

Payroll Perspectives

An Ernst & Young Journal on Current Developments in the Payroll Industry

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Payroll Workshop

Form W-2 Trouble Shooting—The Top 10 Questions Most Frequently Asked About Corrections and Replacements for Tax Year 2007

by Debera J. Salam

With the April 15th deadline just around the corner, it is important that payroll departments are well equipped to deal with Form W-2 complaints and corrections. This month's *Payroll Workshop* provides answers to the top ten questions posed to our employment tax consultants about correcting 2007 Form W-2 errors and responding to employees' Form W-2 inquiries.

1. How long does an employer have to correct an error on a Form W-2?

Employers are required to correct errors on Forms W-2 as quickly as possible, keeping in mind that the maximum IRS penalty for filing an incorrect information return increases over time. The penalty for an error left uncorrected from 1 to 30 days is \$15 and the penalty for an error that is corrected after more than 30 days but before August 1 is \$30. The penalty for corrections made on or after August 1 is \$50. The maximum penalty for a tax year is \$250,000 for information returns and \$100,000 for information statements. Under IRS proposed regulations (*REG-141669-02*), the penalties that apply for failure to file a correct Form W-2 with the SSA under IRC §6722 can be waived if the correction is timely filed. A correction is deemed to be timely filed if made within 30 days of the return due date or by August 1 following the return due date. After August 1, the correction is considered to have been timely filed if made within 30 days of (1) discovering the failure, or (2) removing the impediment to correcting the failure.

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2. Does the IRS require that employers compensate employees for expenses they incur as a result of receiving a Form W-2c?

The IRS does not require that employers reimburse for direct or indirect expenses employees incur as a result of incorrect Form W-2 reporting. This is not to say that employees don't have other avenues for making such claims. In fact, case law history shows that some employees have been successful in bringing suit against their employers for these kinds of damages. (*Clemens v. Revlon, Inc.*, 838 F.2d 1389 (5 Cir. 1988)). In addition, the Taxpayer Bill of Rights 2 makes a provision for civil damages for "any person who willfully files a fraudulent information return with respect to payments purported to have been made to another person." The maximum award of damages under this provision is the greater of (1) \$5,000, or (2) the amount of actual damages (including the costs of the action) and, in the court's discretion, reasonable attorney's fees. (*IRC §7434*)

The most compelling reason to consider reimbursement of direct costs for Form W-2 reporting errors is good employee relations. In an effort to keep employees content and productive, some employers reimburse their employees for direct costs they incur as a result of receiving a Form W-2c. Generally, such reimbursement is made only when the Form W-2c is provided to employees after they have filed their federal, state and local income tax returns.

✂ TIPS TO CLIP. It is important to remember that employee reimbursement for expenses, such as tax preparation fees, incurred as a result of a Form W-2c is considered wages subject to FIT, FITW, FICA and FUTA (state taxes may also apply) in the tax year in which the reimbursement is made.

3. When employees lose their W-2, do we have to provide them with another official statement?

Employers can reissue a Form W-2 using either the IRS official form or an acceptable substitute that meets

the requirements published in IRS Publication 1141. (Publication 1141 can be obtained from the IRS by calling (800) 829-3676 or by downloading it from the IRS Web site at <http://www.irs.gov>.) Regardless of the source of the Form W-2 (or Form W-2c), it must be labeled, "REISSUED STATEMENT." Do not file Copy A of a reissued Form W-2 with the Social Security Administration. (*Instructions for Forms W-2 and W-3, 2007*)

✂ TIPS TO CLIP. Employers can make electronic copies of Forms W-2 available to employees via a secure Web site or other delivery method. (For more information concerning electronic storage and access to Form W-2 data, see IRS REG-107186-00, 66 FR 10247 and TD 8942, 66 FR 10191.) Again, it is important that the substitute forms that are provided from electronic systems are labeled "REISSUED STATEMENT."

4. Is there a deadline for replacing a lost W-2?

The deadline for providing federal Forms W-2 to employees (January 31, 2008 for tax year 2007) applies only to the original issuance. The IRS doesn't specify a period in which lost W-2s must be replaced. While employers should be sensitive to employees' federal, state and local tax filing deadlines, there is generally no need to issue replacement forms on demand.

✂ TIPS TO CLIP. To eliminate daily interruptions caused by responding to requests for duplicate W-2s and to make the process more efficient, some payroll departments designate a specific time each week for issuing replacement forms. Some employers schedule temporary help during this specified time to assist in the preparation and distribution of replacement forms. Also be aware that electronic Forms W-2 are allowed and can significantly reduce the time and effort involved in replacing lost Forms. (See "Tips to Clip" in No. 3 above.)

5. Should we accept verbal requests for replacement W-2s?

In the effort to respond to employee requests for replacement W-2s, don't throw caution to the wind. The W-2 contains confidential information about the employee's earnings and it is the employer's responsibility to ensure that every reasonable precaution is taken to make certain that this information not be delivered into the wrong hands. An employer can show that reasonable effort was taken to ensure the confidentiality of the W-2 information by using such delivery methods as a secure e-mail system, confidential intercompany mail, or the U.S. Postal Service or other reliable delivery service to an address provided by the employee through some form of written or PIN-verified documentation. It is not a prudent

practice to accept phone requests for duplicate W-2s, particularly when such a request includes the direction to send the form to a location other than the employee's address of record.

✂ TIPS TO CLIP. In order to both streamline the processing of replacement W-2s or Forms W-2c) and to ensure that confidentiality is protected, some employers require that employees complete and sign a request form. The request form includes mailing instructions and a signature area for the employee. These written requests can be processed in date-received order, and also can function as essential documentation of the employer's reasonable effort to protect the confidentiality of the information. A sample request form is shown below.

EMPLOYEE REQUEST FOR REPLACEMENT FORM W-2		
I am requesting a replacement Form W-2 for tax year.		
Personal Data		
Employee Name: (Print Name)		
Social Security Number: ____ - ____ - ____		
Phone ()		
Mailing Address		
Street:		
City, State, ZIP:		
Method of Delivery		
____ e-mail ____ first class mail ____ pick up ____ intercompany mail		
Employee Signature (Sign Here)		Date:
For Office Use Only		
Date Request Received:	(Month)	(Day) (Year)
Date Replacement Provided:	(Month)	(Day) (Year)
Replacement Prepared By: (Print Name)		
Copy 1—Payroll, Copy 2—Human Resources, Copy 3—Employee's Copy		

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6. Do I have to correct an error made in reporting nonqualified deferred compensation in box 11 of Form W-2?

