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# **2013 Key Employer Highlights**

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We prepared this guide to serve as a resource tool for common issues we often get questions about. We haven't covered everything. Please call us to discuss your unique business situation. A quick set up question can save hours later in the year.

## ***Federal Payroll Taxes***

### **W-4s**

Employers are required to have a completed W-4 on file for each employee. This form should be completed before an employee begins work and made effective for the employee's first pay period. The Form W-4 is used by employers to determine the correct amount of tax withholding to deduct from employees' wages.

The W-4 is available at [www.irs.gov/pub/irs-pdf/fw4.pdf](http://www.irs.gov/pub/irs-pdf/fw4.pdf), and the worksheet is at [www.IRS.gov](http://www.IRS.gov), type in "withholding calculator."

### **W-2 and W-3s**

The Form W-2, Wage and Tax Statement, is used to report wages paid to employees and the taxes withheld from them.

Special rules apply for employees who were terminated during the course of the year. These employees may request that you provide their W-2s at an earlier date. When a terminated employee requests the W-2s earlier, you must furnish the forms within 30 days of the request or, if later, within 30 days of your last payment of wages to the employees.

The Affordable Care Act requires employers with 250 or more employees in previous year to report the cost of coverage under an employer-sponsored group health plan on an employee's Form W-2, in Box 12, using Code DD. Many employers are eligible for transition relief for tax-year 2012 and beyond, until the IRS issues final guidance for this reporting requirement. This reporting is for informational purposes only. The amount reported does not affect tax liability, as the value of the employer contribution to health coverage continues to be excludible from an employee's taxable income. More information about the reporting can be found on [Form W-2 Reporting of Employer-Sponsored Health Coverage](#).

File paper copies of Form W-3 with Copy A of all of the W-2s by February 28, 2013, or file electronically by April 1, 2013 to the Social Security Administration (SSA). W-2s should be mailed to recipients by January 31st. It is no longer necessary to use the red scannable forms for W-2s. Many software products will print acceptable forms on plain paper.

For more information, see [General Instructions for Forms W-2 and W-3](#).



Wait to mail (or electronically file) the Federal copies until close to the due date. If you discover an error after the Form W-2 has been issued to the employee but before Copy A of Form W-2 and the accompanying Form W-3 are filed with the SSA, mark the "Void" box on the original Copy A. Then prepare a new Form W-2 for the employee, write the word "Corrected" on the copies given the employee and send Copy A of the new form to the SSA. (This new Copy

A should not be marked “Corrected”). If a W-2 is corrected before the SSA receives their copy, it will not be necessary to prepare Form W-2c.

For information on electronically filing your employer information with the Social Security Administration, please go to <http://www.ssa.gov/employer/>.

**Form 941, Employers Quarterly Tax Report**

Form 941 is due quarterly. The IRS will continue to scrutinize 941s and compare them to W-2 data submitted to the SSA. Use your 941s as a double check for your W-2/W-3 reconciliation to avoid penalties. Form 941-X is used for corrections.

**Form 943, Employers Annual Federal Tax Return for Agricultural Employers**

Form 943 is due on January 31, 2013. If your software program does not support 943 reports, run the 941 report quarterly to double check that you are current. At least quarterly you should verify that all payroll deposits have cleared. If you are calculating your payroll manually, use a blank Schedule B and record your liability during the year using the date the paychecks are dated, not the date of the payroll deposit or the last day of the pay period. Form 943-X is used for corrections.

**Form 940, Federal Unemployment Tax (FUTA)**

The FUTA tax rate remains unchanged at 6.0% for 2013. The maximum taxable earnings are \$7,000. If state unemployment is paid on all wages you receive a credit reducing the maximum tax to \$42 per employee based on a net rate of .6%. If any wages subject to FUTA tax are not subject to state unemployment tax (SUTA), you are liable for FUTA at a higher rate (up to 6%) for a maximum of \$420. For instance, in Washington, wages paid to corporate officers can be exempt from SUTA but not FUTA. Different rules apply to agricultural and family employees. See [Circular E](#) or [Circular A](#) for details.

Do not use any Employment Administrative fund payments to calculate your FUTA tax.

Employers are required to make a quarterly deposit for Federal Unemployment Taxes if the accumulated tax due exceeds \$500. If at the end of any calendar quarter, the accrued undeposited amount totals \$500 or more, the tax must be deposited before the end of the following month. Interest and penalty charges are assessed on late deposits at the same rate as Social Security/Medicare employment tax penalties. The annual return for 2012 (Form 940) is due by January 31, 2013.

**Example:** Employee A and Employee B are corporate officers whose wages are excluded from SUTA in your state. Employee C's wages are not excluded from SUTA. During the first quarter, you paid \$11,000 to Employee A, \$2,000 to Employee B, and \$4,000 to Employee C.

	Employee A /SUTA exempt	Employee B /SUTA exempt	Employee C	Total
1st quarter wages	11,000	2,000	4,000	17,000
FUTA taxable wages (up to \$7,000)	7,000	2,000	4,000	13,000
FUTA rate	6%	6%	0.6%	n/a
FUTA liability (taxable wage x rate)	\$ 420.00	\$ 120.00	\$ 24.00	\$ 564.00

In this example, you must deposit \$564 by April 30 because your liability for the 1<sup>st</sup> quarter is greater than \$500. QuickBooks will not calculate this correctly if there are both corporate officers and employees because QuickBooks will only calculate one rate.

**Social Security Tax Rates and Limits**

The FICA or Federal Insurance Contributions Act employment tax is made up of the Social Security or Old-Age, Survivors, and Disability Insurance (OASDI) tax and the Medicare or Hospital Insurance (HI) tax. The Social Security or OASDI portion of the FICA payroll tax is currently 6.2 percent for employers and employees for wages up to \$113,700 in 2013. The Medicare or HI portion of the FICA payroll tax for 2012 is 1.45% for both employers and employees totaling 2.9% of covered wages and is not subject to a wage cap like OASDI.

Beginning in 2013, the employee portion of the FICA Medicare payroll tax rate for high income earners will increase by 0.9% going from 1.45% to 2.35% as part of the health care reform legislation passed under the Affordable Care Act. An employer must withhold Additional Medicare Tax from wages it pays to an individual in excess of \$200,000 in a calendar year, without regard to the individual’s filing status or wages paid by another employer. The employer portion of the FICA Medicare tax would remain unchanged at 1.45%. See more [here](#).

The IRS has released revised Federal Withholding Tables. <http://www.irs.gov/pub/irs-pdf/n1036.pdf> or check [Circular E](#) once revised.

