Top 10 Form W-2 reporting questions for 2013
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By Debera Salam (CPP), Thomas Meyerer and Deborah Spyker, Ernst & Young LLP; and Brian Farrington, Esq., Contributing Editor

By popular request, the following are the Form W-2 most frequently asked questions (FAQs) posed to our Ernst & Young LLP payroll and employment tax professionals for tax year 2013.

FAQ 1  What are the corrective steps if an employer failed to correctly withhold the Additional Medicare Tax of 0.9% in 2013?

FAQ 2  What are the corrective steps if it is discovered at the close of 2013 that an employee contributed too much to the qualified retirement plan (e.g., 401(k))?  

FAQ 3  How are employer-provided dependent care benefits reported on Form W-2?

FAQ 4  Is there a dollar threshold at which Forms W-2 are not required?

FAQ 5  Are we required to report wages and benefits made available to terminated or retired employees on Form W-2 or Form 1099?

FAQ 6  If we withheld too little FICA tax for the year, can we deduct the difference from federal income tax withholding for Form W-2 and Form 941 reporting purposes?

FAQ 7  Can we charge employees for replacement Forms W-2/W-2c?

FAQ 8  Can we report in box 2, federal income tax withheld, amounts employees paid to us by personal check?

FAQ 9  What are the reporting requirements for taxes we paid on behalf of our employees in 2014 pursuant to a 2013 wage payment?

FAQ 10  What do we do if employees do not yet have their Social Security numbers at the time we are required to issue or file Forms W-2?

For more information, or if you require any additional assistance with year-end reporting, write to Debera Salam at debera.salam@ey.com or Thomas Meyerer at thomas.meyerer@ey.com.
**FAQ 1**

**What are the corrective steps if an employer failed to correctly withhold the Additional Medicare Tax of 0.9% in 2013?**

**Facts.** We did not realize until preparing the 2013 Forms W-2 that we failed to withhold the Additional Medicare Tax of 0.9% from wages paid to one of our executives. What can we do now to correct this error?

**Answer.** Similar to federal income tax withholding, errors made in withholding the Additional Medicare Tax cannot be corrected after the close of the tax year. Consequently, adjustments to the tax cannot be reflected on Form W-2c, unless due to an administrative error.

In final regulations (TD 9645) governing the Additional Medicare Tax, the IRS explained that employers are not liable for the Additional Medicare Tax they fail to withhold, provided employees subsequently pay the tax. Even if not liable for the tax, an employer that does not meet its withholding, deposit, reporting, and payment responsibilities for Additional Medicare Tax may be subject to all applicable penalties.

Employers must demonstrate that the employees paid the tax by using Form 4669, Statement of Payments Received, and Form 4670, Request for Relief from Payment of Income Tax Withholding. (IRC §3102(f)(X3).) These are the same forms used for requesting federal income tax withholding relief. Note that the IRS is revising these forms to include the Additional Medicare Tax.

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**FAQ 2**

**What are the corrective steps if it is discovered at the close of 2013 that an employee contributed too much to the qualified retirement plan (e.g., 401(k))?**

**Facts.** We discovered in the process of preparing our 2013 Forms W-2 that some employees contributed on a pretax basis in excess of $17,500 in 2013. What steps do we take now to correct this error?

**Answer.** Excess pretax contributions to a qualified retirement plan discovered after the close of the tax year cannot be adjusted using Form W-2c. Instead, the plan is required to refund the excess to the employee.

It is not unusual for some employees to have made excess pretax contributions (i.e., elective deferrals) to a qualified IRC §401(k), §403(b) or §457(b) plan, either because of contributions made under the plans of other employers in a tax year or because of a payroll system or other error of the employer. The employee is responsible for communicating information regarding excess deferrals so that a corrective distribution can be made by the deadline of the first April 15 following the close of the individual’s tax year. (Reg. §1.402(g)-1(e)(2)(i).) The plan administrator will issue a Form 1099-R for the deferral year to report the amount of the excess deferral that is taxable in the deferral year. The plan administrator will issue a second Form 1099-R for the distribution year to report the amount of earnings being distributed.