The proper reporting of nonqualified deferred compensation in box 11 of the Form W-2 is vital to ensuring that individuals who have or will reach retirement age do not encounter difficulties with the Social Security Administration as it pertains to their Social Security benefits. For Form W-2 reporting purposes, wages are reported in the year paid, and not the year earned. For purposes of the Social Security earnings test, wages are taken into account in the year they are earned and not the year paid. In order to proactively account for these timing differences, the SSA/IRS require that certain nonqualified deferred compensation contributions and/or distributions be reported in box 11. Accurate box 11 reporting is important not only to employees who are at or near retirement age, but penalties can be assessed for failure to report amounts accurately. For these reasons, box 11 reporting errors should always be corrected. See question 9 for more information on correcting the Form W-2 and for more details on the reporting of nonqualified deferred compensation, see Publication 957, *Reporting Back Pay and Special Wage Payments to the Social Security Administration*. (Publication 957 can be obtained from the IRS by calling (800) 829-3676 or by downloading it from the IRS Web site at <http://www.irs.gov>.) (*Form W-2/W-3 reporting instructions, 2007*)

7. Can we correct the amount of federal income tax withholding that we reported on the 2007 Form W-2?

Facts. We realized in January 2008 that we neglected to report a bonus paid in 2007 on the 2007 Form W-2. We intend to pay the employees' Social Security, Medicare and federal income tax on the bonus. Can we report the additional federal income tax withholding on the 2007 Form W-2c?

The IRS does not allow for corrections in the reporting of federal income tax withheld on Form W-2 unless the correction is "administrative." As explained in the Form 941c reporting instructions, an administrative error is "any error that does not change the amount of income tax that was actually withheld." It is the intention of the IRS that an employee not be allowed to have federal income tax withheld from wages for the purpose of correcting underwithholding in a previous year.

Example 1: Assume that employee Greg discovers in January 2008 that his federal income tax withholding is \$500 less than his 2007 federal income tax liability. In order to avoid any penalty arising from the income tax withholding shortage, Greg requests that the employer withhold an additional \$500 from wages paid in 2008 and show the additional \$500 on a 2007 Form W-2c as federal income tax withholding for 2007. In this example, the federal income tax withholding correction is not an administrative error and a Form W-2c for 2007 is not allowed.

An exception to this rule applies if the employer had an agreement with the employee that federal income tax withholding would be paid by the employer. In instances in which a "gross-up" agreement is in place, filing a Form W-2c to reflect the increase in federal income tax withholding may be allowed.

Example 2: Assume that in January 2008, Joan's employer discovered that it neglected to report on the 2007 Form W-2 imputed income of \$350 attributable to her personal use of a company vehicle in 2007. Further assume that Joan's employment agreement stipulates that her employer will pay any federal income tax that is required to be withheld on this fringe benefit. Joan's employer may issue a Form W-2c for 2007 reflecting both the gross-up on the wages and the federal income tax withholding it paid on her behalf.

In the facts outlined above, it was the intention of the employer to pay the employees' federal income tax liability on the value of the vehicle use. (It is highly recommended that any employer agreement to pay the employees' taxes be available in a written document that was in force prior to, or at the time of receiving the taxable benefit or wage payment.) In this case, the additional amount of federal income tax withholding that is the result of the "gross up" calculation does not represent an "amount withheld" from the employee's wages, but rather, an amount the employer failed to report and deposit. Therefore, the adjusted federal income tax withholding shown on the Form W-2c would more likely than not be considered an "administrative" adjustment and would be allowed.

8. Do we have to correct every little error on a Form W-2?

In general, all errors made on a Form W-2 must be corrected. However, in the case of an incorrect employee address, employers are given one of the following options for making a correction:

- (a) Issue a new Form W-2 that shows the correct employee address (and all other information) and indicate "REISSUED STATEMENT" on the new copies. Do not file Copy A with the Social Security Administration;
- (b) Issue a Form W-2c to the employee showing the correct address in box f. Do not file Copy A with the Social Security Administration; or
- (c) Give the employee the Form W-2 with the incorrect address by placing it in an envelope with the correct address. (*Instructions for Forms W-2c and W-3c, rev. 1-2007*)

TIPS TO CLIP. If an employer has a large volume of small dollar adjustments to make to W-2s, it may be possible to obtain a waiver of the requirement to file corrected Forms W-2 or W-2c for minor amounts, even though there are no specific procedures for such a waiver. Written waivers are occasionally granted on a "case by case" basis by the IRS if the employer agrees to pay over any federal income tax, Social Security or Medicare tax that is owed on the total adjustment. A key element taken into account in granting such a waiver is whether the waiver will benefit the IRS (e.g. no amended individual returns for minor amounts, yet the IRS collects the tax from the employer). The IRS will almost never waive the Form W-2c reporting requirement if the adjustments would result in the refund of FICA or federal income tax to the taxpayer. For more information contact our Ernst & Young LLP Employment Tax Advisory Services coordinator, Gregory Carver, at (214) 969-8377.

9. How do you complete the Form W-2c?

Box 12 and Box 13 Errors. Box 12 of the Form W-2 is used primarily to report an employee's contributions to a retirement plan; however, other information concerning group-term life, third-party sick pay, mileage reimbursements, health savings account contributions, moving expenses, etc. are also included in this box. Box 13 is used to indicate if an employee is an active participant in a retirement plan, a statutory employee, or if third-party sick pay is being reported. What is reported in these boxes has a significant impact on the employer, the employee and the governmental agencies that rely on the information. It is essential that errors made in these boxes be corrected on a Form W-2c that is given both to the employee and the SSA. In addition, the IRS can and has assessed penalties for failure to report required information correctly in boxes 12 and 13.

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Correcting Employee Names and/or SSNs Only. If correcting only the employee's name and/or SSN, complete boxes a-i of Form W-2c only as appropriate and enter nothing in boxes 1 through 20.

If a nonresident alien working in the U.S. is given a new Social Security card following an adjustment to his or her resident status that shows a different name or SSN, file a Form W-2c for the most current tax year only.

Insufficient Lines on Form W-2c. If there are an insufficient number of boxes to make all necessary corrections to the Form W-2, use an additional Form W-2c to report only the remaining corrections.