Wages Subject To Tax		Tax Rate			Maximum Tax		
		Employee	Employer	Total	Employee	Employer	Total
FICA	\$113,700	6.2%	6.2%	12.4%	\$7,049.40	\$7,049.40	\$14,098.80
Medicare	Wages up to \$200K	1.45%	1.45%	2.90%	No limit	No limit	No limit

Self employed- Since you are both the employer and the employee, your maximum tax for Social Security is \$14,098.80. There is no limit to the Medicare portion and the tax rate is 2.9% (3.8% for wages over the high income threshold). See the Social Security Administration (SSA) web site [www.ssa.gov](http://www.ssa.gov) for more information.

**941/943/945 Deposit Requirement Threshold of \$2,500**

If your net taxes for the quarter are less than \$2,500, you are not required to make deposits and may pay the taxes with Form 941. You may file Form 941 electronically. Form 943 payments may also be made with Form 943 if your net tax liability for the year is less than \$2,500. The rules are the same for Form 945. All forms must be filed timely for this rule to apply.

## **\$100,000 Next-Day Deposit Rule**

If you accumulate a tax liability of \$100,000 or more on any day during a deposit period, you must deposit the tax by the next banking day **no matter what type of schedule depositor you are**. If you are a monthly schedule depositor and accumulate a \$100,000 tax liability on any day during a month, you become a semiweekly schedule depositor on the next day and remain so for at least the rest of the calendar year and for the following calendar year. Please refer to Circular E for more details. A copy is available on the IRS website at [www.irs.gov](http://www.irs.gov).

## **Electronic Federal Tax Payment System (EFTPS)-Required**

Use Form 9779 or go to [www.eftps.gov](http://www.eftps.gov) to enroll. Businesses can schedule payments up to 120 days in advance and individuals can schedule payments up to 365 days in advance of their tax due dates. Use the Electronic Federal Tax Payment System (EFTPS) to make all your federal tax payments including income, employment, estimated and excise taxes. Enrollment forms can also be obtained by calling 1(800) 555-4477. If your business is new, IRS will automatically pre-enroll you in EFTPS when you apply for an employer identification number (EIN).

Electronic deposits can be made by telephone 1(800)555-3453 or online.

**Payments must be scheduled by 8 p.m. ET one business day in advance of their due date.** You will be given an EFT acknowledgement number which will verify your timely initiation of the tax payment and thus avoid penalties. Check with your financial institution about availability of same day wire payments.

Cancellation of EFTPS scheduled payments must be done at least two days prior to withdraw date.



## **Deposit Penalties-Federal**

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 the failure is:

- 1-5 days late, the applicable percentage is 2% of the under-deposited taxes;
- 6-15 days late, the applicable percentage is 5% of the under-deposited taxes; or
- 16 or more days late, the penalty is 10% and
- the penalty becomes 15% if you fail to make the deposit on or before the earlier of
  1. 10 days after the first notice and demand to you for these amounts or
  2. the day on which notice and demand for immediate payment is given to you under a jeopardy assessment.

There is a 10% penalty for deposits paid directly to the IRS when subject to electronic deposit, or paid with the return unless the deposit shortfall rules apply. [Publication 15, IRS Circular E, Employer's Tax Guide](#) has more details about failure to deposit (FTD) penalties.

Deciding correctly which day is “payday” is important in determining the date when certain liabilities arise. Failure to correctly make this determination can be costly in penalties and

interest. Employer liability arises from the date of a paycheck. **The liability does not arise at the time the wages were earned.** For example:

A payroll is prepared for the pay period March 1-31. Payday is April 1<sup>st</sup>. The liability was incurred April 1<sup>st</sup>; it is a second quarter liability.

The income tax and the employees' share of FICA you withhold from your employees' paychecks are the part of their wages you pay to the United States Treasury instead of to your employees. The portion of their wages you hold is called "**Trust Fund**" taxes. There are extremely large penalties (up to 100%) for employers that delay in turning over employment taxes to the United States Treasury.

### **Bonuses, Christmas Gifts and Other Employee Incentives**

Wages subject to federal employment taxes generally include all pay that you give to an employee for services performed. The **pay may be in cash or in other forms**. Gifts in excess of \$25 (totaled for the year) are considered compensation and subject to payroll taxes. It includes salaries, vacation allowances, bonuses, commissions and fringe benefits. It does not matter how you measure or make the payments. Amounts an employer pays as a bonus for signing or ratifying a contract in connection with the establishment of an employer-employee relationship and an amount paid to an employee for cancellation of an employment contract and relinquishment of contract rights are wages subject to Social Security, Medicare, Federal Unemployment taxes and income tax withholding.

### **IRS calendar**

Every year, the IRS issues Tax Calendar for Small Businesses and Self-Employed (Publication 1518). The calendar contains information on general business taxes, IRS and Social Security Administration customer assistance, electronic filing and payment options, retirements plans, business publications and forms, and of course common tax filing dates.

The calendar is available in printed or electronic form. Please click [here](#) to download or order Tax Calendar from the IRS.

## ***WA State Payroll Taxes***

### **Washington State Minimum Wage**

The Washington State minimum wage rate, effective January 1, 2013, is **\$9.19** per hour, an increase of 15¢ from 2012. The minimum wage applies to all workers in the state except workers under age 16 who may be paid \$7.81 (85% of minimum). The state recalculates the wage each September as required by an initiative passed by voters in 1998.

Tips cannot be included to calculate the minimum wage. Overtime (1.5 times an employee's regular rate) need only be paid for all hours actually worked in excess of 40 in a week. Paid non-work hours (paid vacation, holidays, sick days, jury duty, etc.) do not count for overtime purposes. Bonuses are wages in the year paid and are subject to all Federal and State taxes except Labor & Industries (workers compensation). When an employee is terminated or quits

the wages due may be paid at the end of the established pay period. This does not apply to union or other labor-management agreements that provide otherwise (RCW 49.48.010).

The FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees and certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the U.S. Department of Labor's regulations. For details click [here](#).

### **Washington State Employment Security Tax (Unemployment) (SUTA)**

Employment Security Tax is based on an experience rating system with a taxable wage base of **\$39,800** for 2013. Your new rates should arrive in December.

If you are a new employer or haven't been in business long enough, you won't have enough "experience" to get your own tax rate. Instead, you will be assigned a rate based on your industry.

If you hire a nanny or someone to clean your house and pay them more than \$1,000 in gross wages during a calendar quarter, you must report to the Employment Security Department.

This tax is paid quarterly on a form provided by the Employment Security Department. Hours reportable are all hours paid including holidays, sick leave and vacation. The maximum hours reportable for salaried employees are 520 hours per quarter. The tax, however, is computed on the dollar amount of the wage paid.

