

December 2008

2009 Payroll Withholding and Payroll Tax Changes

Below is our annual summary of specific provisions relating to payroll and information reporting. The provisions will be effective January 1, 2009. Please review this bulletin carefully and share it with all personnel who assist in payroll matters. There is also a separate memorandum, which discusses different types of remuneration to report as compensation on Form W-2.

INTERNET ACCESS

Most governmental taxing authorities have a website where you can access information regarding payroll. For the IRS, Nebraska and Iowa, those websites are as follows:

IRS:	www.irs.gov
Nebraska Dept. of Revenue:	www.revenue.state.ne.us
Iowa Dept. of Revenue:	www.state.ia.us/tax
Nebraska Dept. of Labor:	www.dol.state.ne.us
Iowa Dept. of Labor:	www.iowaworkforce.org

WITHHOLDING ON WAGES

There is a new Circular E (Publication 15 – Rev. December 2008) issued for 2009. Circular E (Publication 15 - Rev. December 2008) for use in 2009 can be obtained from the Internal Revenue Service at the downtown location or by calling 800-829-3676. It can also be downloaded from the above website.

There will not be a new Nebraska Circular EN, Nebraska Income Tax Withholding for 2009. If you do not have the 2008 booklet, please call the Nebraska Department of Revenue at (402) 595-2065 (Omaha) and request that a Circular EN be mailed to you. You can also download this booklet from the above website. As of April 17, 2008, the “special withholding rate” has changed to 1.5%. Employers using the percentage method tables should have replaced the previous rate of 3% with the new 1.5% rate.

For Iowa withholding, use the Iowa Withholding Tax Rate Tables, effective April 1, 2006. These rate tables are not reissued every year. Copies may be obtained by calling 1-800-367-3388 or downloaded from the above website. Please note the Iowa Department of Revenue now requires the Form 44-095a, Withholding Quarterly Return be filed via the web site stated above or by telephone (1-800-514-8296) each quarter.

Please note that Federal withholding on "supplemental" wage payments for 2008 is at 25% (35% on supplemental payments in excess of \$1,000,000), and the Nebraska rate remains at 5%.

PAYROLL TAXES

The combined FICA tax rate for 2009 is 7.65% (which is the same as prior years)—6.2% for social security (OASDI) and 1.45% for Hospital Insurance (Medicare). For 2009, the OASDI wage base is \$106,800 for a maximum OASDI tax of \$6,621.60 for both employee and employer. As in prior years, there is no limit on Medicare wages.

As in the past, the FICA taxes must be computed on gross wages less any cafeteria plan deductions. There may be other pre-tax deductions. Please contact us if you have any questions. The employer withholds the tax from the employee's wages for remittance to the government, and the employer must also match the amount of FICA taxes withheld from an employee's wages.

The social security (FICA) tax rate for self-employed individuals for 2009 will be 15.3%, twice the rate noted above. The wage bases for OASDI and Medicare will be the same as noted above. As in the past, the self-employed individual reports and pays this social security tax as part of their individual tax return, but will be able to deduct one-half of the tax liability on that return.

The Federal unemployment tax rate will continue at 0.8% (6.2% less 5.4% credit for state taxes) on the first \$7,000 of wages paid to each employee (gross wages x .008). If the total liability per quarter for all employees is \$500 or less (including any FUTA tax carried forward from an earlier quarter), no deposit is required. If the cumulative liability exceeds \$500 for any of the calendar quarters, a deposit for the total liability must be made by the end of the month following the close of the quarter, at which point the \$500 tax liability is exceeded (April, July, October and January). **NOTE: The 0.8% rate applies only if all state unemployment payments are made in a timely manner.**

The Nebraska unemployment tax rate is determined by the Nebraska Workforce Development each year based on the employer's experience account. The notice for determination will be issued in late December 2008. The taxable wage base for 2009 remains at \$ 9,000 of wages paid to each employee. You can now file your quarterly unemployment insurance reports by electronic filing via the internet. All employers with an annual gross payroll of \$500,000 or more are mandated to file and pay their quarterly unemployment insurance tax through the Nebraska Workforce.com website. For further information go to www.uiconnect.state.ne.us.

If you pay Iowa unemployment, you should have received or will receive your 2009 unemployment tax rate from them. The wage base for 2009 is \$ 23,700. Information and forms are now available from their Internet website.

The Internal Revenue Service continues to process Forms 940 and 941 by optical character recognition. In order to read entries correctly on these forms, they ask that you type or print in black ink. In addition, no erasures, whiteouts or strikeouts will be accepted. The IRS accepts Forms 940 and 941 produced by software applications, such as QuickBooks.