Restrictions on filing Forms W-2c. The following restrictions apply to all W-2c reports, whether filed electronically or on paper:

1. Previous W-2s where both the Name and SSN fields were blank may not be corrected.
2. Agent Indicator Codes may not be corrected.
3. The electronically filed W-2 report for tax year 2007 must be in COMPLETE status before attempting to file 2007 Forms W-2c. If the 2007 W-2 report has not moved to COMPLETE status, call Social Security Employer Reporting Assistance number 1-800-772-6270.
4. Self-employed individuals may not file correction reports.

NOTE: Self-employment income and applicable taxes must be reported on Internal Revenue Service Form Schedule SE, as required by the Internal Revenue Service. If you have questions about self-employment income and tax reporting, visit the Internal Revenue Service Web Site (www.irs.gov) or call 1 (800) 829-1040. For TDD/TTY, call 1 (800) 829-4059.

Box-by-Box Instructions for Completing Form W-2c

- **Box a.** Show the four-digit tax year of the form being corrected. For example, "2007." If a territorial employer, show the type of Form W-2 being corrected.
- **Box b.** Enter the employee's correct SSN and, if applicable, show the SSN as incorrectly reported in box h.
- **Box c.** Check this box if the Form W-2c reflects a corrected name and/or Social Security number in box b and/or e.
- **Box d.** Enter the employer's correct federal EIN, even if it was incorrectly reported on Form W-2. On Form W-3c, show the correct EIN in box e and, if applicable, the incorrect EIN in box h.
- **Box e.** Show the correct employee's name. If the employee name on Form W-2 differs from the employee name on Form W-2c, check box c, "corrected name," and show the employee's name as incorrectly reported in box i.
- **Box f.** Show the employee's correct address and ZIP code.
- **Box g.** Show the employer's name, address, and ZIP code as reported on the Form 941, 943, 944, CT-1 or Schedule H of Form 1040 for household employers. (Note: Employers are required to report a change in their address to the IRS by filing Form 8822.)
- **Box h.** Show the employee's SSN as incorrectly reported on the original Form W-2. Show the SSN as correctly reported in box b and check box c.
- **Box i.** Enter the employee's name as incorrectly shown the Form W-2. Show the correct name in box e and check box c.

- **Boxes 1-11:** Complete only those boxes that were incorrectly reported on the Form W-2. Show the amount reported on Form W-2 in the column “Previously reported.” Show the correct amount in the column “Correct information.”
 - **Box 12:** Complete only if any amounts were omitted or incorrectly reported. For instance, if an amount for Code D was not reported on the original Form W-2, enter a “D” in one of the boxes labeled “12” in the “Correct Information” column and show nothing as “Previously reported.”
- Note:** If a single Form W-2c does not provide enough blank spaces for corrections, use additional Forms W-2c.
- **Box 13:** Previously reported and Correct information. Check the boxes that should have been marked on the original Form W-2. For instance, if “retirement plan” should have been checked on the original W-2 but was not, do not check “retirement plan” in box 13 under the column “Previously reported.” Check “retirement plan” in box 13 under the column, “Correct information.”

10. Are there any other returns I need to file when correcting the Form W-2?

The wage and tax information reported on Form W-2 is reconciled to other federal, state and local returns. A difference, for instance, in the amount of wages/taxes reported on Forms W-2 and the Forms 941/944 for the tax year will generally result in IRS notices, even penalty assessments. Similarly, an unexplained difference between federal taxable wages and taxable wages as reported on the Forms W-2 filed with state and local taxing authorities can create audit adjustments that could have monetary consequences (e.g., penalty and interest). For these reasons, it is imperative that when preparing Forms W-2c, employers take the following steps:

1. Create a “batch file” of all Forms W-2c filed.
2. Establish a regular schedule (e.g., monthly) of filing a Form W-2c “batch.”
3. When preparing to file the W-2c batch, review the following matrix to determine other returns that are potentially impacted by the Form W-2 correction.

Form W-2c Related Return Check List				
What Other Returns May Need a Correction?				
Form W-2 Corrected Box	Form 941c (attach to Form 941/944 or 843)	Form 940 Amended (attach Form 843)	State/Local Income Taxable? State Form W-2c	SUI Covered?
State Unemployment Return-Amended				
Box 1-Federal Taxable Wages	X	X	X	X
Box 2- Federal Income Tax Withheld	X			
Box 3-Social Security Wages	X	X		X
Box 4-Social Security Tax Withheld	X			
Box 5-Medicare Taxable Wages	X	X		X
Box 6-Medicare Tax Withheld	X			
Box 7-Social Security Tips	X	X		X

When You Have Only a Few Forms W-2c to File...

Consider filing Forms W-2c, *Corrected Wage and Tax Statement* quickly, easily and at no cost using SSA's W-2c Online service, available through SSA's Business Services Online at <http://www.socialsecurity.gov>. W-2c Online allows businesses to create, print, and submit up to 5 Forms W-2c for each W-3c per session on the Internet with no limit on the number of sessions. Using Forms W-2c Online a business can create, save, print, and submit its Forms W-2c and Form W-3c for tax year 2007; resume working with unsubmitted Forms W-2c it may have saved; and download a file containing Forms W-2c and Form W-3c that were submitted using W-2c Online. All that is required is a computer with Internet access and Adobe Acrobat Reader (version 5.0 or higher recommended) for printing Forms W-2c and Form W-3c. (For a free copy of Acrobat Reader go to www.adobe.com.)

Note that a business cannot use the W-2c Online service if:

- attempting to file Forms W-2; filing corrections for a tax year other than 2007;
- attempting to correct the Employment Type or the Establishment Number;
- correcting a previous W-2c report;
- correcting only state wage/tax data; boxes 15 through 20 on Form W-2c (SSA does not pass W-2c information to the state);
- correcting using a military Employment type or using a Military B List Employer Identification Number (EIN);
- correcting a W-2 using a Military A List EIN, only use an Employment type of Regular (941) or Medicare Qualified Government Employment (MQGE), and the establishment number must be left blank;
- correcting incorrectly filed EINs;
- submitting "Third-party sick pay recap Forms W-2c and W-3c" described in Part 6 of Internal Revenue Service publication 15-A at www.irs.gov/pub/irs-pdf/p15a.pdf (A recap form is a special W-2c that does not contain an employee name or Social Security Number. Submit those on a paper Form W-2c with a W-3c);
- attempting to correct the business address information (Instead, complete IRS Form 8822); or the entity is a territorial user that files a form other than the domestic W-2c. (Any territorial user who can successfully use the domestic W-2c for corrections, can use the W-2c Online.)

