



Payroll Tax Penalties

Personal Liability

The IRS takes payroll taxes very seriously, so seriously, in fact, that they consider nonpayment of payroll taxes **theft** of employee retirement funds. An employer's payroll responsibilities are **fiduciary** in nature, and therefore the IRS has the right to hold both business owners and other responsible persons personally liable for the payment of all assessed taxes, penalties, and interest if the business does not pay. The person that is generally targeted as the "responsible person" is the person who has the authority to sign checks for payment of the taxes. This could be a corporate officer, or just a clerical person.

Payroll Tax Penalty Assessment / Types of Penalties

FAILURE TO DEPOSIT TAXES: There are specific rules regarding when payroll taxes withheld from your employees must be remitted to the IRS. These rules are detailed in the [Form 941 instructions](#), as well as IRS [Publication 15](#), and are based on the total taxes withheld.

LATE FILING OF FORM 941: For each whole or partial month a return is late, there is a penalty of 5% of the unpaid tax due with that return. The maximum penalty is generally 25% of the tax due.

INACCURATE REPORTING OF TAX LIABILITY: If 100% of the payroll taxes are not deposited timely, penalties ranging from 2% to 15% may be assessed by the IRS.

FAILURE TO PROVIDE ACCURATE FORMS W-2 TO THE EMPLOYEES / FAILURE TO FILE AN ACCURATE AND TIMELY FORM W-3 AND W-2's WITH THE SOCIAL SECURITY ADMINISTRATION: The penalty ranges from \$30 to \$100 per W-2, based on when you file the forms. The maximum penalty is \$1,500,000 (\$500,000 for small businesses).

There is also a penalty assessment for a business owner who inaccurately classifies an employee as an independent contractor. In this instance, a business owner may be required to pay payroll taxes on disbursements to the contract worker/employee, in addition to penalties and interest, retroactively for seven years. Clearly, knowing the difference between an independent contractor and an employee is of paramount importance, and an issue which will be addressed in an upcoming newsletter.

Taxpayers may file Form 843 to request abatement of penalties and/or interest assessed by the IRS.

Lastly, on a bright note, there are some exemptions available to business owners who employ family members. For details, see [Publication 15](#).

Following is a table which summarizes the most common federal payroll forms:

Form #	Description	Filing deadline
940	Employer's Annual Federal Unemployment (FUTA) Tax Return. FUTA is a payroll tax on the first \$7,000 of earnings per employee. The taxes due are calculated at the end of each calendar quarter and are deposited by the end of the month following the end of the quarter	Filed annually and due on the last day of the month following the end of the calendar year (January 31).

941	Employer's Quarterly Federal Tax Return. Used to report the amount of federal withholding, Social Security, and Medicare taxes owed to the IRS.	Last day of the month following the end of a calendar quarter; January 31, April 30, July 31, October 31.
943	Employer's Annual Tax Return for agricultural Employees. Annual reporting by agricultural employers.	Filed annually and due on the last day of the month following the end of the calendar year (January 31).
945	Annual Return of Withheld Federal Income Tax. Used to report non-payroll withholding.	Filed annually and due on the last day of the month following the end of the calendar year (January 31).
W-2	Wage and Tax Statement. Used to report certain earnings and deductions for the calendar year.	Due to the employee by January 31 of each year, and due to the Social Security Administration (SSA) on the last day of February (if filing manually), or the last day of March (if filing electronically).
W-3	Transmittal of Income and Tax Statements. Used to transmit copy A of paper Forms W-2.	Due to the SSA on the last day of February with copy A of Form W-2.

Additionally, payroll reports must also be filed as mandated by the states in which you have employees. These filing requirements vary from state to state, but most states require quarterly reporting of wages for either unemployment or state income tax purposes.

If you have any questions regarding these or other tax issues, please contact one of our tax specialists listed below to arrange a consultation regarding these tax planning opportunities.

Lisa Potter - 972.341.9549
Jackie Miller - 972.739.1256
Rachel Alexander - 972.739.1251
Carla Medrano - 972.739.1266