



July 3, 2023

Andres Garcia
Internal Revenue Service
1111 Constitution Avenue, NW, Room 6526
Washington, DC 20224
Pra.coments@irs.gov

Re: Comments on Draft Form W-2c, 88 *Fed. Reg.* 27588 (May 2, 2023), OMB Number 1545-0008

Dear Mr. Garcia:

PayrollOrg, formerly the American Payroll Association,¹ appreciates the opportunity to comment on the draft Form W-2c. While PayrollOrg understands that the IRS's *Federal Register* notice includes minimal changes to the form, e.g., updated e-filing information and new filing address, we are taking this opportunity to ask questions about Box 13 on the form. PayrollOrg requests that the answers to the following issues be added to the form instructions or to frequently asked questions on the IRS's website.

Union and Pension Plan Situation

Instructions are needed in a situation where an employee is a union member, is not yet eligible to participate (not vested) in an employer-offered pension plan, yet the employer is required to contribute and, thus, checks the "Retirement Box" in Box 13 on Form W-2. The employee wants to take an IRA deduction and cannot because the box is checked. Should the box have been checked by the employer in this situation? If not, and it was checked, is a Form W-2c required?

¹ Established in 1982, PayrollOrg is a non-profit organization serving the interests of more than 20,000 payroll professionals nationwide. One of PayrollOrg's core missions is providing representation for payroll professionals at the federal, state, and local levels. This is done primarily through PayrollOrg's Government Relations Task Force in which members educate government and community leaders about the payroll industry and the best practices associated with paying America's workers.

To expand on this situation, pension, health, and welfare contributions via union contracts are a lump-sum item in payroll systems. The information is not always provided to employees because of the union contract. Even when provided, the employee will not necessarily know how much money the employer has contributed to a pension and how much for health and welfare. The employer contributions may not vest for 5 years or more. If employees leave employment before the plan vests, they will never receive the pension money. If the “Retirement Box” is checked, these employees also can never take an IRA deduction.

The IRS does not have instructions on when to check the box, or whether to correct the box in these situations involving union pension plans. Is there a way for the employee to take the IRA deduction and, if so, where can these instructions be found, so employers can direct their employees?

401k Plan Borrowing Situation

Employees can borrow from their 401k plan under certain circumstances. Generally, when they borrow, contributions are stopped. Later when employees repay the borrowed amounts through payroll deductions, should the employer check the “Retirement Box” on Forms W-2? If not, should Forms W-2c be filed to correct errors? Is this considered merely repaying the loan or contributions (which would make the employee an “active participant” for the year) by the IRS?

In summary, employers and employees need instructions in union contract pension situations and 401k borrowing situations for purposes of Box 13 on Forms W-2 and W-2c.

Sincerely,



Alice P. Jacobsohn, Esq.
Director of Government Relations

For: Government Relations Task Force
Federal Issues Subcommittee
Chairs Rebecca Harshberger, CPP, and Jon Schausten, CPP