✂ TIPS TO CLIP. If a third-party service provider normally files your Forms W-2 and other employment tax returns and anticipates a significant delay in issuing Forms W-2c for your employees and the SSA, filing the Forms W-2c independent of your third-party provider using SSA's W-2c Online may be viable alternative. It is important; however, that you make your third-party service provider aware of your intention to file using W-2c Online and be certain to submit to your third-party service provider all information necessary for generating other required employment tax returns such as Forms 941, corrected 940 and other related federal and state returns.

The SSA announced that it has received numerous paper Forms W-2 with various errors, which can delay their processing. The SSA explained that these errors could be a result of format changes that were made in the 2007 version of Form W-2.

SSA Reports Significant Errors in 2007 Form W-2 Files –Change in Location of SSN Likely Explains Problem

By way of review, in the 2007 version of Form W-2, the Employee's Social Security Number (SSN) was moved from "Box d" to "Box a" and the "Control Number" box was moved from "Box a" to "Box d." In addition, the Form ID number ("22222") and the "Void boxes" were moved to the top left corner of Form W-2.

Among the various problems reported, the SSA has received numerous paper Forms W-2 with the following errors:

- SSN in the improper position;
- surnames in the improper position, sometimes overlapping the Form ID number;
- SSNs in the Employee Identification Number (EIN) box;
- data overlapping the VOID box;
- prior versions of Forms W-2 with 2007 printed on them;
- Forms W-2 showing no Form ID box; and
- SSNs printed in the top left corner.

What are the Consequences to Employers and Employees?

These errors can delay processing of the Forms W-2 by the SSA, cause the SSA to reject the Forms W-2 or, in the worst case, process the Forms W-2 as filed, which could potentially subject the employer to a penalty under IRC §6721 because the data in the SSN field is not a valid SSN. Therefore, employers should closely review their paper Forms W-2, in particular Copy A, to ensure the accuracy of information presented therein and that all Form W-2 information is in the proper position before filing the forms with the SSA.

There is a potential for an employer penalty under IRC§6721, which the IRS imposes after SSA shares

the processed W-2 information with the IRS. While Reg. §301.6721-1(c)(1) provides an exception for an inconsequential error or omission, an error of this type does not qualify for the exception. The term "inconsequential error or omission" means any failure that does not prevent or hinder the IRS from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. If the SSA processes the Forms W-2 using the incorrect data shown in the SSN box, the IRS will not be able to match the Form W-2 information against the payee's Form 1040. Further, the regulations provide that an error in an identifying number is never an "inconsequential error or omission."

There is a corresponding penalty under IRC § 6722 for errors on the payee statement copy provided to the employees. Unlike the penalty imposed under IRC §6721, the inconsequential error or omission provision is less stringent. An inconsequential error or omission means any failure that cannot reasonably be expected to prevent the payee from timely receiving correct information and reporting it on his or her return or from otherwise putting the statement (W-2) to its intended use. Since the SSN is on the form, just in the wrong position (assuming the number entries are correct), employees are not hindered in filing their personal income tax returns. Therefore, employers may wish to advise those employees who plan to file a paper tax return (as opposed to electronic filing) to write their SSN in the proper box before they mail their returns to the IRS.

Note: Forms W-2 filed with state and local taxing jurisdictions may have the same errors, and similar consequences can result at the state and local level; therefore, it is important to verify the paper Forms W-2 filed with all taxing authorities.

Employment Tax Reporting

IRS Mailed Form 944 Notices This Month

In February, the IRS mailed notices to certain businesses telling them that they qualify for filing Form 944, *Employer's Annual Federal Tax Return*. Businesses whose employment taxes will be \$1,000 or less in 2008 are required to file Form 944 rather than Form 941, *Employer's Quarterly Federal Tax Return if notified by the IRS to do so*. If a business did not get a notice from the IRS but fits the criteria, or if a business gets a notice but wants to continue filing Form 941, it should call (800) 829-4933 by April 1. For more information see the IRS web site at <http://www.irs.gov>.

Crossing the States

States Offering a Supplemental Withholding Tax Rate Option⁴ (Survey Results as of January 2008)

Are you withholding the correct amount of income tax from bonuses and other supplemental wages? Businesses sometimes make the mistake of assuming that if the supplemental withholding rate can be used for federal income tax purposes, the same is true at the state (and local) level. In fact, this is not the case. A number of states do not provide for a supplemental rate of withholding. To ensure that you are not incorrectly withholding state income tax, we have included a 2008 survey of the states offering a supplemental withholding option and the rates currently in effect.

(Note: Some of this information was obtained by Ernst & Young LLP during the course of informal telephone or e-mail surveys with state governmental agencies. Although telephone and e-mail surveys are useful in determining how government departments currently treat an issue, answers and positions derived from such surveys are not binding upon the state, cannot be cited as precedent, may change over time, and hence cannot be relied upon.)

States Offering a Supplemental Withholding Tax Rate Option⁴(Survey Results as of January 2008)