Corporate officers who provide services in Washington will be covered for unemployment insurance unless their employer specifically exempts them. Corporations that want their officers to be covered by unemployment insurance do not need to file for coverage, but must include the officers and their Washington wages in the unemployment insurance quarterly reports. State unemployment taxes on corporate officers must be paid each quarter, and they may be eligible for unemployment benefits if they lose their jobs. Check with Employment Security regarding your specific situation as a corporate officer who owns greater than 10% of the Company or if you are a family member of an owner. You may not be eligible for benefits. Corporations should not report individual corporate officers who have been approved for exemption. By law, corporate officers **need to be notified in writing** that they are ineligible for Unemployment Insurance coverage. The notice must contain the officers' names and signatures and must be kept on file for audit purposes. If you have questions regarding coverage of corporate officers, please check with our office. If your corporation requested exemption and you are unsure if the exemption was approved call 1(360)902-9360.

If you don't have payroll during the quarter you can file your report by phone 1(888) 836-1900. Check this [ESD web page](#) for different electronic filing options. The electronic filing software remembers employees from quarter to quarter so only new employee information needs to be added. Electronic payment options are available and easy to use. It will calculate excess wages.

Use only the original paper form sent by Employment Security . Do not use old forms.



## **Shared-Work Program**

The Shared-Work Program offers you an alternative to laying off workers. The program allows you to reduce the work hours of your full-time employees, while the workers collect partial unemployment benefits to replace a portion of their lost wages. The program helps you retain your skilled workers, reduce your payroll costs and avoid the expense of recruiting, hiring and training new employees when the economy improves.

Any company can participate if the company is registered in Washington for at least six months prior to applying for the program.

Your participating employees must:

- Be full-time and hourly;
- Be eligible for regular unemployment benefits; and
- Be able and available to work all hours offered by the shared-work employer.

The Shared-Work Program is not for slowdowns that are an expected part of an industry or business. The program cannot be used to support seasonal businesses during the off season or companies that traditionally use part-time employees.

You must reduce the weekly work hours of your participating employees by at least 10 percent, but not more than 50 percent. For example, the work schedule for a full-time employee who typically works 40 hours a week must be reduced by at least 4 hours, but not more than 20 hours.

A shared-work plan can last up to one year. If your request is for less than a year, it still counts as your one plan for the year. In most instances, it is best to open a plan for the full year so it will be available if you need it.

Similarly, employees can receive up to 52 weeks of shared-work benefits in each one-year plan as long as there is a balance available. The weeks do not need to be consecutive. Go to <http://www.esd.wa.gov/uibenefits/faq/shared-work.php> for details on all programs.

## **Workers' Compensation Premium (Industrial Insurance, L&I)**

There will be no overall increase in workers' compensation rates for 2013. This is the second year in a row that L&I has held overall rates flat. Individual employers may see their rates go up or down, depending on their recent claims history and changes in the frequency and cost of claims in their industry. You will receive a notice from the Department of Labor and Industries indicating your composite rate for 2013. This composite rate also includes amounts for Medical Aid and Supplement Pension Assessment.

Employers may withhold one-half of the Medical Aid and Supplemental Pension Assessment from the employee.

For hourly employees, report the hours actually worked. Do not include vacation, holidays, or sick leave. For salaried employees, use 160 hours per month. Sole proprietors, partners and their spouses are exempt from Industrial Insurance, but these persons may elect to be covered. Please note corporate officers will not be covered under Industrial Insurance unless

they file an election to be covered. Corporate minutes must exist which discuss making the election to be covered and letters should be sent to each officer informing them of the election. You may be required to pay industrial insurance for independent contractors.

**WARNING:** Partners, sole proprietors and corporate officers who are not covered by Industrial Insurance should check their group/individual medical insurance policy. Unless the policy has 24/7 coverage that includes “on the job” coverage they may be uninsured if injured at work.

The Department of Labor and Industries website has a list of methods to reduce your L&I tax rate. Go to <http://www.lni.wa.gov/ClaimsIns/Insurance/default.asp> for questions or to sign up for electronic filing.

### **Accident Prevention Program**

Every employer in the State of Washington, regardless of the number of employees, is required to have a safety and health committee plan. Additionally, Washington Industrial Safety and Health Act (WISHA) rules require each employer to establish an accident prevention program outlined in a written format.

Labor and Industries has sample Accident Prevention Programs you can modify for your workplace. Visit <http://www.lni.wa.gov/safety/basics/programs/accident/default.htm> for more information. The website has sample programs which can be downloaded.

## ***Medical Benefits***

### **Treatment of Medical Insurance Premiums for S Corporation Shareholders**

Medical insurance premiums paid for greater than 2% shareholders of S corporations are deductible by the corporation and are included in income on the W-2s of the greater than 2% shareholders. Covered family members who are also employees of the S corporation must also have premiums included in gross wages. The premiums are not subject to withholding for Social Security or Medicare tax if the premiums are paid under a health plan covering all employees. **100%** of the premiums are deductible on Form 1040 as self-employed health insurance deductions if the family is not covered by another employer sponsored plan. In the case of an employee who is related to a more than 2% shareholder, a statement should be attached to the W-2 issued to the employee. The statement should explain the reason for the taxable income increase and notify the employee that he/she may be eligible for the self employed health insurance deduction for any month the family is not covered by another employer sponsored plan. This statement should also be attached to the employee’s tax return. We can provide a sample statement.



If the 2% shareholder medical insurance is not included on the W-2 the shareholder will not be allowed to deduct their medical insurance premiums on page one of their 1040 even if they otherwise qualify. Instead, the insurance premium will only be deductible on schedule A, as an itemized deduction subject to the 7.5% of adjusted gross income limitation.

## **Section 125 Flexible Spending Account (FSA)/Cafeteria Plans**

**New for 2013:** Effective for cafeteria plan years beginning January 1, 2013, the maximum amount of salary reduction contributions that an employee may elect to have made to a flexible spending arrangement for any plan year is \$2,500.

A cafeteria plan is a written plan that allows participating employees to select qualifying benefits from a "menu" of choices the employer creates which can include dependent care, medical expense and the employee's share of medical insurance costs. The participant can direct a portion of their salary to the plan. The redirected salary is deposited to a trust account. When an expense is incurred for a qualifying benefit, the employee is reimbursed by the trust account. Reimbursements provide additional benefits to the employee, because they are free from federal and state income tax, and payroll tax. With cafeteria plans, employees can use pre-tax dollars to pay for health insurance & dependent care. Both the employee and employer save on taxes: Federal income, Social Security/Medicare, and state income taxes (where applicable). The participant chooses the amount to be allotted to the Section 125 plan at the beginning of the year and cannot change the amount except under specific circumstances. Two and a half months after the end of the plan year any leftover employee dollars in the Section 125 plan account revert to the employer.

The tax savings make cafeteria plans very attractive. Inexpensive plan documents are available and the plans are relatively simple to administer. Flexible spending/Cafeteria plan benefits can help retain employees.

