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COMPLIANCE ALERT #2013-13



IRS Provides Process to Correct Over-Withholding of Same-Sex Spouse Benefits

On Sept. 23, 2013, the IRS issued Notice 2013-61. This notice provides a special process for employers to make refund claims or internal adjustments of FICA and federal income tax (FIT) that was withheld or paid in connection with same-sex spouse benefits. Employers that prefer to use the normal refund process instead may do so.

Employers that offer coverage to same-sex spouses may not impute income on or require after-tax payment of premiums paid for same-sex coverage after Sept. 16, 2013. The IRS appears to be treating taxation of same-sex spouse's premiums as incorrect withholding. Employers are expected to correct erroneous withholding, so it appears that employers will need to reimburse employees for amounts withheld in connection with coverage for same-sex spouses prior to Sept. 16, 2013.

2013 Overpayments

The UBA Compliance Center provides information to help employers and compliance professionals meet today's ongoing and increasingly complex group health plan challenges.



This information is general and is provided for educational purposes only. It reflects UBA's understanding of the available

With respect to over-withholding an employee's FIT and FICA, the employer may either:

- Use the fourth quarter 2013 Form 941 to correct/adjust overpayments for all of 2013. This is only available if the employer reimburses the employee for all FICA and FIT over-withheld during 2013 before Dec. 31, 2013. The amounts reimbursed will reduce amounts reported on lines 2, 3, 5c, and (if applicable) 5d of the fourth quarter Form 941. Line 16 or Schedule B also must be adjusted.
- File one Form 941-X for the fourth quarter of 2013 to correct all 2013 overpayments. The employer should write "WINDSOR" in dark, bold letters across the top margin of the first page of Form 941-X. (Note that only FICA, and not FIT, may be adjusted on a Form 941-X. The employee must be reimbursed for the over-withheld FICA before the employer can file the Form 941-X.)

If the employer is able to reimburse the employee for all over-withholding occurring during the third quarter of 2013 before it files the Form 941 for the third quarter, it does not need to report the amounts originally over-withheld on the third quarter Form 941.

Prior Year Overpayments

Refunds of overpayments are available for open tax years (generally, 2010, 2011, and 2012).

With respect to over-withholding an employee's FIT for prior years, the employee will need to file an amended tax return (Form 1040X). Employers are expected to correct prior over-withholding of FICA by filing a Form 941-X. Prior year overpayments cannot simply be adjusted by the employer in the current year.

With respect to the employer's overpayments of FICA, the employer may file one 941-X for the entire year (rather than a separate Form 941-X for each quarter, as is usually required). In addition, the employer must:

- Reimburse the employee for the amount of the employee's FICA that was over-withheld
- Obtain a written statement from the employee confirming that the employee has not, and will not, make a claim for refund of the over-collected employee FICA
- Provide the employee with a Form W-2c reflecting the corrected FICA amount for each affected year
- Write "WINDSOR" in dark, bold letters across the top margin of the first page of Form 941-X

If the employee's pay exceeded the Social Security wage base, FICA is only considered over-withheld to the extent the amounts collected incorrectly exceed the wage base.

The same refunds process applies whether income was imputed to the employee for the value of group health coverage (or other fringe benefits) or if the employee was required to pay for the same sex spouse's coverage with after-tax dollars, rather than as a pre-tax salary reduction.

Additional details are available in Notice 2013-61:

<http://www.irs.gov/pub/irs-drop/n-13-61.pdf>

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guidance as of the date shown and is subject to change. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.