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48 DTR G-1

Employment Taxes

IRS to Begin Employer Tip Reporting Compliance Program, SB/SE's Tuzynski Says

The Internal Revenue Service is starting a new compliance program to assess the employer's share of Federal Insurance Contributions Act (FICA) taxes on tips reported on Form 4137, John Tuzynski, IRS chief of employment tax operations, Small Business/Self-Employed Division, said March 12.

Employees who receive cash and charge tips of more than \$20 per calendar month and do not report them have to report them on Form 4137, Social Security and Medicare Tax on Unreported Tip Income, Tuzynski said at the American Payroll Association's 2010 Capital Summit.

Employees also must file this form if they have been allocated tips, he said, but the employers are only liable for their portion of payroll taxes on tips when the employees report the tips to them.

'Making History' at IRS

"We have never made those employer assessments in the history of the IRS," Tuzynski said, "so we're going to be making history this year."

IRS can conduct these assessments because it revised Form 4137 about three years ago to require the employee to list the employer identification number on the form so it can aggregate all those forms, Tuzynski said. It did not have the capacity to do so before the form was modified, he said.

The service will notify employers via notice and demand letter with the amount owed, Tuzynski said. The agency will ask employers to include the taxes on their next Form 941 and will not subject employers to interest or penalties if they are compliant, he said.

IRS conducted a pilot program with a limited number of audits about three months ago and discovered it needed to conduct some outreach, Tuzynski said. IRS should issue a news release about the compliance program within the next three weeks, along with some frequently asked questions, he said.

Many employers IRS has contacted about the program did not know the agency could examine tip reporting, Tuzynski said. IRS has the authority to make such assessments under tax code Section 3121(q), he said.

Backup Withholding Pilot

IRS started another pilot program a little over a year ago on backup withholding, where it mined through the Form 1099-MISC database to find payors that had filed these forms with the greatest frequency of no taxpayer identification numbers, Tuzynski said. IRS audited a limited number of these returns and found that many small businesses did not understand their backup withholding responsibilities, nor did they comprehend what to do when they received a Notice CP2100 that identifies whether there was a TIN mismatch or no TIN at all, he said.

The service is working to clarify the CP2100 notice and is planning more outreach in the future, Tuzynski said.

COBRA Health Coverage Extensions

IRS is currently trying to clear a news release on the latest extension to March 31 of premium reductions for health insurance benefits under the Consolidated Omnibus Budget Reconciliation Act, Tuzynski said. More extensions are likely in the future, he said.

If an employer receives the 35 percent share of the premium in 2010, but the coverage is for 2009, the credit should be taken on a 2010 return in any quarter, Tuzynski said. If an employer chooses to reduce payroll tax deposits during the quarter based on receipt of the 35 percent, the employer has to claim the credit for the related subsidy on the Form 941 or in the quarter during which the payroll deposits are reduced, he said.

The COBRA credit is subject to verification, and employers must keep supporting documentation, Tuzynski said. He said he is doing a number of COBRA examinations, which are started every week.

"The compliance effort's gone very well, and I think in large part what employers are doing has really been active reporting, timely reporting," Tuzynski said. "I really couldn't be more pleased with the level of reporting on the part of the payroll community."

IRS employees also have met about the jobs bill for the last 45 days, and Tuzynski said his staff already has completed a news release based on the House version of the legislation. "We're ready to go with the news release; we're ready to go with frequently asked questions," he said.

The forms and publications area already is examining how it would revise the Form 941, Tuzynski said. "We're really trying to make it as less burdensome, as quick, and as timely as we can so you can comply because, let me tell you, I know what you're going through in trying to get something that impacts your systems so quick in the process, and it's really tough," he said.

New Schedule R in Development

IRS released a new Schedule R for 2010 for reporting agents who file consolidated Forms 941 on behalf of other employers who complete Form 2678, Employer/Payer Appointment of Agent, Tuzynski said. Federal Unemployment Tax Act (FUTA) tax is not covered by tax code Section 3504, so each client must keep filing the Form 940 under a name and TIN separate from the agent who is designated to act on their behalf to meet employment tax obligations, he said.

However, a Schedule R is currently being developed for the Form 940 for home health care service recipients who will be permitted to file an aggregate Form 940 beginning in 2011 for calendar year 2010, Tuzynski said.

IRS is aiming to debut an electronic filing option for the Schedule R, Tuzynski said. He said he does not believe IRS has the option finished right now but thinks the ability for less than 1,000 taxpayers to e-file the schedule should be on track for the first quarter. The system cannot accept more than 1,000 filings now due to capacity, he said.

Worker Classification Issues

Tuzynski said he is hopeful IRS will receive enough data by the end of the three-year employment tax National Research Program to see where the most noncompliance is so the service can determine the best treatment for it, whether it be through more education and outreach or additional guidance. IRS hopes to obtain information via the NRP with regard to worker misclassification to determine how big of an issue it is nationally, he said.

"This is one of the cornerstones of it, is that we will get information that we would be able to measure just how big the issue is, and that might be helpful on the legislative front," Tuzynski said.

Tuzynski said tax code Section 530 prohibits him from providing guidance on worker classification. "It's always sort of a tightrope I walk," he said.

Regarding an issue IRS is not currently examining, Tuzynski mentioned Commissioner Douglas Shulman's Jan. 8 statement on C-SPAN that IRS has shelved efforts to develop guidance regarding the treatment of cellular phones as listed property under tax code Section 280F (6 DTR G-3, 1/12/10). Shulman said the agency is not conducting, nor is it moving forward on, any initiatives concerning employer-provided cell phones.

The service hopes Congress will address the issue legislatively, he said.

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ISSN 1522-8800

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