If the corrective distribution of the excess deferral is not made on or before April 15 following the end of the employee’s tax year in which the deferral occurred, then the excess deferral generally may not be paid out as a corrective distribution. Rather, the excess deferral is “trapped” in the tax-qualified plan until a distributable event permitted under IRC §401(k)(2)(B) (and in accordance with the written terms of the plan). The effective penalty to the employee for failing to communicate the excess deferral to the employer in time to allow for a timely correction on or before April 15 following the end of the employee’s tax year in which the deferral occurred is that the employee will be taxed twice on the amount: (i) the excess deferral amount is subject to taxation for the year of deferral (because it was an invalid deferral) and (ii) the excess deferral amount will be subject to income taxation a second time for the year in which the amount is distributed from the tax-qualified retirement plan. (Reg. §1.402(g)-1(a) and -1(e)(8)(iii).)

Treasury regulations and other guidance set forth explicit instructions for making corrective distributions and reporting those distributions on information returns/statements. Failure to comply with these guidelines can have consequences for the employer, the employee and/or the plan itself.
FAQ 3
How are employer-provided dependent care assistance benefits reported on Form W-2?

**Facts.** Under our fringe benefits policy, we offer two types of dependent care assistance benefits. All employees may elect to contribute to a dependent care flexible spending account on a pretax basis under our cafeteria plan. Their pretax election cannot exceed $5,000 per year (or $2,500 if they are married, filing separately and their spouse also has the same benefit). Additionally, we have contracts with two day-care facilities that employees may use in the event of an emergency or a work scheduling conflict (e.g., the regular day-care provider is ill, or the employee is asked to work when the regular day-care provider is not expected to be available).

How are the pretax contributions and day-care subsidies reported on Form W-2?

**Answer.** Qualified dependent care assistance benefits in excess of $5,000 per employee per year ($2,500 in the case of a married taxpayer filing separately) is included in wages subject to federal income tax (FIT), federal income tax withholding (FITW), the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA). Qualified dependent care assistance benefits include the fair market value of employer-provided day-care facilities, whether those facilities are located at or away from the workplace. Qualified dependent care assistance benefits also include qualified reimbursement arrangements (pretax contributions) under a cafeteria plan.

Under your policy, you make direct payment to the child-care facility for services provided to your employees. In this case, the fair market value of the benefit is the fee incurred by you for the child-care facility on behalf of your employees.

When determining an employee’s total annual dependent care assistance benefit, all qualified benefits are taken into account. Hence, in determining an employee’s total annual benefit, the company must take into account the amount the employee elected to contribute on a pretax basis to the dependent care assistance flexible spending account for the calendar year and any fees the employer incurred in providing child-care services under the emergency child-care policy. There is no exclusion from gross income for “emergency” day-care services that are required because of a work emergency. ([IRC§129(a)(2)(A); IRS Notice 89-111, 1989-2 CB 449, as supplemented by IRS Notice 90-66, 1990-2 CB 350, as corrected by IRS Announcement 90-136, 1990-50 IRB 19.])

**Example 1:** Assume the employer provides emergency day-care services in December 2013 totaling $1,000, but this amount is not paid to the day-care facility until January 2014. The $1,000 is treated as benefits provided in 2013. Further assume that in 2013 this same employee set aside $5,000, on a pretax basis, into his dependent care assistance reimbursement account. Qualified dependent care assistance benefits in excess of $5,000 per employee per year ($2,500 in the case of a married taxpayer filing separately) is included in wages subject to FIT, FITW, FICA and FUTA; therefore, in this example, the employee received dependent care benefits in 2013 totaling $6,000 ($5,000 pretax and $1,000 of employer day-care subsidies). The excess, or $1,000, is treated as wages subject to FIT, FITW, FICA and FUTA. There is no exclusion for “emergency” day-care services that are required because of a work emergency.
The dependent care assistance benefits in Example 1 are reported on Form W-2 as follows:

- **Form W-2, box 1** – federal taxable wages: report here $1,000, representing only qualified dependent care assistance benefits in excess of $5,000 in the calendar year.

