapse effective July 1, 2011. The Administration again proposes to reinstate the 0.2% surtax and to make it permanent effective with wages paid on or after January 1, 2015.

So that employers aren't subject to an increase in their FUTA tax because of the increase in the FUTA wage base, the budget also calls for lowering the net FUTA tax rate from 0.8% (0.6% plus the reinstated temporary surtax of 0.2%) to 0.37% effective in 2017.

The budget again addresses concern about the adverse impact of higher UI tax on job growth by proposing a two-year (2014 and 2015) waiver of interest charges applicable to states that continue to carry a federal UI loan balance. For 2014 and 2015, the FUTA credit reduction paid by employers in states carrying a UI loan balance would also be waived.

Worker misclassification

The budget again includes provisions to address the issue of incorrectly treating employees as independent contractors, including a provision allowing the IRS to issue more definitive guidance concerning worker classification. The Section 530 protections for misclassified workers would be prospectively removed, and businesses would be required to provide notice to independent contractors concerning the consequences of their classification (tax, workers' compensation, minimum wage and overtime, etc.).

Self-employment tax

Similar to the House Ways and Means draft proposal for tax reform, the Administration is proposing that individual owners of professional service businesses organized as S corporations, limited partnerships, general partnerships, and LLCs taxed as partnerships be equally subject to self-employment tax (SECA). The House Ways and Means proposal would treat 70% of materially participating business owners' income (their compensation plus their share of the business earnings) as net earnings from self-employment (subject to SECA). By comparison, the Administration proposes to treat 100% of income from material participation (generally defined as 500 hours per year) as subject to SECA.

Unlike the Camp proposal, the administration proposes that SECA apply only to taxpayers that materially participate in entities that perform services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, investment advice or management, brokerage services and lobbying

Identity theft

The budget proposes several strategies for combatting tax refund schemes involving identity theft, including civil penalties, more jail time for fraudsters and allowing employers to truncate the Social Security Number (SSN) on the Form W-2. Businesses have also requested that the law allow for the truncation of the Employer Identification Number (EIN) on Forms 1099 and Forms W-2 to reduce instances where the EIN is used to perpetrate fraud; however, this measure is not included in the 2015 budget.



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Employer provisions of the administration's fiscal year 2015 budget

Subject area	Provision	Proposed effective date
(A) Wage reporting		
Accelerated filing due date 	The deadline for filing Forms W-2 and 1099 (except Form 1099-B) would be set at January 31, whether filed on paper or electronically. Form 1099-B would be required to be filed with the IRS by February 15. The due dates for the payee statements would remain the same.	January 1, 2015
Truncation of the Social Security Number	IRC §6051 would be revised giving Treasury and the IRS authority to allow for the reporting of only the last four digits of the Social Security Number (SSN) on Forms W-2 and similar wage and tax statements, thereby allowing for similar truncation currently allowed on other information statements (e.g., Form 1099).	Upon enactment
(B) Electronic filing		
Tax return 	All corporations and partnerships with \$10 million or more in assets would be required to file their returns electronically. Regardless of asset size, corporations with more than 10 shareholders and partnerships with more than 10 partners would be required to file their tax returns electronically.	January 1, 2015
Information returns 	The IRS would be given the authority to reduce the threshold at which electronic filing of information returns is required to fewer than 250 (e.g., Forms 1042-S, 1099, 1098, 1096, 5498, 8805, and 8966).	January 1, 2015
Penalties	An assessable penalty would apply for failure to comply with a requirement of electronic (or other machine-readable) format for a return that is filed on paper. The penalty would be \$25,000 for a corporation or \$5,000 for a tax-exempt organization. For failure to file in any format, the existing penalties would remain, and the proposed penalty for failing to file electronically would not apply. The penalty would be waived if it is shown that the failure to file electronically is due to reasonable cause.	January 1, 2015
(C) Unemployment insurance		
FUTA tax rate	Reinstate the FUTA surtax of 0.2% and make it permanent (increasing the minimum FUTA rate from 0.6% to 0.8%). Effective in 2017, reduce the net FUTA rate from 0.8% to 0.37%.	January 1, 2015; January 1, 2017
FUTA wage base	Increase FUTA wage base from \$7,000 to \$15,000 and index the amount each year thereafter based on wage growth. (The state unemployment wage base cannot be less than the FUTA wage base.)	January 1, 2017
Waiver of FUTA loan interest and FUTA credit reduction	Waive the interest owed by states on federal UI loans and the FUTA credit reduction that applies to employers in states with an outstanding federal loan balance of two or more years.	2014 and 2015
(D) Identity theft and fraud prevention		
Stiffer criminal sanctions	Tax-related identity theft would fall under the Aggravated Identity Theft Statute (Title 18 and Title 26), subjecting identity thieves to longer sentences than under the current law.	Upon enactment
Civil penalty	The Internal Revenue Code would be amended to include a \$5,000 civil penalty on individuals in identity theft cases involving a fraudulent return. A separate civil penalty would apply to each incident of identity theft with no maximum penalty.	Upon enactment
National Directory of New Hires	The IRS would be allowed access to quarterly wage detail available in the National Directory of New Hires (NDNH) for general tax administration purposes, including data matching, verification of taxpayer claims during return processing, preparation of substitute returns for noncompliant taxpayers, and identification of levy sources. Currently, IRS access to the NDNH is limited to purposes of administering the earned income tax credit (EITC) and verifying employment reported on a tax return.	Upon enactment