Employees can use FSA balances that remain at the end of a plan year to pay for health care and dependent care expenses incurred during the first 2½ months of the following plan year **provided the Section 125 plan has been amended to allow it.**



Sole proprietors, LLC members, partners and 2% or greater shareholders in an S-corporation are not allowed to participate in a Section 125 plan.

Effective Jan. 1, 2011, the cost of an over-the-counter medicine or drug cannot be reimbursed from Flexible Spending Arrangements or health reimbursement arrangements unless a prescription is obtained. The change does not affect insulin, even if purchased without a prescription, or other health care expenses such as medical devices, eye glasses, contact lenses, co-pays and deductibles. See [IRS Publication 969](#), Health Savings Accounts and Other Tax-Favored Health Plans for more details.

## **Health Savings Accounts (HSAs)**

A health savings account (HSA) is a tax-exempt trust or custodial account that an employee sets up with a qualified HSA trustee to pay or reimburse certain medical expenses they incur. Amounts you contribute to your employees' HSAs are generally not subject to employment taxes. You must report the contributions in box 12 code "W" of the Form W-2 you file for each employee. This includes the amounts the employee elected to contribute through a cafeteria plan.

To be eligible to participate in an HSA plan, an employee must be covered under a high deductible health plan (HDHP) and cannot have any other health coverage (with certain

exceptions). They cannot be enrolled in Medicare or claimed as a dependent on someone else's tax return.

No permission or authorization from the IRS is necessary to establish an HSA. When an employee sets up an HSA, they will need to work with a trustee. A qualified HSA trustee can be a bank, an insurance company, or anyone already approved by the IRS to be a trustee of individual retirement arrangements (IRAs) or Archer MSAs. The HSA can be established through a trustee that is different from their health plan provider. See [IRS Publication 969](#), Health Savings Accounts and Other Tax-Favored Health Plans for more details.

### **Health Reimbursement Arrangements (HRAs)**

A health reimbursement arrangement (HRA) must be funded solely by an employer. The contribution cannot be paid through a voluntary salary reduction agreement on the part of an employee. Employees are reimbursed tax free for qualified medical expenses up to a maximum dollar amount for a coverage period. An HRA may be offered with other health plans, including FSAs.

If any distribution is, or can be, made for other than the reimbursement of qualified medical expenses, any distribution (including reimbursement of qualified medical expenses) made in the current tax year is included in gross income. For example, if an unused reimbursement is payable to you in cash at the end of the year, or upon termination of your employment, any distribution from the HRA is included in your income. This also applies if any unused amount upon your death is payable in cash to your beneficiary or estate, or if the HRA provides an option for you to transfer any unused reimbursement at the end of the year to a retirement plan. See [IRS Publication 969](#), Health Savings Accounts and Other Tax-Favored Health Plans for more details.

### **Welfare Plans**

There are many ways to provide employee medical, disability, life insurance and other benefits, including welfare benefit plans and cafeteria plans. While distinct from retirement plans, these plans are just as complex, and they come with their own sets of rules and regulations, as well as filing and testing requirements.

A welfare plan is the general name for most plans providing benefits other than retirement benefits or deferred compensation. Welfare plans, like qualified retirement plans, are governed by ERISA and may include health, dental and vision coverage; life insurance; long- and short-term disability insurance; child care; transportation; and even legal benefits.

### **Health Care Credit**

The small business health care tax credit helps small businesses and small tax-exempt organizations afford the cost of covering their employees. Your business may be eligible for the credit. The maximum credit is worth up to 35 percent of a small business' premium costs (25% for tax-exempt employers) for tax years 2010 to 2013. On Jan. 1, 2014, this rate increases to 50 percent (35 percent for tax-exempt employers). The credit phases out gradually for firms with average wages between \$25,000 and \$50,000 and for firms with the equivalent of between 10 and 25 full-time workers.

To be eligible, you must cover at least 50 percent of the cost of single (not family) health care coverage for each of your employees. You must also have fewer than 25 full-time equivalent employees (FTEs). Those employees must have average wages of less than \$50,000 a year.

If you are a tax-exempt organization, include the amount on line 44f of the Form 990-T, Exempt Organization Business Income Tax Return. You must file the Form 990-T in order to claim the credit, even if you don't ordinarily do so.

A good calculator for determining whether your business qualifies is located at [www.nfib.com/issues-elections/healthcare/credit-calculator](http://www.nfib.com/issues-elections/healthcare/credit-calculator).

Small employers, whether businesses or tax-exempt organizations, will use Form 8941, Credit for Small Employer Health Insurance Premiums, to calculate the small business health care tax credit.

### ***Retirement Plans***

Qualified retirement plan limits for 2013	Under Age 50	Over Age 50
Pretax contributions for 401(k), SEP plans and 403(b) annuities	\$17,500	\$23,000
Combined employer/employee pay-in limits for all defined contribution plans	\$51,000	\$51,000
Annual defined benefit plan limitation	\$205,000	\$205,000
Maximum annual compensation limit for retirement plan computations	\$255,000	\$255,000
Minimum compensation limit for SEP participation	\$550	\$550
Highly compensated employee definition	\$115,000	\$115,000
SIMPLE pretax contribution limit	\$12,000	\$14,500

Employee pretax contributions (elective deferrals) to a qualified plan, such as a 401(k), SEP, or SIMPLE plan, are exempt from Federal income tax but are subject to Social Security/Medicare and FUTA taxes and are reported on the Form 941, lines 6 and 7(not on line 2).

All participant contributions should be deposited with the plan trustee as soon as they can be reasonably segregated from the employer's assets (generally within 3 business days from the date on which the contributions are withheld from payroll) and no later than the 15th day of the month immediately following the month in which the contributions are received or would otherwise be available to the employees in cash.

## **Savings Incentive Match Plans for Employees (SIMPLE)**

SIMPLE plans are available to employers with 100 or fewer employees. The IRA form of this plan allows the employer to adopt and maintain a plan with relative ease and few administrative costs. The employer is required to either match employee elective contributions on a dollar-for-dollar basis up to 3% of the employee's compensation or, in lieu of making a matching contribution, make a 2% of compensation non-elective contribution for each eligible employee regardless of whether the employee puts any of his/her own money in the plan. Employer-matching and non-elective contributions to a SIMPLE account are not subject to employment taxes. If you are self-employed and file a Schedule C, all matching and/or non-elective contributions that are made to your own personal SIMPLE plan account are subject to self-employment taxes. If you have a SIMPLE plan, you are still eligible to contribute to a Roth or regular IRA provided you qualify with respect to the income limits (\$112,000 single filer, \$178,000 joint filer). SIMPLE matching contributions for 2012 must be funded by Jan 31, 2013.

An employer must deposit employees' salary reduction contributions to their SIMPLE IRAs within 30 days after the end of the month in which the amounts would otherwise have been payable to the employees in cash, according to IRS rules (IRC section 408(p)(5)(A)(i)).