- **Form W-2, box 2** – federal income tax withholding: report here the federal income tax withheld on qualified dependent care assistance benefits of $1,000 (the amount in excess of $5,000 for the calendar year).

- **Form W-2, box 3** – Social Security wages: report here $1,000, representing only dependent care assistance benefits in excess of $5,000 in the calendar year. The total in this box should not exceed the 2013 maximum of $113,700.

- **Form W-2, box 4** – Social Security tax withheld: report here the Social Security tax withheld on qualified dependent care assistance benefits of $1,000 (the amount in excess of $5,000 in the calendar year).

- **Form W-2, box 5** – Medicare wages: report here $1,000, representing only the dependent care assistance benefits in excess of $5,000 in the calendar year.

- **Form W-2, box 6** – Medicare tax withheld: report here the Medicare tax withheld on qualified dependent care assistance benefits of $1,000 (the amount in excess of $5,000 for the calendar year).

- **Form W-2, box 10** – report here $6,000, representing all dependent care assistance benefits provided in the calendar year, even if the total benefits exceed $5,000. (2013 Form W-2/W-3 reporting instructions, IRS Publication 15-B, Employer’s Tax Guide to Fringe Benefits, rev. 2013.)

Note that the IRS allows employers the flexibility of reporting in Form W-2, box 10, either the cash reimbursements made from the employee’s flexible spending account or the annual pretax contributions elected to be made by the employee. Most employers report the pretax contribution amount elected to be made by the employee because this data is the easiest to obtain. (IRS Notice 2005-61, 2005-39 IRB 1; IRS Notice 89-111.)

**FAQ 4**

Is there a dollar threshold at which Forms W-2 are not required?

**Facts.** We have a large number of seasonal, part-time employees. A significant number of them received wages of less than $100 in 2013. Do we have to issue Forms W-2 for small dollar amounts?

**Answer.** There is no de minimis exemption from the requirement to file Forms W-2. The IRS states that “employers must file a Form W-2 for wages paid to each employee from whom: (1) income, Social Security, or Medicare taxes were withheld, or (2) income tax would have been withheld if the employee had claimed no more than one withholding allowance or had not claimed exemption from withholding on Form W-4, Employee’s Withholding Allowance Certificate. In addition, every employer engaged in a trade or business that pays remuneration for services performed by an employee, including noncash payments, must furnish a Form W-2 to each employee even if the employee is related to the employer.” (IRS Reg. §31.6051-1; Form W-2 reporting instructions (rev. 2013).)
FAQ 5

Are we required to report wages and benefits made available to terminated or retired employees on Form W-2 or Form 1099?

**Facts.** We paid sign-on bonuses, taxable relocation expenses, group-term life insurance and other incentives this year to retired employees and to individuals who terminated their employment prior to their first day of work. We intend to report these taxable amounts on a Form 1099-MISC because these individuals never performed services for us. Is this correct?

**Answer.** Amounts paid to individuals in anticipation of employment, such as sign-on bonuses or taxable relocation reimbursements, are wages subject to FIT, FITW, FICA and FUTA, and as such are reported on Form W-2, not Form 1099. Similarly, wages and taxable benefits provided to former employees, such as taxable group-term life insurance provided to retirees, are reported on Form W-2 and not Form 1099. Generally, amounts treated as wages are reported on Form W-2 regardless of the status of the employment relationship (pre-employment, retired, laid off) at the time the payments are made or benefits provided. Note that if Social Security and Medicare tax were not withheld from a former employee’s taxable group-term life insurance, the amount not withheld is shown in box 12 of Form W-2 using codes M and N, respectively. (TAM 9718001; IRS Reg. §§31.3121(a)-1(i), 31.340(a)-1(a)(5); Rev. Rul. 78-176, 1978-1 CB 303; Rev. Rul. 2004-109, 2004-50 IRB 958.) Also see FAQ 1.