State	Supplemental Withholding Tax Rate for 2008	Call for More Information
Alabama	5.00%	(334) 242-1300
Arkansas	7.00%	(501) 682-4773
California		
Supplemental Wages	6.00%	(916) 464-3502 or (888) 745-3886
Bonus and Stock Options	9.30%	
Colorado	4.63%	(303) 238-7378
Georgia		(404) 417-3210
Annual Wages: Under \$8,000	2.00%	
\$8,000 - \$10,000	3.00%	
\$10,000 - \$12,000	4.00%	
\$12,000 - \$15,000	5.00%	
over \$15,000	6.00%	
Idaho	7.80%	(208) 334-7660
Illinois	3.00%	(217) 782-3336
Indiana	3.40%	(317) 233-4016
Iowa	6.00%	(515) 281-3114
Kansas	5.00%	(785) 368-8222
Kentucky	6.00%	(502) 564-4581
Maine	5.00%	(207) 626-8475
Maryland (1)	MD Resident 5.50% plus local WH Rate	(410) 767-1300
Massachusetts	5.30%	(617) 887-6367
Michigan	4.35%	(517) 636-4730
Minnesota	6.25%	(651) 282-9999
Missouri	6.00%	(573) 751-7200
Montana	6.00%	(406) 444-6900
Nebraska	5.00%	(402) 471-5729
New Mexico	4.90%	(505) 827-0700
New York (2)	7.35%	(877) 698-2910
North Carolina	6.00%	(877) 252-3052
North Dakota	3.92%	(701) 328-3125
Ohio	3.50%	(888) 405-4039
Oklahoma	5.50%	(405) 521-3160
Oregon	9.00%	(503) 378-4988
Pennsylvania	3.07%	(717) 787-1064
Rhode Island	7.00%	(401) 222-1040
South Carolina	7.00%	(803) 898-5752
Vermont (3)	7.20%	(802) 828-2551
Virginia	5.75%	(804) 367-8037
West Virginia		(304) 558-3333
Annual Wages under \$10,000	3.00%	
\$10,000 - \$25,000	4.00%	
\$25,000 - \$40,000	4.50%	
\$40,000 - \$60,000	6.00%	
over \$60,000	6.50%	
Wisconsin		(608) 266-2776
Annual wages: under \$7,970	4.60%	
\$7,970 - \$15,589	6.15%	
\$15,590 - \$115,139	6.50%	
\$115,140 and over	6.75%	

Footnotes

1. For Maryland: For lump sum distribution, withhold at 6.75% for nonresidents; 3.00% for residents employed in Delaware and 5.50% plus local rate for residents working in Maryland.
2. For New York State withholding purposes, the supplemental withholding rate is 7.35%. For New York City residents, the supplemental withholding rate is 4.00%. For City of Yonkers, the resident supplemental withholding rate is 0.735% and for non-resident, 0.50%.
3. For Vermont, in cases where federal withholding is computed as 25% of supplemental payments, the supplemental withholding rate is 7.20%. In cases where the federal withholding is computed at 35% (for payments exceeding \$1 million), the supplemental withholding rate is 9.5%.
4. There is no supplemental rate of withholding for Arizona, Connecticut, Delaware, District of Columbia, Hawaii, Louisiana, Mississippi, New Jersey, Puerto Rico, or Utah.

State News

Arizona

Income Tax Withholding

The Arizona Department of Revenue has released the 2008 Form A1-E, Employer's Election to Not Withhold Arizona Taxes in December. Form A1-E can be used by Arizona employers to elect not to withhold Arizona income taxes from compensation paid to employees in December 2008. Employers choosing to exercise this option must file the Form A1-E with the Arizona Department of Revenue by July 1, 2008. The election, once made, applies to all the employer's employees for the month of December 2008 only. *(Form A1-E General Instructions, released to the Arizona Department of Revenue Web Site in December 2007)*

Employers must also notify all their employees in writing by July 1, 2008 of the decision to not withholding Arizona income taxes from their wages in December 2008. The notice must include a statement informing employees that they can, if they wish, complete Form A-4, *Employee's Withholding Allowance Certificate*, to compensate for the change in their annual withholding amount.

Form A1-E should be mailed to the Arizona Department of Revenue, Office of Economic Research and Analysis, 1600 W. Monroe Street, Phoenix, AZ 85007-2650.

For more information, see the Arizona Department of Revenue at <http://www.revenue.state.az.us/index.htm> or call (602) 255-2060 or (800) 843-7196.

Unemployment Insurance

For calendar year 2008, the Arizona state unemployment insurance (SUI) tax rates continue to range from 0.10% to 5.40%, however, most positive-balanced

employers will see a reduction in tax rates of up to 0.10% from 2007. New employers continue to pay at 2.0% for 2008. The 0.10% additional Job Training Tax surcharge continues to be in effect for 2008 for positive-balanced experience-rated employers assigned a rate of 0.31% to 2.08%. *(Unemployment Insurance Tax Rates, Arizona Department of Economic Security Web Site, January 2008)*

For more information, contact the Arizona Department of Economic Security at (602) 771-6603 or see the department's Web site at <http://www.azdes.gov>.

California

Income Tax Withholding

The California Employment Development Department (EDD) announced that the California Franchise Tax Board has revised 15 pages of 2008 California personal income tax (PIT) wage-bracket withholding schedules for the Method A Single and Married Persons. This is a revision of what was originally sent to employers in the official 2008 California Employers' Guide. Errors appeared in some withholding ranges provided by the Franchise Tax Board and amount to slight under-withholding for some employees. *(California Employment Development Department Web Site, February 2008)*

The tables have now been updated to accurately reflect the withholding amounts that should be withheld in each bracket of income at the time of the employee's payroll. Employers should begin using the revised withholding schedules with their next payroll. This will help minimize any potential tax liability employees may face when they file their 2008 State personal income tax return.

Employers should not withhold extra PIT now to make up the difference in what may have been under-withheld in January 2008. Employers may withhold per-

sonal income tax retroactively from wages *only with the express written consent of the employee* as there is no legal authority to do so otherwise. Employers that have already deposited the PIT withheld for the month of January should not file an amended Form DE 88 as the Form DE 88 as originally filed is accurate in that it reflected the true amount withheld and paid for January. (*Frequently Asked Questions on Revised 2008 Schedules, California Employment Development Department, February 2008*)

For a copy of the revised schedules, see the EDD's Web site at <http://www.edd.ca.gov> or contact the EDD Taxpayer Assistance Center at (888) 745-3886. Employees having questions about the possible ramifications of under-withheld PIT on their 2008 personal income tax return should contact the Franchise Tax Board at (800) 852-5711.

Disaster Relief

Employers in the counties of Glenn, Kings, Placer, Sacramento, San Francisco, Sutter, Yuba, Yolo, Colusa, Del Norte, El Dorado, Sierra, Mendocino, and the cities of Oakland and Grass Valley directly affected by the damage resulting from the extreme wind, unusually heavy rains, and high snow levels throughout the state in January 2008 may request up to a 60-day extension of time from the Employment Development Department (EDD) to file their state payroll reports and/or deposit state payroll taxes without penalty or interest. This extension may be granted under Section 1111.5 of the California Unemployment Insurance Code (CUIC). Written requests for extension must be received within 60 days from the original delinquent date of the payment or return to file or pay.

State payroll taxes include Unemployment Insurance, Employment Training Tax, State Disability Insurance, and California Personal Income Tax. To request an extension, employers must send EDD a letter specifi-

cally requesting an extension of time under Section 1111.5 of the CUIC, along with the previously unfiled report(s) and payment(s). The letter must also provide detailed information as to why the report or payment could not be submitted in a timely manner.

