

AMERICAN PAYROLL ASSOCIATION

July 16, 2021

Internal Revenue Service
National Public Liaison Office
Attn. Joseph M. Guillen, Senior Tax Analyst

Re: Common Pay Agent Request Regarding Excess Social Security Tax Credit

Dear Mr. Guillen:

The American Payroll Association (APA)¹ offers the IRS recommendations to resolve a problem with refunds of excess Social Security taxes caused by the use of a single identifier for multiple employers in common pay agent situations.

Description of the Problem

A significant number of employers pay employee wages through multiple legal entities while seeking to streamline and improve their processes for withholding, reporting, and paying federal employment taxes. To accomplish this goal, employers have implemented either an Employer/Payer Appointment of Agent arrangement (Common Pay Agent) or a Certified Professional Employer Organization/Customer Reporting Agreement (CPEO).

A Common Pay Agent or CPEO arrangement allows employers to appoint an agent to file employer/payer tax returns, initiate backup withholding, and withhold and deposit employment taxes on a consolidated basis for multiple employer/payer entities using the appointed agent's federal employer identification number (FEIN).

¹ The APA is a nonprofit professional association representing more than 20,000 payroll professionals in the United States. APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations. In addition, APA's Government Relations Task Force (GRTF) works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and workers. With more than 70% of federal employment tax collections through payroll management, the IRS's relationship with APA is extremely important to ensure correct withholding and reporting.

Employers who pay wages through multiple legal entities often transfer funds and distribute employees' pay among legal entities. These employers must issue employees separate Forms W-2, *Wage and Tax Statement*, from each employer entity for which wages were paid during the same calendar year, even though as an agent the wages and taxes are reported under one FEIN. Therefore, each entity must separately track employees' wages against the Social Security wage base without regard to wages paid by other entities.

The required inclusion of a shared FEIN on multiple Forms W-2 from separate employer entities often appears to show that a single employer has over-withheld Social Security taxes within the same calendar year.

If employees are paid in excess of the annual Social Security wage base limit because of separate accounting by multiple employers, including employers who use the same pay agent in the same calendar year, the responsibility to identify the over-withheld Social Security taxes falls to the employees. They must ask for a refund using their Forms 1040, *Individual Income Tax Return*.²

As a practical matter, this process of multiple employers with the same FEIN can and often does result in the IRS denying employees the refunds owed for excess Social Security taxes with the IRS notices telling employees to obtain refunds from their employers. Impacted employees often receive incorrect notices from the IRS, their tax preparers, or are alerted by their tax filing software that their Forms W-2 show over-withheld amounts, and they must seek refunds through their employers.

Further, in the General Instructions for Forms W-2 and W-3 (2021) under "Special Reporting Situations for Form W-2" and "Agent reporting," a common pay agent is to enter in box c (Employer's name, address, and ZIP code), the "(Name of agent), Agent for (name of employer), and Address of agent." These Form W-2 instructions are also referenced in the IRS's Internal Revenue Manual (IRM) § 21.6.3.4.2.4(5).

This agent reporting process does not resolve the problem of refunding excess Social Security taxes. The common pay agent information appears as an extension of employer contact information and multiple forms still use the same FEIN. The agent reporting instructions also are not identified on the form, the title of box c, or the

² The APA notes that the Internal Revenue Manual provides guidance for auditing and processing credits for excess Social Security taxes withheld, but this procedure is not consistently applied. See 2020 Form 1040 and 1040-SR instructions at page 104, line 10.

instructions on the form itself. As a result, the form appears to show a single employer and the employee is denied a refund from the IRS.

It is common for employees' Social Security tax refund problem to take 12 to 18 months to be resolved. When the IRS denies the Form 1040 request for the excess Social Security tax refund, the calculation of individual income taxes changes. This Form 1040 adjustment may indicate a tax amount due. If the tax amount due is not paid, the IRS will use a future Form 1040 refund to offset (or deduct) the amount due from the previous tax year. In essence, this creates a domino effect that ultimately impacts an employee's personal income tax return filing status. For example, if the IRS issues a lien to collect the taxes due before the excess Social Security tax refund problem is resolved.

Recommendations

The APA recommends that the IRS take the following steps to resolve the issues:

1. Create a checkbox on Form W-2 that can be used by employers to indicate Employer/Payer Appointment of Agent or CPEO reporting arrangements. For example, a check box could be added to the top of box c, immediately after "ZIP code" with instructions provided with the form. When the box is checked, the IRS, tax preparers, and tax filing software will recognize that a single FEIN applies to multiple Forms W-2 and that a refund may be indicated.
2. Add an additional field or box on Form W-2 to identify actual common law employer FEINs to clarify the identity of both the employer and the third-party agent.

The APA also recommends the IRS make the following changes to allow payroll practitioners better access to employment tax data:

1. Eliminate the need for inclusive tax periods (i.e., from XXXX to XXXX) to access:
 - a. Form 941, *Employer's Quarterly Federal Tax Return*,
 - b. Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*,
 - c. Employment tax data on Form 2848, *Power of Attorney and Declaration of Representative*, and
 - d. Employment tax data on Form 8821, *Tax Information Authorization*.

2. Enable the IRS Transcript Delivery System (TDS) to sync with individuals who have properly executed Forms 2848 or Forms 8821 on file. Though the TDS website suggests that individuals with a Form 2848 or Form 8821 on file may access the system to obtain information, this is not actually accurate as IRS Advisory Council members and APA members have expressed.
3. Enable employers to access the IRS Online Account System to receive Account Transcripts, Tax Return Transcripts, and incoming and outgoing IRS Correspondence.

The APA appreciates your consideration of these recommendations. To discuss the problem and recommendations further with APA members, please contact me by email at ajacobsohn@americanpayroll.org or by phone at 202-669-4001. Thank you.

Sincerely,



Alice P. Jacobsohn, Esq.
Director, Government Relations

For the APA GRTF Subcommittee on Federal Issues:
Chairs Rebecca Harshberger, CPP, and Jon Schausten, CPP
Pay Agent Team Lead Martin Armstrong, CPP, MBA, DBA