FAQ 6

If we withheld too little FICA tax during the year, can we deduct the difference from federal income tax withholding for Form W-2 and Form 941 reporting purposes?

**Facts.** In the process of reconciling our Form W-2 files, we discovered that we did not withhold sufficient Social Security and Medicare (FICA) taxes from the wages of some of our employees. We are considering deducting FICA taxes owed from employees’ federal income tax withholding and then reflect the adjustment to FICA and FITW on the fourth-quarter Form 941 so that the amounts on Forms W-2 and 941 agree. Is this allowed under the federal tax regulations, and if not, what is the risk?

**Answer.** It is a risky practice to rob from federal income tax to pay FICA. The tax regulations establish two separate requirements for the withholding of federal income tax and FICA tax. Additionally, employers are separately liable for the employer’s share of FICA taxes. Should the IRS audit the withholding tax records and discover that this transfer between federal income tax and FICA withholding was made by you, it will find that you have not complied with the requirements to correctly withhold employee FICA taxes under IRC §3102(a), to correctly withhold federal income tax under IRC §3402(a) or to pay at the correct employer FICA rate under IRC §3111. Consequently, the IRS can hold you personally liable for the FICA and FITW shortages (IRC §§3102(b), 3111 and 3301) plus interest and penalties.

FAQ 7

Can we charge employees for replacement Forms W-2/W-2c?

**Facts.** We have a few employees who consistently lose their Forms W-2/W-2c each calendar year. To discourage requests for replacement forms, we are considering charging a fee, such as $5 or $10 per replacement, through payroll deduction. Are there any laws restricting us from charging these fees?

**Answer.** The IRS does not prohibit the assessment of fees for the replacement of information statements (e.g., Forms W-2, 1099), but there may be restrictions under other laws. For instance, employers should be cautious of collecting such fees from workers earning the minimum wage because certain deductions that bring wages below the federal minimum are prohibited under federal (and some state) wage-hour laws. (Instructions for Forms W-2 and W-3, rev. 2013; 29 CFR §531.37.)
FAQ 8
Can we report in box 2, federal income tax withheld, amounts employees paid to us by personal check?

Facts. A number of our employees gave us personal checks requesting that we deposit these amounts with the IRS and report the payments as federal income tax withheld on the 2013 Form W-2. Is this allowed, and if not, what is our risk?

Answer. It depends on the circumstances. If the employee is writing a personal check to cover the federal income tax withholding on a taxable noncash fringe benefit, and the check is given to you at the time the withholding obligation is incurred, the IRS would likely have no issue with this practice. (IRS Reg. §31.6205-1)

If, on the other hand, the employee is giving you a check to cover federal income tax payment shortages that accumulated throughout the year, accepting the personal check could put the employer at risk. The IRC requires that federal income tax liabilities be paid throughout the year, not all at once at the end of the year. Hence, an employee's options for paying the current year's federal income tax liability are (1) federal income tax withholding based on the Form W-4 and/or (2) quarterly estimated tax payments. In order to avoid an estimated tax penalty, individual taxpayers generally must pay in 90% of their current-year federal income tax liability or 100% of their prior year's federal income tax liability by the end of the calendar year through withholding and/or estimated tax payments (the final estimated tax payment generally is due on January 15 of the subsequent year). (IRC §6654(d)(1)(B) and (C).) Thus, in the case of an individual who has income from which tax is withheld (i.e., wages) and income from which tax has not been withheld (e.g., dividends, bank interest), penalties can be avoided by increasing federal income tax withholding based on the Form W-4 and/or by making quarterly estimated tax payments.

Supporting the intent of the law is a statement in Publication 15, Circular E, Employer's Tax Guide, rev. 2013, instructing employers not to “accept any withholding or estimated tax payments from employees in addition to withholding based on their Form W-4.” In other words, the IRS instructs employers that they should not accept personal checks from employees, the purpose of which is to assist employees in evading IRS late payment penalties.