Distributions from a SIMPLE plan generally are taxed under the rules applicable to traditional IRAs. Tax-free rollovers can be made from one SIMPLE account to another. A SIMPLE account can be rolled over to a traditional IRA on a tax-free basis after a two-year waiting period that starts the day the individual first became a participant in the SIMPLE plan. If an employee is no longer participating in a SIMPLE plan and two years have passed since the employee first participated in the SIMPLE plan, the employee's SIMPLE account is treated as a traditional IRA. It can be rolled over to a Roth under the traditional IRA rules at this stage. Withdrawals of any kind within the first two years of participation are subject to federal income tax (FIT) plus a **25% penalty**. Early withdrawals from a SIMPLE account after the two years have passed are subject to the 10% early withdrawal penalty applicable to IRAs.

## **One Person 401(k) Retirement Plan for Self-Employed**

One-person 401(k) retirement plans are available to any business whose only full-time employees are its owners and their spouses. Corporations, partnerships, sole proprietorships, and not-for-profit organizations are all eligible. This plan allows the tax-deferral of a 401(k) with increased contribution limits. In 2013, the total contribution limit for a one-person 401(k) is \$51,000 or \$56,500 if age 50 or older. The annual one-person 401(k) contribution consists of 2 parts: a salary deferral contribution and a profit sharing contribution. The total allowable contribution adds these 2 parts together to get to the maximum one-person 401(k) contribution limit. Business owners may contribute the greater of 25% of compensation or 100% of compensation up to \$17,500 (\$23,000 if age 50 and over). One-person 401(k) contributions are flexible. Both the salary deferral and the profit sharing contributions are discretionary and can be changed at anytime based on business profitability. The contribution limits can be doubled for husband and wife businesses. Businesses with a spouse on the payroll can also contribute to the one person 401(k). There would be a single one person 401(k) for the business with two participants. Provided a business owner and spouse have sufficient income from the business, both may be able to contribute \$51,000 each or \$56,500

each if both are age 50+ in 2013. However, you may not contribute to a Simple IRA and establish a one-person 401(k) within the same calendar year. A one-person 401(k) must be set up no later than December 31, 2012 to be eligible for 2013 tax deductions.

A Form 5500 is required to be filed if the one-person retirement plan assets exceed \$250,000. IRA, SEP, KEOGH, SIMPLE and 401(k) s are eligible for rollover into a one person 401(k).

Any Simple IRA contributions in 2013 will disallow the establishment of a one-person 401(k) until 2014.

### **Form 5500 Annual Return/Report of Employee Benefit Plan**

If you are a plan administrator for a retirement plan (Profit Sharing or Money Purchase Plan or Self-Employed 401(k)), defined benefit plan, corporate pension and profit sharing plan, certain 403(b) plans or a 401(k) plan, generally you must file a Form 5500 each year. Under ERISA, welfare plans must file Form 5500 unless they have fewer than 100 participants and the plan is unfunded (benefits are paid as needed solely from the employer's general assets), fully insured or a combination of the two. The number of participants is the number in the plan, not the number eligible, as of the beginning of the plan year. General assets include the account the employer uses for day-to-day business transactions or its corporate bank account. See [www.dol.gov/ebsa](http://www.dol.gov/ebsa) for more information on Form 5500 filing requirements.

### **Cross Tested or Multiple Tiered Retirement Plans**

Another choice for businesses with employees is the cross tested retirement plan. This strategy most often advances the interests of professionals -- such as medical and law offices - - whose highly compensated employees may be older than its other employees.

Cross testing is nondiscrimination testing that determines if a profit sharing contribution, as valued at normal distribution age, is non discriminatory. It provides the highest allocation possible to the business owner and other highly compensated employees. Cross testing is used under two profit sharing allocation options: age weighted or new comparability formulas. The age weighted formula is based on employees' ages and salaries. The new comparability formula is based on separate employee categories determined by the business owner. Another term for this type of plan is multiple tiered.

### **Traditional and Roth IRAs**

IRA and Roth IRA contribution limits are the lesser of \$5,500 or earned income for 2013. For those over 50, there is a "catch-up provision" which allows the lesser of \$6,500 or earned income. 2013 IRAs can be funded no later than April 15<sup>th</sup> 2014. For 2012, contributions of the lesser of \$5,000 (6,000 for those over 50) or earned income can be made until April 15<sup>th</sup>, 2013.

## ***Other Payroll Info***

### **Change of Address Form 8822-B**

Beginning in 2012, employers must use the new Form 8822-B, Change of Address-Business, for any address change.

### **Form 945, Annual Return of Withheld Federal Income Tax**

This form is due January 31, 2013 for the year ended December 31, 2012. This form is used to report non-payroll tax liability, including backup withholding, income tax withheld from gambling winnings, pensions, annuities and IRAs. You cannot combine deposits for Form 941 and Form 945.

Generally, the deposit rules that apply to Form 941 also apply to Form 945. However, because Form 945 is an annual return, the rules for determining your deposit schedule are different from those for Form 941. See section 11 of [Circular E](#) for a detailed discussion of the deposit rules.

### **Garnishment**

Act on garnishment notices immediately. Garnishment is a court-ordered (or other legal or equitable procedure such as the Internal Revenue Service) process whereby a person's property is confiscated to pay a debt; in the case of wage garnishment, that property is one's paycheck. The federal government protects debtors and sets limits on the amount of wages that can be garnished from an individual. State governments have established and enforce their own separate debt collection laws. Washington state rules can be found on this website: <http://www.dol.gov/compliance/guide/garnish.htm>

In the wage garnishment process, there are three parties: your employee (the debtor), the party that's owed money (the creditor) and you, the employer (the garnishee). As an employer, you're legally bound to comply with wage garnishment court orders. It's your responsibility to make the proper deductions from your employee's paycheck and send payments to the creditor. Common reasons for wage garnishment include:

- Alimony
- Child support
- Defaulted student loans
- Bad debts
- Bankruptcy
- Tax levies

It is illegal to fire an employee or to take any negative action against them because their wages are being garnished. However, if there are two or more separate garnishments during a calendar year the employee may be terminated.

If your employee quits, you are no longer required to make payments.

If an employee's wages are to be garnished, the creditor will notify you by sending you a Wage Garnishment package (SF-329). This package includes a letter to the employer (SF-329A), the



wage garnishment order (SF-329B), a wage garnishment worksheet (SF-329C) and an employer certification form (SF-329D). Complete and return the employer certification form (SF-329D) within 20 days of receipt. If you don't, you may be subject to civil and criminal action. Click [here](#) to download a copy of the wage garnishment package.