Subject area	Provision	Proposed effective date
(E) Employer tax credits		
Work Opportunity Tax Credit (WOTC)	The WOTC would be made permanent effective after December 31, 2013.	January 1, 2014
 WOTC – Veterans	The definition of qualified veterans for purposes of WOTC would be revised to include disabled veterans who use G.I. Bill benefits to attend a qualified educational institution or training program within one year of being discharged or released from active duty and are hired within six months of ending attendance at the qualified educational institution or training program. Qualified first-year wages of up to \$12,000 paid to such individuals would be eligible for the WOTC.	January 1, 2015
Indian employment credit 	The Indian employment credit would be made permanent. In addition, for tax years beginning after December 31, 2014, the credit would be equal to 20% of the excess of qualified wages and health insurance costs paid or incurred by an employer in the current tax year over the amount of such wages and costs paid or incurred by the employer in the base year. The base-year costs would equal the average of such wages and costs for the two tax years prior to the current tax year.	January 1, 2014; January 1, 2015
Small-business health insurance tax credit	The current small-business health insurance tax credit would be expanded to include employers with up to 50 full-time equivalent employees and would begin the phaseout at 20 full-time equivalent employees. Modifications to the tax credit would be made to ensure that employers with fewer than 50 employees and an average wage less than \$50,000 would be eligible for the credit, even if they are nearing the end of both phaseouts. The requirement that an employer make a uniform contribution on behalf of each employee would be eliminated, as well as the limit imposed by the rating area average premium.	January 1, 2014
(F) Independent contractors		
Certified Taxpayer Identification Number (TIN)	Businesses would be required to verify the TIN of all contractors receiving \$600 or more in payments in a calendar year with the IRS. If the name and TIN supplied by the contractor on Form W-9 doesn't match IRS records, the business would be required to withhold federal income tax.	January 1, 2015
Guidelines for application of the common-law test	The Department of the Treasury and the IRS would be permitted to issue general guidance on the proper classification of workers under the common-law test. They would also develop guidance providing safe harbors and/or rebuttable presumptions, both narrowly defined. To make that guidance clearer and more useful for service recipients, the guidance would generally be industry- or job-specific.	Upon enactment
Required notices to independent contractors	Businesses would be required to give notices to independent contractors when first engaged to perform services that include how they are being classified and the consequences (e.g., tax implications, coverage for workers' compensation, wage and hour law exclusion).	Upon enactment
Share worker reclassification information	The IRS would be permitted to disclose to the U.S. Department of Labor information about businesses whose workers were reclassified.	Upon enactment
Voluntary income tax withholding	Independent contractors with payments totaling \$600 or more in a calendar year would be permitted to request that the business withhold federal income tax at a flat percentage of gross (15%, 25%, 30% or 35%) as selected by the contractor.	January 1, 2015
Classification enforcement remedies (expansion of VCSP and more)	The reduced penalties for worker misclassification under current law (and, presumably, the existing Voluntary Classification Settlement Program, or VCSP) would be retained; however, lower penalties would apply if a business voluntarily reclassifies its workers before being contacted by the IRS or another enforcement agency and if the business met the Form 1099 reporting requirements. In addition, businesses with only a small number of employees and a small number of misclassified workers would be eligible for a waiver if the business (1) had consistently filed Forms 1099 reporting all payments to all misclassified workers and (2) agreed to prospective reclassification of misclassified workers. Finally, future enforcement efforts would focus mainly on obtaining the proper worker classification prospectively.	Generally, upon enactment