Form 941, Employer's Quarterly Federal Tax Return, and Form 940, Employer's Annual Federal Unemployment tax return, can no longer be filed electronically using the TeleFile system. These forms may be filed using the Employment Tax E-File System through an authorized IRS e-file provider. We are an authorized IRS e-file provider.

There is a new Form 941-X for correcting previously filed Forms 941 or 944. These forms are to replace Form 941c. Please call our office if you need assistance.

DEPOSITS

The rules effecting payroll tax deposits remain the same as 2008. The IRS divides taxpayers into two groups for making payroll tax deposits:

1. Monthly, or
2. Semi-weekly

The IRS makes this determination on the amount of withholding required for the twelve months ending the prior June 30. If you had \$50,000 or less of deposits during this period, you are in the monthly group; otherwise, you are in the semi-weekly group. It is your responsibility to watch your tax liability and start depositing on the semi-weekly basis when necessary.

Under the monthly rule, all payroll taxes withheld during the month must be paid by the 15th day of the following month.

Under the semi-weekly rule, taxes accumulated from payroll paid on Wednesday, Thursday or Friday must be deposited by the close of banking on the following Wednesday. Amounts accumulated from payroll made on Saturday, Sunday, Monday or Tuesday must be deposited by the following Friday. When a semi-weekly period (Wednesday - Friday or Saturday - Tuesday) straddles the end of a quarter, two separate deposits are required for taxes accumulated in the different quarters. For example, if one quarterly return period ends on Thursday and a new quarter begins on Friday, employment taxes accumulated on Wednesday and Thursday are subject to one deposit obligation and taxes accumulated on Friday are subject to a separate obligation. Separate Federal Tax Deposit (FTD) coupons or EFTPS Deposits are required for each deposit obligation.

A special rule overrides both rules noted above. If total accumulated taxes reach or exceed \$100,000 during a deposit period, it must be deposited the next day. A second special rule applies if total accumulated taxes are less than \$2,500 during a quarter. Such amount can be paid with the tax return for the quarter (Form 941).

Certain taxpayers may now file their employment taxes annually. You will be notified by the IRS if you qualify to file Form 944, Employer's Annual Federal Tax Return. If your Federal payroll tax

liability will be \$1,000 or less and you have not received notification from the IRS, you can call the IRS at 1-800-829-4933 before April 1, 2009 to determine if you can file Form 944 for calendar year 2009.

For any deposit due on a day that is not a banking day, the deposit is due the next banking day.

Please contact us if you have trouble understanding or applying these rules.

NOTE: It is our recommendation that a deposit be made with each payroll, thereby eliminating penalties and interest.

We remind you that when completing the Federal Tax Deposit Coupon (Form 8109) to deposit your payroll taxes and corporate estimated taxes, it is extremely important you use a pencil or black pen and it be marked neatly and correctly with the proper type of tax and quarter for which you are making a deposit. Deposit only one type of tax per coupon. Also, be sure to put your federal identification number and type of tax you are paying on your check. Deposits made at an unauthorized financial institution, paid directly to the Internal Revenue Service, or paid with the tax return (when FTD deposits are required) may be assessed a 10% penalty.

EFTPS

The requirement for payment of taxes using the Electronic Federal Tax Payment System (EFTPS) continues to go through changes. If you currently use EFTPS, continue to do so. If you do not currently use EFTPS, you are required to do so if your total federal depository taxes (payroll taxes, corporate income tax, excise tax) exceeded \$200,000 in a prior year. Each subsequent year, **you** must determine if you meet the threshold for making electronic payments using the tax deposits of the second preceding year (the IRS will not notify you). Once you are using the EFTPS method, you must continue using it each subsequent year. If you are required to use EFTPS and fail to do so, you may be subject to a 10% penalty.

Before you can make deposits electronically, you must enroll in the system by filing Form 9779 with the Internal Revenue Service. *Once the threshold amount has been reached, all Federal taxes must be paid electronically and paper coupons can no longer be used for any Federal tax payment.* You can receive information from the IRS, (402) 221-4018, (800) 555-4477 or (800) 945-8400 or on the internet at www.eftps.gov.

You can now make your EFTPS payments via internet. Contact the Internal Revenue Service through the website at the beginning of this summary and follow the instructions for enrolling.

Nebraska also has a program for making electronic payments. Employers withholding \$100,000 or more during the previous tax year may be required to remit amounts withheld via electronic funds transfer. Covered employers will be notified at least three months in advance of the requirement to remit electronically. Again, you must enroll in the program before payments can be made. You need to file Nebraska Form 27EFT. Their help line is (800) 433-8631. You can now file via the internet. Contact the Nebraska Department of Revenue through the website indicated at the beginning of this summary and follow the instructions for enrolling.