Calculating the proper amount to garnish can be extremely complicated. Do it wrong and you could face legal repercussions. Even if you're within the legal limits, you can still draw heat from a creditor for garnishing too little or from your employee for garnishing too much. Payments are generally made each pay period.

In some cases, an employee's wages may be garnished by more than one creditor. For instance, you may be asked to garnish wages for child support and for a defaulted student loan. It's your responsibility to know which types of garnishments take priority.

Child Support Orders: in Washington, the employer can charge a fee to the employee for administrative costs of processing a court-ordered support withholding. For child support payments the fee is \$10 for the 1<sup>st</sup> remittance and \$1 thereafter per remittance. Wage garnishment orders: in Washington, the administrative fee for a commercial garnishment may be deducted from the payment to the creditor, or paid to the employer at the outset when the withholding order is served. In Washington, the reimbursement of employer administrative costs related to commercial garnishment orders is \$20 for the first answer and \$10 at the time the second answer is submitted. Employers can now make payments on the Internet by using [Washington State's Child Support Internet Payment Service](#).

When your employee's debt has been paid off, the creditor will notify you with a Notice of Termination of Wage Garnishment Order (SF-329E). Once you receive this form, you are to stop deducting withholdings from the employee's paycheck immediately. Download a copy of form SF-329E from the [U.S. General Services](#) web site.

### **Family Employees**

An important exemption from Social Security taxes applies to sons and daughters under 18 years of age employed by their parents in a trade or business. The trade or business must be a sole proprietorship or a partnership in which all partners are parents of the child. The child's wage must be reasonable and the hours and services carefully documented. Payments for the services of a child under age 18 who works for his or her parent in a trade or business are not subject to Social Security and Medicare taxes or FUTA. If these services are for work other than in a trade or business, such as domestic work in the parent's home, they are not subject to Social Security and Medicare taxes until the child reaches age 21. Payments for the services of a child under age 21 who works for his or her parent whether or not in a trade or business are not subject to FUTA tax. Although not subject to FUTA tax, a child may still be subject to income tax withholding.



Open a Roth-IRA in your child's name with the money saved on Social Security and Medicare taxes (up to a maximum of \$5,000 or their earnings, whichever is less).

## **Charitable Payroll Deduction Recordkeeping**

To substantiate a deduction, a taxpayer must maintain a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution. For a charitable contribution made by payroll deduction, a pay stub, Form W-2, or other employer furnished document that sets forth the amount withheld for payment to a donee organization, along with a pledge card prepared by or at the direction of the donee organization, will be deemed to be a “written communication from the donee organization” that satisfies the requirements of Internal Revenue Code section (§) 170(f) (17). The substantiation record must be dated prior to the date the tax return is filed.

## **Company Reimbursements**

There are strict requirements for non-taxable treatment of cash payments to employees. Some examples are substantiated employee reimbursements for meals and entertainment, travel expenses, automobile mileage, auto allowances and other necessary business expenses.

Payments made by an employer to an employee do not qualify as a working condition fringe benefit (non-taxable to the employee) unless the employer maintains an “accountable plan” that requires the employee to:

- Use the payment for expenses in connection with a specific activity for which a deduction is allowed as a business expense;
- Substantiate the expenditures that the payment was for; **and**
- Return to the employer any part of the payment not so used.

Failure by the employer or employee to meet these conditions will cause the payments to be taxable to the employee (and subject to withholding and employment taxes) and require the employee to deduct the “unreimbursed” business expenses as a miscellaneous itemized deduction on Schedule A of their 1040.

The per diem continental U.S. (CONUS) standard rate effective Oct 1, 2012 is \$77 for lodging and \$46 for meals and incidental expenses. See IRS publication 1542 for updated rates during the year. Other rates including foreign, Hawaii, Alaska, and high rate areas are available at <http://www.gsa.gov/perdiem>. Employer-provided cell phones can now be a tax free fringe benefit. If used primarily for non-compensatory business purposes the value of the cell phone is excludable from the employee's income. In addition, any personal use of the employer-provided cell phone, if issued primarily for non-compensatory reasons, will also be excludable from the employee's gross income as a de minimus fringe benefit. The IRS will no longer require recordkeeping of business use of an employer-provided cell phone in order to receive this tax-free treatment as long as the phone is issued and used primarily for business reasons.

The IRS will also take a similar administrative approach that applies with respect to arrangements common to small businesses that provide cash allowances and reimbursements for work-related use of personally-owned cell phones. Under this approach, employers that require employees, primarily for non-compensatory business reasons, to use their personal cell phones for business purposes may treat reimbursements of the employees' expenses for reasonable cell phone coverage as nontaxable. This treatment does not apply to

reimbursements of unusual or excessive expenses or to reimbursements made as a substitute for a portion of the employee's regular wages.

### **Standard Mileage Rate for 2012 and 2013**



<u>Mileage</u>	<u>2012</u>	<u>2013</u>
Standard	55.5¢	56.5¢
Medical/Moving	23¢	24¢
Charitable	14¢	14¢

Taxpayers who use no more than four vehicles at the same time for business purposes may use the standard mileage rate.

A taxpayer may not use the standard mileage rate for a vehicle after using any depreciation method under the modified accelerated cost recovery system after claiming a Code Section 179 deduction for that vehicle, or for any vehicle used for hire.

### **New Hire**

Federal law requires that all employers verify the identity and employment eligibility of all new employees (including U.S. citizens) within three days of hire.

All new employees are required to fill out a [W-4](#) and an [I-9](#) that must be verified and completed by the employer. The requirement applies to all employers including household employers and not-for-profit organizations regardless of the number of employees. It is important to physically check the documentation as the penalties for non-compliance include civil monetary fines as well as more serious criminal penalties. Social Security numbers of new employees can be verified online. Go to [www.socialsecurity.gov/bsowelcome.htm](http://www.socialsecurity.gov/bsowelcome.htm) to register. Another method of verification is through the E-Verify process (see below).

Federal law requires employers to submit to their state agency (ours is Washington Division of Child Support) six data elements for each newly hired employee. The purpose of the law and the program is to help locate parents who are not paying child support. The law also allows other state agencies like the Department of Labor and Industries and the Employment Security Department to use new hire information to detect claim fraud. Report all new hires and rehires to the Division of Child Support (DCS) within **20 days** after employment begins. Beginning June 7, 2012, employers **must** include the date a new employee is hired. The requirement also applies to rehires, if the employee hasn't worked for you within the past 60 days. This *date of hire* is the date on which the employee first works for pay. Failure to report could result in a penalty.

Employers may submit reports in a variety of ways. If faxing or mailing W-4s, copy them and then fill in the employer information in boxes 8-10 and add the employee birth date to box 1 of the form after the last name.