Employers should mail the letter and tax report or payment to the address specified on their filing form. If an employer has already been charged a late filing or payment penalty that he/she believes may qualify for this extension, the employer should send a written request to EDD, P.O. Box 826846, MIC 3A, Sacramento, CA 94246-0001.

For more information, call the EDD Taxpayer Assistance Center at (888) 745-3886 or see the EDD Web site at <http://www.edd.ca.gov>.

Colorado

Minimum Wage

Effective January 1, 2008, the Colorado minimum wage increased to \$7.02, up from \$6.85 for 2007. The minimum wage is payable for all adults and emancipated minors. Unemancipated minors under 18 years of age may be paid 15% below the current minimum wage less any applicable lawful credits for all hours worked. (*Colorado Minimum Wage Order #24; Colorado Minimum Wage Fact Sheet, Colorado Department of Labor and Employment, Division of Labor, November 2007*)

Beginning with calendar year 2008, the minimum wage is adjusted annually for inflation, based on the Consumer Price Index (CPI) as of June 30 of the preceding year. The CPI increased 2.5% from the first half of 2006 to the first half of 2007, resulting in the increase to \$7.02 for 2008.

The minimum wage for tipped employees is \$4.00 for calendar year 2008. No more than \$3.02 per hour in tip

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income may be used to offset the minimum wage of a tipped employee. If an employee's tips combined with the employer's cash wage of at least \$4.00 per hour do not equal the minimum hourly wage of \$7.02, the employer must make up the difference in cash wages. A tipped employee is defined as any employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips.

For more information, contact the Colorado Department of Labor and Employment, Division of Labor, at (303) 318-8441 or (888) 390-7936 or see the department's Web site at <http://www.coworkforce.com/lab>.

Connecticut

Unemployment Insurance

The Connecticut 2008 state unemployment insurance (SUI) tax rates range from 1.4% to 6.3%, an increase of 0.20% from 2007. New employers will continue to pay at 3.1% for 2008. As previously reported, the SUI taxable wage base continues at \$15,000 for 2008. Tax rates are generally issued to employers by March. (*Connecticut Department of Labor Web Site, February 2008*)

For more information, contact the Connecticut Department of Labor at (860) 263-6705 or see the department's Web site at <http://www.ctdol.tate.ct.us/uitax/txmenu.htm>.

Hawaii

Unemployment Insurance

The Hawaii 2008 state unemployment insurance (SUI) tax rates range from 0.0% to 5.4% on Contribution Rate Schedule A, with rates generally decreasing by 0.20% from calendar year 2007. New employers pay at

1.7% for 2008, down from 1.9% for 2007. Employers continue to be assessed the additional 0.01% Employment & Training Assessment. As previously reported, the SUI taxable wage base is \$13,000 for calendar year 2008, down from \$35,300 for 2007. (*Announcement, Hawaii Department of Labor & Industrial Relations Web Site, December 2007*)

For more information, contact the Hawaii Department of Labor & Industrial Relations at (808) 586-8913 or see the department's Web site at <http://hawaii.gov/labor/ui/index.shtml>.

Illinois

U.S. Department of Homeland Security Instructs Illinois Employers to Continue to Use E-Verify Despite Recently Enacted State Law Prohibiting Its Use

The U.S. Department of Homeland Security (DHS) issued a notice to Illinois employers regarding the use of the E-Verify program (formerly known as the Basic Pilot Program). According to the notice, Illinois employers enrolled in the E-Verify program should continue to use the program on and after January 1, 2008 to confirm newly-hired employees' authorization to work in the U.S. Businesses that have not yet signed up for E-Verify may do so without fear of being penalized. (*Notice For Illinois Employers About E-Verify, U.S. Department of Homeland Security, December 31, 2007*)

On August 13, 2007, the Illinois governor signed into law the Illinois Right to Privacy in the Workplace Act (*HB 1744, P.A. 95-0138*). In September 2007, the U.S. Department of Homeland Security sued the state because the Act contained the following language:

“Employers are prohibited from enrolling in any Employment Eligibility Verification System, including the Basic Pilot program, as authorized by 8 U.S.C. 1324a, Notes, Pilot Programs for Employment Eligibility Confirmation (enacted by PL 104208, div. C, title IV, subtitle A), until the Social Security Administration (SSA) and Department of Homeland Security (DHS) databases are able to make a determination on 99% of the tentative nonconfirmation notices issued to employers within 3 days, unless otherwise required by federal law.”

According to the U.S. Department of Homeland Security notice, the Act would have effectively prohibited employers in the state of Illinois from enrolling in the E-Verify program, thereby causing a conflict with federal law. The law was scheduled to take effect on January 1, 2008, but the state has agreed not to enforce the above provision until the lawsuit is over. However, the other provisions of the Act, including the requirement that employers file an E-Verify Attestation Form prior to enrollment in the E-Verify program that attests the employer has received E-Verify training materials and completed a program tutorial, and posted certain notices in a prominent place in the employer’s workplace, were not subject to the lawsuit and remain in effect.

For more information, a copy of the Act and supporting regulations, and the Attestation Form, see the Illinois Department of Labor Web site at

<http://www.state.il.us/agency/idol/laws/law55.htm> or call (312) 793-1805. See also the U.S. Department of Homeland Security’s Web site at <http://www.dhs.gov/E-Verify> or call (888) 464-4218.

Indiana

Local County Income Tax Rates

The Indiana Department of Revenue has released the final County Adjusted Gross Income Tax (CAGIT), County Economic Development Income Tax (CEDIT) and the County Option Income Tax (COIT) rates that are effective with wages paid on or after January 1, 2008. The changes are the result of the extension of the deadline for counties to change or adopt new local-option income tax rates to December 31, 2007. Because of this extended deadline, county tax rates found in Departmental Notice #1, dated October 2007, are updated as of January 1, 2008. *(Revised Departmental Notice #1, Indiana Department of Revenue, January 2008)*

Refer to the chart below for the counties that had a change in the income tax rate since October 1, 2007. For the entire list, see the Indiana Department of Revenue Web site at <http://www.in.gov/dor/reference/notices/pdfs/dn01.pdf>.