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Subject area	Provision	Proposed effective date
(G) Coordination of federal and state income tax		
Extend federal statute of limitations for state and local tax adjustments	The standard three-year statute of limitations for federal tax purposes would be extended to take into consideration a longer period that may apply for state or local tax assessments. States provide the IRS with reports of potential discrepancies between state and federal returns. It is proposed that the standard three-year statute of limitations would be extended to the greater of: (1) one year from the date the taxpayer first files an amended tax return with the IRS reflecting adjustments to the state or local tax return; or (2) two years from the date the IRS first receives information from the state or local revenue agency.	January 1, 2015
Federal refund offset for state income tax	It is proposed to permit the offset of federal refunds to collect state income tax, including nonresident income tax.	Upon enactment
(H) Employee leasing		
Liability for employment tax	Standards would be established as to when to hold employee leasing companies jointly and severally liable with their clients for federal employment taxes and when to hold employee leasing companies solely liable for such taxes. Note that the IRS issued proposed regulations in 2013 setting forth standards as to when employee leasing companies and their clients are severally liable. (See EY Payroll Newsflash, Vol. 14, #036, 1-30-2013.)	January 1, 2015
(I) Penalties		
Punitive damages	Deductions would be disallowed for punitive damages whether paid upon a judgment or in settlement of a claim. Further, damages paid or incurred by an insurer would be included in the gross income of the insured person and the insurer would be required to report those payments to the IRS.	January 1, 2016
Willful failure to file return 	Currently, willful failure to file a tax return is a misdemeanor punishable by a term of imprisonment of not more than one year, a fine of not more than \$25,000 (\$100,000 in the case of a corporation), or both. It is proposed that to willfully fail to file tax returns in any three years within any five-consecutive-year period, and if the aggregated tax liability for such period is at least \$50,000, would carry with it a new aggravated failure to file criminal penalty that would be classified as a felony. Upon conviction, a fine may be imposed of not more than \$250,000 (\$500,000 in the case of a corporation) or imprisonment for up to five years, or both.	January 1, 2015
Indexing of penalties	All IRS penalties would be indexed to inflation and rounded to the next hundred dollars.	Upon enactment

Subject area	Provision	Proposed effective date
(J) Retirement plans		
Automatic enrollment mandatory employee IRA plans	<p>Employers in business for at least two years that have more than 10 employees would be required to offer an automatic IRA option to employees, under which regular contributions would be made to an IRA on a payroll-deduction basis. Employers sponsoring a qualified retirement plan, SEP or SIMPLE plan would be excluded from the requirement.</p> <p>Small employers (those that have no more than 100 employees) that offer an automatic IRA arrangement could claim a temporary nonrefundable tax credit for the employer's expenses associated with the arrangement of up to \$500 for the first year and \$250 for the second year. In addition, these employers would be entitled to an additional nonrefundable credit of \$25 per enrolled employee up to \$250 for six years.</p>	January 1, 2016
Small-employer pension plan start-up cost credit	The current "start-up costs" tax credit for a small employer that adopts a new qualified retirement, SEP or SIMPLE plan would be doubled from the current maximum of \$500 per year for three years to a maximum of \$1,000 per year for three years and extended to four years (rather than three) for any employer that adopts a new qualified retirement plan, SEP or SIMPLE plan during the three years beginning when it first offers (or first is required to offer) an automatic IRA arrangement.	January 1, 2016
Limit on retirement savings	<p>Currently, the maximum benefit permitted to be paid under a qualified defined benefit plan in 2014 is generally \$210,000, adjusted for increases in the cost of living. The maximum benefit limit is reduced if distributions begin before age 62 and is increased if distributions begin after age 65.</p> <p>It is proposed that similar limits be applied pursuant to the combined amount an individual contributes or in accruals received in a tax-favored qualified defined contribution plan (i.e., IRAs, 401(k), 403(b), funded 457(b) plans). According to the President's budget, the maximum permitted accumulation for an individual age 62 is approximately \$3.2 million.</p>	January 1, 2015
(K) Self-employment tax		
 Self-employment tax	<p>It is proposed that individual owners of professional service businesses organized as S corporations, limited partnerships, general partnerships, and LLCs taxed as partnerships be equally subject to self-employment tax (SECA), with 100% of income from material participation (generally defined as 500 hours per year) subject to SECA.</p> <p>"Professional service businesses" would be defined as partnerships, S corporations or other entities taxed as partnerships, substantially all the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts and consulting (fields similar to those referenced in Sec. 448(d)(2)(A)), as well as athletics, investment advice or management, brokerage services and lobbying.</p>	January 1, 2015

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