Mail: New Hire Program  
P.O. Box 9023  
Olympia, WA 98507-9023

Fax: 1 (800)782-0624

Phone: 1 (800)562-0479 (up to four new hires) select option 3

Online: <http://www.dshs.wa.gov/newhire>

Employers doing business in two or more states may register with the National New Hire Reporting Program and report all new hires to one state.

Employers may register as a multi-state employer using one of the following options:

Online: <http://65.210.61.140/ocse/>

Fax: 410-277-9325

Mail: Multi-State Employer Notification  
P.O. Box 509  
Randallstown, MD 21133-0509

Phone: 410-277-9470

Include your business name, address, phone number, and Federal Employer Identification Number (FEIN) on all requests. Visit the [National Registry website](#) to [download forms](#) or to obtain more information about multi-state employers.

### **E-Verify**

The Department of Homeland Security (DHS) and the Social Security Administration (SSA) have established an electronic system called E-Verify to assist employers in verifying the employment eligibility of all newly-hired employees. In short, through E-Verify, employers send information from Form I-9 to SSA and DHS to ensure that the new hire is authorized to work in the United States and that the name, Social Security number, date of birth, citizenship status, and any other non-citizen information provided on the Form I-9 matches government records.

You can register for E-Verify at <https://e-verify.uscis.gov/enroll>, which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you the employer, the SSA, and U.S. Citizenship and Immigration Services (USCIS). An employee who has signatory authority for the employer can sign the MOU.

- Employers must post a notice informing employees of their use of E-Verify.
- E-Verify must be used for new hires only. It cannot be used to verify the employment eligibility of current employees.
- E-Verify must be used for all new hires regardless of national origin or citizenship status. It may not be used selectively.
- E-Verify must be used only after hire and after completion of the Form I-9.
- Employers may not pre-screen applicants through E-Verify.
- If an employee receives an information mismatch from their Form I-9 and SSA and DHS databases, the employer must promptly provide the employee with information about

how to challenge the information mismatch, including a written notice generated by E-Verify.

- If an employee decides to challenge the information mismatch, the employer must provide the person with a referral letter issued by E-Verify that contains specific instructions and contact information.
- Employers may not take any adverse action against an employee because he/she contests the information mismatch. This includes firing, suspending, withholding pay or training, or otherwise infringing upon his/her employment.
- The employee must be given eight federal government work days to contact the appropriate federal agency to contest the information mismatch.
- If an employee receives a SSA tentative non-confirmation (TNC), they have the option of visiting an SSA field office to update their record or if the employee is a naturalized citizen, the employee may choose to call USCIS directly to resolve the TNC. The phone number can be found on the SSA referral letter.

### **Outstanding Payroll Checks and Other Unclaimed Property**

Outstanding payroll and other checks which have not been claimed or cashed are required to be turned over to the Unclaimed Property Division of the Department of Revenue. Outstanding checks through June 30, 2012 must be reported by November 1, 2013. Credits or outstanding checks should be reclassified to a liability account (call it unclaimed property). See <http://ucp.dor.wa.gov/>.

### ***Non-payroll issues***

#### **Employee vs. Independent Contractor**

Did you know that when you hire an individual to work or perform a job for you, no matter how small the job is, you need to report that individual to the Employment Security Department (ESD)? There is no minimum dollar/hour threshold that needs to be met before an individual is considered reportable as an employee.

Often businesses consider individuals who perform incidental work, or a one-time job, as casual labor or temporary help, and do not report these individuals to ESD as employees. Unemployment insurance tax is due from the first dollar that is paid to an individual who is working for and being compensated by you. Even if you have someone come and perform a job that takes one or two hours, you need to report that individual as an employee and pay the required quarterly unemployment insurance taxes on their gross wages.

There are also three new IRS programs focusing on Independent Contractors (ICs). The programs attempt to stop misclassification of employees as ICs, which currently costs the government \$2.72 billion in unpaid federal taxes, plus unpaid state workers' comp and UI.

The Worker Reclassification Settlement Program is a voluntary program which allows a participating employer that has misclassified workers as ICs to avoid problems with the IRS by agreeing to treat the workers as employees in the future. The employer pays 10% of the

employment tax liability it would have paid for the last tax year had the workers been correctly classified as employees.

IRS-DOL joint program. The IRS and Department of Labor (DOL) have an agreement to share data related to worker misclassification and other payroll tax enforcement.

Federal-state programs. The IRS and DOL have agreements to share data on worker misclassification with more than 30 states.

The Washington State Employment Security Department has issued [guidelines](#) on the classification of workers hired as independent contractors or employees. **It is important to keep a record of the individual's verification of independence (i.e., UBI number).**

**NOTE:** According to the **IRS** a worker's status under the common law test is determined by applying 20 relevant facts that fall into the three main categories below. All facts must be considered. No single fact provides the answer.

**Behavioral controls:** A worker is an employee when the business has the right to direct and control the worker even if it does not actually exercise that right.

**Financial controls:** A worker who has the opportunity for profit or loss; or unreimbursed expenses; or a significant investment in the work may be an independent contractor.

**Relationship of the parties:** A written contract may show the relationship between the worker and the business.

Receiving benefits indicates the worker is an employee.

## **W-9**

The IRS matches the Employer Identification Number (EIN) to the business name by computer. If you get a notice of back-up withholding from someone you do business with, check your original EIN application (SS-4) and provide the identical information on the W-9. The IRS cross matches by computer the first four letters on the SS-4 application to the number they assigned. If they do not match there is an automatic letter generated to the business entity that submitted the Form 1099 requiring back up withholding of 28% (may increase to 31% in 2013). A "doing business as" (d.b.a.) name cannot be used as the primary name. Sole proprietors should use their EIN and last name.

**Individuals-** the IRS uses the first 4 letters of the last name.

**Trusts-** the IRS uses the first 4 letters of the name of the trust unless the trust was established before 2006. Pre 2006 trusts use the first 4 letters of the last name of the grantor.

**Partnerships-** the IRS uses the first 4 letters of the trade or business name, if none, the first 4 letters of the last name of the first partner listed on the original SS-4.

**All other organizations-** the IRS uses the first 4 letters of the entity's name on the SS-4.

## **Form 1099**

All Forms 1099 must be mailed to recipients by January 31, 2013. Form 1096 with Copy A of all forms 1099 must be mailed to the IRS by February 28<sup>th</sup> or electronically filed by April 1<sup>st</sup>.

Each 1099 that is sent to a recipient must contain the payer phone number. The IRS assesses **\$50** fines to those who do not respond to requests for a phone number. The number must provide direct access to an individual (not the recipient) who can answer questions about the statement. Payers are permitted to include the telephone number in any conspicuous place on the statements. The number is not required on Copy A (IRS copy).

If more than one 1099 (for example, a 1099-MISC for rents and one for non-employee compensation) is issued to an employer identification number or Social Security number, there must be a unique control/account number for each statement such as 001, 002 or A1, A2.