TAX COUNTY	CODE	TYPE	RESIDENT	NONRESIDENT
Fayette	21	COIT/CEDIT	0.0237	0.0087
Howard*	34	COIT/CEDIT	0.0160	0.0055
Montgomery	54	COIT/CEDIT	0.0210	0.0060
Wabash	85	CAGIT/CEDIT	0.0290	0.0075
Wells	90	CAGIT/CEDIT	0.0210	0.0070

*Change was effective November 1, 2007. Includes the Howard County jail operating and maintenance income tax rate.

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All other county rates currently remain the same as those in effect on October 1, 2007.

Determining the Local Tax Rate That Applies

The residence, principal place of business, or employment of an individual is determined on January 1 of the calendar year in which the individual's taxable year commences. An individual cannot be subject to both a resident rate and nonresident rate at the same time. If a person resides in an adopting county on January 1 they are subject to that county's resident rate. If a person resides in a non-adopting county, but works in an adopting county, they are subject to the nonresident rate for their county of principal employment.

For more information, contact the Indiana Department of Revenue at (317) 233-4016 or see the department's Web site at <http://www.in.gov/dor/>.

Kentucky

New Hire Reporting

Effective January 1, 2008, the mailing address to mail Kentucky new hire paper reports or magnetic media files on 3 1/2" diskette, CD-R or 3490/3490E tape cartridge is changed to:

Kentucky New Hire Reporting
P.O. Box 2586
Atlanta, GA 30301-2586

The fax number for reporting continues to be (800) 817-0099. Employers may report online on the Kentucky New Hire Reporting Web site at <http://www.kynewhire.com>. For more information, see the Web site or call (800) 817-2262 (*Kentucky New Hire Reporting Center Web Site, January 2008; E-mail Response to Inquiry, February 1, 2008*).

Maine

Income Tax Withholding

Maine Revenue Services recently adopted new and revised rules, available at <http://www.maine.gov/revenue/rules>, that mandate electronic filing of Maine income tax withholding returns, and electronic payment of withholding taxes, for certain employers.

Mandatory electronic filing of all original Maine tax returns of quarterly and annual reconciliation of Maine income tax withholding for 2008 applies to (Rule 104, "Electronic Filing of Maine Tax Returns," effective February 11, 2008; *Maine Tax Alert Newsletter, Maine Revenue Services, February 2008*):

- Employers with 75 or more employees in 2008 that are subject to Maine income tax withholding;
- Third party filers or payroll processors, as defined in 10 M.R.S.A., chapter 222, preparing withholding returns for an employer with 75 or more employees in 2008 that are subject to Maine income tax withholding;
- Third party filers or payroll processors, with 75 or more client employers in 2008 that are required to file Maine income tax withholding returns under 36 M.R.S.A., chapter 827, or make competitive skills scholarship fund or unemployment compensation insurance payments under 26 M.R.S.A., chapter 13, subchapters 5 and 7;
- Non-wage payers with 75 or more payees in 2008 that are subject to Maine income tax withholding under 36 M.R.S.A. § 5255-B.

For returns filed for withholding in calendar years after 2008, the threshold that triggers the electronic filing requirement in each case is 50 or more employees, payees or client/employers, whichever applies.

Beginning January 1, 2008, taxpayers having a total combined tax liability of \$100,000 or more during the look-back period ending in 2007 are required to remit taxes via EFT. Beginning January 1, 2009, the EFT threshold is reduced to \$50,000 and, for years after 2009, the threshold is \$25,000. (*Rule 102, revision effective January 7, 2008; Maine Tax Alert Newsletter, Maine Revenue Services, January 2008*)

Original quarterly withholding or unemployment returns for the most recent calendar year or any of the most recent prior three quarters may be filed using *Maine I-File*. Employers may also file annual reconciliation Form W-3ME returns using *Maine I-File* for the most recently completed calendar year.

Original quarterly withholding and unemployment insurance returns, and Form W-3ME may be filed electronically using the Maine Employers Electronic Tax Reporting System (MEETRS). Many payroll software packages now support Maine electronic filing of payroll returns. The following returns cannot be processed through MEETRS:

- Nonwage withholding returns where Box B is checked because MRS has granted permission to exclude schedule 2.
- Pass-through entity withholding returns.
- Maine amended payroll tax returns (must be filed on paper).

Note that in addition to filing a Maine tax return, *Maine I-File* may also be used to change an employer's Internet password; company name and address; owner name and address; contact name, phone number, and address; report ownership changes and business closures; and change the employer's ACH debit information. (*Maine Tax Alert Newsletter, Maine Revenue Services, December 2007*)

For more information on filing income tax withholding returns electronically, call (207) 626-8475, send an e-mail to withholding.tax@maine.gov or see the MRS Web site at <http://www.maine.gov/revenue/>.

Massachusetts

Health Care Reporting

For tax year 2007, the deadline for self-insured employers (or other sponsors of an employment-sponsored health plan) to submit Form MA 1099-HC, *Individual Mandate—Massachusetts Health Care Coverage*, electronically to the Massachusetts Department of Revenue is extended from January 31, 2008, to February 29, 2008. Penalties will not be imposed on employers and other entities that comply with the electronic filing requirement by February 29, 2008. The deadline to provide 2007 Form MA 1099-HC to subscribers/covered individuals remained January 31, 2008. (*Technical Information Release 08-1, Massachusetts Department of Revenue, February 1, 2008*)

Under the Massachusetts Health Care Reform Act (Chapter 58 of the Acts of 2006), beginning for calendar year 2007, self-insured employers and other entities are required to electronically submit to the Massachusetts Department of Revenue back-up information for Form MA 1099-HC. The deadline by law to submit Form MA 1099-HC to the state and covered individuals is January 31 of the year following the year of coverage. Failure to submit Form MA 1099-HC to covered individuals and electronically file with the Massachusetts Department of Revenue by January 31 (with the exception of the 2007 form) will result in a penalty of \$50 per covered individual, up to a maximum of \$50,000 per year. (*Emergency Regulation: 830 CMR 111M.2.1; Massachusetts Department of Revenue Web Site, February 2008*)

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For more information, contact the Massachusetts Department of Revenue at (617) 887-MDOR or (800) 392-6089, or see the department's Web site at <http://www.mass.gov/dor>.