FORM W-4

All employees must complete a Form W-4, Employee's Withholding Allowance Certificate, when hired, or when they request a change in withholding. The same marital status and number of withholding allowances claimed for Federal purposes must be used for Nebraska. The web sites, www.paycheckcity.com or www.irs.gov, can assist employees with completing Form W-4.

NEW HIRE REPORTING - Employers must report any new hires or rehires within 20 days after the date of hire. You should transmit the required information by forwarding a copy of the employee's Federal W-4 or any form approved. The employer name, address and Federal identification number must be on the form. Nebraska employers should mail the forms to:

Nebraska State Directory of New Hires
P.O. Box 65366
St Paul, MN 55165-0366
or Fax (866) 808-2007 (no cover page required)

Registration and reporting can be done on the internet by accessing their website at:
www.ne-newhire.com.

Employers in states other than Nebraska should contact that state for the correct address, or contact us for assistance.

Under new regulations, you are not automatically required to send a copy of a questionable W-4 to the Internal Revenue Service. Now, you only have to submit copies when you receive written notice from the IRS or are directed to do so with a revenue procedure or notice in the Internal Revenue Bulletin. For further information, please contact us.

Note: A Form W-4 on which an employee claims exemption from withholding legally expires on February 15 of the year after it is filed, thereby requiring the employee complete another Form W-4.

FORM I-9

As part of the Immigration Reform and Control Act, employers are required to verify that employees are not illegal or unauthorized aliens. It is unlawful to hire or employ an unauthorized alien. To comply with and document this verification, employers should have all employees and subsequent new hires complete Form I-9, Employment Eligibility Verification. The current edition of Form I-9 is dated June 5, 2007 and is available at www.uscis.gov/files/form/I-9.pdf. You should consult an attorney familiar with this law if you have any questions or concerns. These forms must be kept in a separate file from other employee information.

SOCIAL SECURITY NUMBER VERIFICATION

The Internal Revenue Code provides that the employer may be penalized up to \$50 for each incorrect Form W-2. Therefore, it is important to verify each employee's name and Social Security number. You may call (800) 772-6270 to verify up to five Social Security numbers. You may present a paper list of up to fifty Social Security numbers to the local Social Security Administration office.

The Social Security Administration's Employee Verification Service may handle over fifty verification requests; however, pre-registration is required. We are a registered agent to verify Social Security numbers.

More information is available at www.ssa.gov/employer/ssnv.htm or you can call (800) 772-6270.

EMPLOYER FEDERAL PENALTIES AND INTEREST

1. The penalty for late filing of a payroll tax return is 5% of the tax not paid on time. It is figured for each month or part of a month the return is late, up to 25% of tax paid late.
2. The penalties for failure to make deposits of taxes are based on applicable percentages of the amount of underpayment determined by the number of days the deposit is late. If failure is:
 - a) not more than 5 days late, the applicable percentage is 2% of the underdeposited taxes;
 - b) more than 5 days but not more than 15 days late, the applicable percentage is 5% of the underdeposited taxes; or
 - c) if the failure is more than 15 days late, the penalty is 10%.

Also, a penalty of 15% may be imposed if the under-deposited taxes are not paid on or before the earlier of:

- a) 10 days after the first delinquency notice; or
 - b) the day on which notice and demand for immediate payment is given.
3. As of May 25, 2007 a new law raised the IRS bad check fee to \$25 and applies to checks and money orders of \$1,250 or less. This amount is up from the previous \$15 on amounts of \$750 or less. The penalty is 2% for higher amounts.
4. There are also employer's penalties for (a) failure to withhold, (b) fraudulent wage and tax statements, (c) failure to furnish wage and tax statements, (d) failure to file information returns, Forms 1099, Forms W-2 and Forms W-3, (e) perjury, (f) failure to include taxpayer identification number, employer or employee's numbers, and (g) failure to permit inspection of books. If further information is needed on these penalties, please contact our office.
5. The current (12-31-08) interest rate on underpayment of Federal taxes is 6%. This rate is adjusted quarterly.

EMPLOYER STATE PENALTIES AND INTEREST

The Nebraska penalty for late filing of withholding tax is 5% per month, up to a maximum of 25% and the interest rate as of January 1, 2009 is 5%, adjusted biannually. The Nebraska Workforce Development penalty for late payment is equal to 0.1% of the total wages paid during the quarter, but not less than \$25 or more than \$200. The interest charges will be 1.5% of tax due per month.