**New Form 1099-K.** Payments made with a credit card or payment card and certain other types of payment, including third party network transactions, must now be reported on Form 1099-K by the payment settlement entity under section 6050W and are not subject to reporting on Form 1099-MISC.

Form 1099-INT is filed for each person to whom payments of \$10 or more in interest were paid during the year.

Form 1099-DIV is filed for payments of gross dividends and other distributions of stock.

Form 1099-MISC is used to report aggregate payments of \$600 or more to persons not treated as employees for services performed for your trade or business (independent contractors). It is also used for rents and royalties. If you bartered your services you still report the business value received on form 1099-MISC (and the value you gave is income on your business or personal tax return).

Form 1099-MISC should not be used to report employee payments or bonuses. Ordinarily, payments made to corporations are not reported on Form 1099-MISC, however, there are exceptions. Medical and health care payments, commercial fish purchases for cash, attorney's fees and gross proceeds paid to an attorney are the most common exceptions.

The 1099 reporting exception for payments to a corporation does not apply to attorneys. Reporting is required for payments to an attorney or law firm including a corporation. All payments to attorneys are reported on Form 1099-MISC. If you made a payment to an attorney in the course of your business in connection with legal services, report the amount paid in box 7 if it exceeds \$600. If the attorney's fee cannot be determined, you must report the total fees and cost reimbursements paid to the attorney in Box 14 on Form 1099-MISC.



When an independent contractor performs services, have them fill out a W-9 for you **before** you pay them. This ensures you have an address and identification number available when you prepare the 1099 the following January. If someone refuses to provide you with their Taxpayer Identification Number (TIN), you are required by law to withhold 28% (may increase to 31% in 2013) from payments made until you receive a TIN. Call 1(800) 772-6271 for TIN verification.

Some states also require reporting and sometimes require withholding. For instance, if you are a Washington company and pay an independent contractor for work performed in California, you must report the amount paid to the Franchise Tax Board. If the independent contractor does not reside in California you will also be required to withhold on that payment.

Call us before you do work outside of Washington so that all nexus issues are discussed proactively.

### **Letter 147C**

Some businesses receive requests from vendors for a Form 147C. The IRS has notified the vendors that they must use backup withholding unless a 147C is received. The 147C is actually a letter from the IRS verifying the EIN and name of your company. It is required when there is a matching problem between your W-9 and the IRS records. To get this letter you must call and request it from the IRS.

### **Director's Fees**

Director's fees should be reported on Form 1099-MISC unless they are part of an employee's compensation. The amount reported should include all travel and reimbursed expenses. The total fees including the value of stock options are subject to B&O tax by the director. The corporation can elect to report them for the director using the [corporate director fees B&O tax payment agreement](#) found at <http://www.dor.wa.gov>.

## ***Other WA State and Local Business Taxes***

### **Washington State Sales and Use Taxes**

The city of Bellingham's combined state and local tax is **.087** (8.7%) effective April 1, 2011. Whatcom County's combined state and local tax is **.085** (8.5%) effective January 1, 2010.

Sales and/or use tax must be paid when you are the end user of a product no matter where or how it was purchased. The Department of Revenue has been aggressively enforcing use tax. Use tax must be paid on all purchases (including freight and shipping) by catalog, telephone or internet when you are not charged sales tax. You must remit use tax with your excise tax return. The Department of Revenue has been sending out notices if you do not declare use tax on your excise tax return. The notice provides an estimate of your industry's average use tax which looks like an assessment. Verify your records and submit your actual use tax if applicable.

Retailers must collect local sales tax based on the destination of the shipment or delivery – "destination-based sales tax." This only affects shipments and deliveries to locations within Washington State. Please see the Department of Revenue website <http://www.dor.wa.gov/> for more information including a nice tax rate lookup tool and calculator.

For monthly filers the due date of the return is the 25<sup>th</sup> of the following month. All monthly and quarterly filers **must file and pay** their excise taxes electronically. Annual returns are due January 31<sup>st</sup>.

### **Personal Property Tax on Business Property**

You must report your business property, furniture, equipment (other than licensed vehicles), supplies, etc. to the assessor of the county in which your business is located. The report is due



April 30<sup>th</sup>. For Whatcom County, see <http://www.co.whatcom.wa.us>. Please give us a copy of your completed report so we can match it to your tax depreciation schedule.

### **Gift Certificates and Layaway Treatments**

In Washington State, purchased gift certificates/cards may not have an expiration date; assess a dormancy or inactivity charge; or include a service fee RCW 63.29.020. Gift certificates donated to charities may include an expiration date.

Taxes are due when the gift certificate is redeemed by the holder. When the certificate is used, the taxes due on the sale depend on the nature of the item or service purchased.

When a customer purchases tangible personal property, sales tax is collected and the seller reports retailing B&O tax and retail sales tax at that time. For purchases of sales tax exempt food products, only retailing B&O tax is due. The seller should report the income for sales tax, and then take an "exempt food products" deduction. No sales tax is due. If the certificate is used to purchase a service (a haircut, for example), the seller reports the transaction under the service B&O tax classification. No sales tax is due.

When an item is purchased on layaway, the seller does not enter the transaction as a sale until the customer takes delivery of the item. Upon delivery, the business will collect and report retail sales tax and retailing B&O tax. If the customer does not complete the terms of the layaway and forfeits the deposit, the seller will report this income under the service B&O tax classification, because there is no retail sale to charge sales tax.

### **B&O State and Local Taxes and Business Licenses**

Businesses in Washington State pay state Business & Occupation Tax. The Department of Revenue will review your business activities for you and verify whether you have been reporting them correctly if you go into their office. See <http://www.dor.wa.gov/> for more information. Also check to see if your business and/or the city you do business in requires a license. Some cities, including Bellingham <http://www.cob.org>, also have a business tax. Go to <http://bls.dor.wa.gov/citycounty.aspx> for exact licensing information for your company and the locations where it does business.

We have tried to make this employer guide as complete and accurate as possible. Laws change, however, and we ask that you consult the applicable government websites or publications for the most recent regulations. Please call us if we can be of assistance. If you would like us to communicate with the IRS or a state agency regarding any employment or tax issues, we will need to file a limited power of attorney for tax purposes (IRS Form 2848).

## DISCLAIMER

**There are pending tax rate changes at the time of this writing. Please be sure to check current rates or contact us for updates.**

*Notice regarding reliance on tax advice in conformance with IRS Circular 230:*

You may not rely on this communication to avoid penalties that may be imposed under the Internal Revenue Code unless you have engaged us to provide written tax advice in a form that satisfies IRS standards for "covered opinions". We make this disclaimer to avoid potential penalties that the IRS might assess against us for issuing an opinion that does not meet strict IRS standards of presentation. IRS covered opinion standards result in significantly increased cost.