In determining sanctions that could be imposed on employers that assist employees in avoiding the penalty for failure to pay their federal income tax liability throughout the year, the IRS would likely rely on IRC §7206. IRC §7206 provides that any taxpayer who “willfully makes and subscribes any return, statement, or other document ... which he does not believe to be true and correct as to every material matter” shall be guilty of a felony. Upon conviction thereof, the consequence to corporations for the felony offense of assisting employees in evading estimated tax penalties by falsifying the amount of federal income tax withheld is a fine of up to $500,000 ($100,000 in the case of individual employers), not more than three years' imprisonment, or both, plus the costs of prosecution.

There is some indication that the IRS might also rely on IRC §6701 and §7201. The extent to which the IRS would be successful in imposing these additional sanctions is arguable; however, because the IRS would probably rely on them, it is relevant to take them into consideration:

- IRC §6701. This section applies to anyone who aids or assists in preparing a return understating a tax liability. The penalty is $1,000 or, in the case of a return relating to the liability of a corporation, $10,000. Whether this provision can be stretched to apply to the evasion of the estimated tax penalty may be questionable.

- IRC §7201. This section imposes a sanction against “any person who willfully attempts in any manner to evade or defeat any tax imposed” by the IRC. Such person is guilty of a felony and, upon conviction, subject to a fine of not more than $100,000 ($500,000 in the case of a corporation), imprisonment of up to five years, or both, plus the costs of prosecution. Whether this provision applies to the estimated tax penalty may be questionable.

Regardless of whether a business is in the practice of accepting personal checks for federal income tax withholding, employees should be notified that the business will not accept personal checks to remedy federal income tax withholding shortfalls throughout the year. This notification should include information concerning the employees' options of adjusting the Form W-4 and/or making estimated federal income tax payments. Copies of your organization's policy against accepting personal checks for federal income tax withholding shortfalls can be distributed with the 2013 Forms W-2 or mailed separately together with a blank 2014 Form W-4.
FAQ 9
What are the reporting requirements for taxes we paid on behalf of our employees in 2014 pursuant to a 2013 wage payment?

Facts. We discovered early in 2014 that we neglected to report certain taxable fringe benefits on the 2013 Form W-2. We issued Forms W-2c for 2013 and paid the federal income, Social Security and Medicare taxes on the employees’ behalf and reflected those withholdings on the 2013 Form W-2c. We understand that a gross-up is required. Should we have reported the gross-up on the 2013 Form W-2c, or is it included on the 2014 Form W-2?

Answer. Before we address your specific question about the gross-up, we emphasize that you cannot correct an underwithholding of federal income tax after the close of the tax year, unless the income tax underwithholding was due to an administrative error. (See IRS Publication 15, Sec. 13, Prior Period Adjustments – Income Tax Withholding Adjustments.) An example of an administrative error is when the employer withholds income tax but fails to remit it to the IRS. There is also an administrative error if the employer has an agreement to pay the employee’s federal taxes but fails to do so.

In the current situation, you discovered that you did not report taxable fringe benefits that were subject to federal withholding. Based on the facts, this does not appear to have been an administrative error. You should have corrected the 2013 W-2 wage amounts by issuing Form W-2c and correcting the underwithheld FICA taxes, but you cannot correct the 2013 federal income tax withholding after the close of the tax year unless the error is an administrative error. If you provided employees the funds to pay the 2013 income tax related to the fringe benefits, the employees will have additional income in 2014, which will require a gross-up computation. If you pay the employees’ FICA tax, this will also require a gross-up computation in 2014.

As you correctly state, federal income withholding and FICA taxes paid on behalf of employees are subject to FITW and FICA. To address the pyramiding effect of the tax on the tax, the IRS prescribes a formula for arriving at the gross taxable amount or gross-up. (Rev. Rul. 58-113,1958-1 CB 362.) While there are a few variations on the gross-up methodology, we will demonstrate one gross-up method at right that is the easiest to understand.