In Iowa, if at least 90% of the correct tax is not paid by the due date of the return or deposit, a 10% penalty will be added to the unpaid portion of the tax due. The penalty will not be waived due to reasonable cause. Interest is also added to unpaid tax at a rate prescribed by law from the due date of the return until payment is received.

EMPLOYEE PENALTIES

Employees are subject to penalties for false or fraudulent information furnished to their employer.

WAGES

Please review our separate memorandum also found on our website for a detailed discussion of wages.

Wages for purposes of withholding and payroll taxes include all reported tips. If non-tip income is not sufficient to cover required withholding, special rules must be followed. Allocated tips may also have to be computed and reported for food and beverage establishments that employ 10 or more employees per day.

The Federal minimum wage is \$6.55 per hour and will be increased to \$7.25 per hour effective July 24, 2009.

Nebraska follows Federal for the minimum wage increase. Iowa raised their minimum wage to \$7.25 effective January 1, 2008.

Tip credit. Restaurateurs and other employers that have tipped workers can continue to pay their workers \$2.13 an hour if the tips bring the hourly wage up to the prevailing minimum wage at the time detailed above.

FEDERAL NON-EMPLOYEE PAYMENTS (FORM 1099)

All persons (including corporations, partnerships and proprietorships) engaged in a trade or business must file an information return (Form 1099) for payments in excess of \$600 made to a non-corporate entity as compensation for services. The law also requires that the payer report payments to non-corporate entities in excess of \$600 for interest, dividends, rents, royalties and pensions on Form 1099. You can order forms and the separate instruction booklet by calling 800-829-3676, or by going to www.irs.gov and clicking on "Forms and Publications" to select the appropriate materials for downloading.

Form 1099 must include all payments made in connection with a trade or business during a calendar year. The Form 1099 must be filed with the Internal Revenue Service by February 28 of the following year, and a copy of the information return must be given to the payee by January 31. Nebraska does not require a copy at this time; however, Iowa does require reporting of this information.

The law encompasses all payments for services performed for the trade or business by a non-corporate entity and services performed by any professional entity. If the payee is a corporation, no Form 1099 is required, except for payment made to attorneys for legal services. Services to be reported include labor costs to repair your plant or equipment by non-employees (full cost of repairs including replacement parts may have to be reported), cleaning or lawn services, attorney and accounting services, painters, exterminators, consultants and other non-employee labor. Also the fair market value of prizes and awards given to non-employees should be reported in Box 3 on the 1099-MISC.

The Form 1099 must include your name, identification number and phone number, the payee's name, address and identification number, and the amount of payment. **Be sure your 1099-MISC forms include the telephone number of the person that your payees/recipients should contact.**

In order to accurately complete the Form 1099, you must request the payee's tax identification number, and/or exempt status. Form W-9 is used to request the necessary information from the payee. If you do not receive the identification number or confirmation of exempt status, you are required to withhold 20% of the payment and remit it to the Internal Revenue Service on a quarterly basis.

Failure to file the Form 1099 when required can result in a penalty of up to \$100 for each Form 1099 not filed; however, failure to request the identification number along with failure to withhold 20% of the payment will result in much more serious penalties. The Internal Revenue Service will assess you the 20% you failed to withhold. In addition, it will assess you a penalty of 5% a month, up to 25%, and charge you interest on the amount not withheld.

Even if you can abate the tax by showing the payee reported the income you paid them, the Internal Revenue Service will still assess the penalty and interest.

Note: Even though we may process your monthly records, we do not have the necessary information to prepare the Form 1099 information returns. If you need assistance, please let us know.

NEBRASKA NON-EMPLOYEE COMPENSATION

Nebraska requires employers to withhold income taxes on payments made to a nonresident of Nebraska for personal services. Withholding is required where payments to the nonresident exceed \$600. The total payments and amounts withheld must be reported to the payee and state of Nebraska.

Employers should have the service provider complete Form W-4NA. If annual payments are less than \$28,000, the withholding rate is 4% of the payments, less applicable expenses. If payments equal or exceed \$28,000, the withholding rate is 6% of the payment, less applicable expenses.

Withholding is required where payment is made to a corporation or partnership if the individual performing the services controls the corporation or partnership.

Please refer to your Nebraska Circular EN for more information.

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Your payroll department should be given a copy of this bulletin for future reference. If you have any questions or would like further explanation of the changes, please contact our office.

Our office has a complete payroll department capable of performing all payroll services, including preparation of checks, deposit coupons, quarterly and annual reports, and employer summary reports. Please contact us if you would like us to perform any payroll services for you.

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Please be advised that, based on current IRS rules and standards, the advice contained herein is not intended to be used, nor can it be used, for the avoidance of any tax penalty that the IRS should assess related to this matter.