Minnesota

Income Tax Withholding

Employers are reminded that, effective January 1, 2008, employers that withheld \$10,000 or more in Minnesota withholding tax for the fiscal year of July 1, 2006 through June 30, 2007, are required to pay withholding tax by electronic means. (Previously, the threshold was \$20,000 or more in the fiscal year.)

Employers are also required to pay withholding tax electronically if required to pay any other business tax electronically to the Minnesota Department of Revenue. (*Minnesota Withholding Tax Update, January 18, 2008; HF 138, Chapter 3 of the 2005 Minn. Laws*)

Free business workshops are held by the Minnesota Department of Revenue at various locations throughout the state. For more information, see the department's Web site at http://www.taxes.state.mn.us/taxes/business_taxpayers/business_education/mbe-workshops.shtml.

For more information on electronic payment and filing, contact the Minnesota Department of Revenue at (651) 282-9999 or (800) 657-3594, or see the department's Web site at <http://www.taxes.state.mn.us/>.

Nebraska

New Hire Reporting

Effective December 28, 2007, the mailing address to mail Nebraska new hire paper reports or magnetic media files on 3 1/2" diskette, reel tape, 3490/3490E tape cartridge is changed to:

Nebraska State Directory of New Hires
P.O. Box 144013
Austin, TX 78714-4013

The fax number for reporting continues to be (866) 808-2007. Employers may report online on the Nebraska New Hire Reporting Web site at <http://www.NE-NewHire.com>. For more information, see the Web site or call (888) 256-0293 (*Nebraska State Directory of New Hires Web Site, January 2008; E-mail Response to Inquiry, January 25, 2008*).

New York

Payment of Wages

Effective January 14, 2008, the threshold at which an employee is considered "employed in a bona fide executive, administrative, or professional capacity" and therefore exempt from certain of the state's wage payment provisions is increased to \$900 (up from \$600). As a result, clerical and other such employees earning less than \$900 per week must be paid at least semi-monthly (special provisions apply to manual workers and commissioned salespersons), and the employer must obtain written permission from these employees in order to pay wages by direct deposit. Note, however, that the change does not affect the requirement that bona fide executives, administrators and professionals be paid a minimum of \$536.10 per week to be exempt from the overtime requirements of state law. (*NY CLS Labor §§ 190(7), 192(1)(d), 198-c*)

For more information on the requirements for payment of wages in New York, contact the New York Department of Labor at (518)457-9796 or see the department's Web site at <http://www.labor.state.ny.us>.

Tennessee

Unemployment Insurance

The Tennessee Department of Labor & Workforce Development has determined that it is once again necessary to increase certain Tennessee employer SUI tax rates mid-rate year due to a decrease in the Tennessee unemployment trust fund balance as of December 31, 2007. For the first and second quarters 2008 (January 1, 2008 - June 30, 2008), Premium Rate Schedule 3 will be in effect, with rates ranging from 0.40% to 10.0%. Experience-rated, positive-balanced employers only will be affected by this change, with rates increasing by as much as 0.60% over those assigned as of July 1, 2007 (under Premium Rate Schedule 4). Negative-balanced, new and government employers' rates will continue through June 30, 2008, as assigned as of July 1, 2007. The 2008 taxable wage base remains at \$7,000. (*E-mail Response to Inquiry, Tennessee Department of Labor & Workforce Development, February 6, 2008*)

The Tennessee Department of Labor & Workforce Development is in the process of mailing revised rate notices to employers affected by the change. Blank first quarter 2008 contribution and wage reports will reflect the revised rates and should be mailed to employers the middle of March.

For more information, contact the Tennessee Department of Labor & Workforce Development at (800) 344-8337 or (615) 741-2486, or see the department's Web site at <http://www.state.tn.us/labor-wfd/index.html>.

Washington

Unemployment Insurance

For calendar year 2008, the state unemployment insurance (SUI) tax rates continue to range from 0.35% to 6.0%, plus a 0.02-0.03% Employment Administrative Fund (EAF) surcharge. Employers delinquent in paying taxes as of September 30, 2007, will receive a rate of 6.20% for 2008. As previously reported, the 2008 taxable wage base is \$34,000, up from \$31,400. (*Washington Employment Security Department Web Site, January 2008*)

Solvency Tax. There is no solvency surcharge for rate year 2008 since the balance in the Trust Fund balance is above the threshold for months of benefits available as set by law.

New Employer Tax Rates. For 2008 taxes, new employers will pay 90% of the average industry array calculation factor rate. In 2007, they paid 115% of the average industry array calculation factor rate.

Tax Rate Changes. Starting in 2008, employers whose NAICS is "111", "112", "1141", "115", "3114", "3117", "42448", or "49312" will no longer have a graduated social cost factor of zero. Instead, the combination of the employer's array calculation factor and the graduated social cost factor for the NAICS codes listed may not exceed five and seven-tenths percent for rate year 2008 and thereafter.

For more information, contact the Washington Employment Security Department at (360) 902-9620 or see the department's Web site at <http://www.esd.wa.gov/>.

Payroll Tax Calendar

Federal Employment Tax Due Dates for March 2008

Due Date	Deposit or Filing Requirement
February 29	Semiweekly deposit due date for liabilities incurred Feb. 23-26
March 5	Semiweekly deposit due date for liabilities incurred Feb. 27-29
March 7	Semiweekly deposit due date for liabilities incurred March 1-4
March 10	Employers should receive Form 4070 from tipped employees receiving \$20 or more in tips during February 2008.
March 12	Semiweekly deposit due date for liabilities incurred March 5-7
March 14	Semiweekly deposit due date for liabilities incurred March 8-11
March 17	If the monthly deposit rule applies, FICA and federal income tax withheld must be deposited no later than this date for the month of February 2008. Forms 1042 and 1042-S must be filed with the IRS no later than today.
March 19	Semiweekly deposit due date for liabilities incurred March 12-14
March 21	Semiweekly deposit due date for liabilities incurred March 15-18
March 26	Semiweekly deposit due date for liabilities incurred March 19-21
March 28	Semiweekly deposit due date for liabilities incurred March 22-25
March 31	Forms W-2, W-2G, 8027, 1098, 1099 and 5498 filed electronically must be submitted to SSA (Form W-2) and IRS no later than today.
April 1	Tax advances made by employers for employees' federal withholding taxes for 2007 must be repaid by employees no later than today.
April 2	Semiweekly deposit due date for liabilities incurred March 26-28
April 4	Semiweekly deposit due date for liabilities incurred March 29-31

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