Example 1. Assume that the employer pays the employee’s FITW (at 25%) and FICA on a taxable fringe benefit having a fair market value of $1,000 and that the employee has not and will not reach the Social Security wage limit for the calendar year. Here is the gross-up calculation:

1. 100% less 25% (federal income tax) less Social Security (6.2%) less Medicare (1.45%) = 67.35%
2. $1,000 (fringe benefit) divided by 67.35% (the result from step 1) = $1,484.78
3. To test:
   - FITW (25%) ........................................ $ 371.19
   - Social Security tax (6.2%) ............ $ 92.06
   - Medicare tax (1.45%) ................ $ 21.53
   - Net ................................................ $ 1,000.00
   (original wage amount)

Under the facts as they were presented, the gross-up was done in 2014 pursuant to a 2013 wage payment. Under the rule of constructive receipt (IRC §451), the resulting increase in wages and taxes from the gross-up are required to be reflected in the year the gross-up occurred (under these facts, 2014).
Example 2. Assume the same facts as Example 1 except that the gross-up was performed in 2014 pursuant to fringe benefits that will be reported on the 2013 Form W-2c.

1. 2013 Form W-2c (additional wages and taxes):
   - Box 1, federal taxable wages = $1,000
   - Box 2, no entry because it is not an administrative adjustment (but employer pays employee’s 2013 federal income tax at 25% = $250)
   - Box 3, Social Security wages = $1,000
   - Box 4, Social Security tax withheld at 6.2% = $62
   - Box 5, Medicare wages = $1,000
   - Box 6, Medicare tax withheld at 1.45% = $14.50
   - Total taxes paid for employee for 2013 = $326.50 ($250 + $62 + $14.50)
   - 100% less 25% (federal income tax) less Social Security (6.2%) less Medicare (1.45%) = 67.35%
   - $326.50 (taxes paid for employee) divided by 67.35% = $484.78

2. 2014 Form W-2 (increase due to taxes paid on employee’s behalf)

   | Box 1, federal taxable wages | $484.78 |
   | Box 2, federal income tax withheld | $121.19 |
   | Box 3, Social Security wages | $484.78 |
   | Box 4, Social Security tax withheld | $30.06 |
   | Box 5, Medicare tax wages | $484.78 |
   | Box 6, Medicare tax withheld | $7.03 |

Proof: $484.78 = $326.50 plus taxes paid for employee ($121.19 + $30.06 + $7.03)

FAQ 10
What do we do if employees do not yet have their Social Security numbers at the time we are required to issue or file Forms W-2?

Facts. We employed a number of foreign workers in November 2013 who applied for their US Social Security cards at the time of hire. We have been told that their Social Security cards and Social Security numbers (SSNs) will likely not be available by the due date for filing the 2013 Forms W-2. What should we report in Form W-2, box A? Will there be penalties for filing Forms W-2 with the Social Security Administration (SSA) without SSNs?

Answer. According to the 2013 Instructions for Forms W-2 and W-3, when filing on paper, the words “applied for” should be used when the SSN is not available. However, when filing electronically, the SSA instructs employers to enter zeroes in locations 3 to 11 of the RW record. When the SSN is provided, the employer should submit a Form W-2c showing the correct SSN. This Form W-2c is issued to the employee and filed with the SSA.

In Publication 1915, Understanding Your Individual Taxpayer Identification Number, the IRS states that it generally will not issue an Individual Taxpayer Identification Number (ITIN) to aliens who have met the SSA’s evidence requirements for work authorized under the immigration law but who are experiencing delays in securing an SSN caused by the SSA’s procedures. The IRS instructs employers in this case to keep documentation to show that the failure to supply a payee’s SSN was caused solely by the SSA’s procedures for issuing SSNs to aliens. (Note that the SSA routinely verifies the name and SSN as reported on Forms W-2; an ITIN that appears in box A of Form W-2 is treated by the SSA as an invalid SSN.)
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