

NEW ELECTRONIC DEPOSIT RULES IN 2011 FOR PAYMENT OF RETIREMENT PLAN WITHHOLDING TAXES

IRS has now **FINALIZED** regulations which are effective **January 1, 2011** that generally require deposit of taxes withheld from retirement plan distributions (Pension, Profit Sharing, 401(k), etc.) using the **Electronic Federal Tax Payment System (EFTPS)**.

NOTE: Direct rollovers to an IRA or new company plan, and age 70 ½ minimum taxable distributions are not subject to withholding tax, so are not affected by the new rules.

What are the current rules? Generally, withheld taxes can be deposited at an authorized financial institution using Form 8109, Federal Tax Deposit coupon. However, Plans with tax withholding of more than \$200,000 in 2008, and plans required to make electronic payment in 2009 or earlier, must use **EFTPS** for all 2010 deposits.

What's changing? Beginning January 1, 2011, deposit of withheld taxes generally must be made through **EFTPS - deposits using Federal Tax Deposit coupon Form 8109 will NO LONGER BE ACCEPTED.** Payment can be made online or by phone.

Will there be any exceptions to the new electronic deposit requirements? YES. As under the current rules, plans with *total withholding taxes of less than \$2,500* for a year may continue to pay the taxes with the Form 945 filing due by January 31st following the calendar year of withholding.

NOTE: The Plan Trustee/Administrator must monitor if total taxes withheld in a calendar year reaches \$2,500, when payment through **EFTPS** is immediately required.

Must I enroll with EFTPS if all Plan assets are held by a single vendor, e.g., insurance company or mutual fund platform? MAYBE NOT. If the vendor performs all payout functions, forwarding the withheld taxes to IRS and preparing Forms 1099-R, 1096 and 945, you might not need to enroll under EFTPS. *You should confirm this with your vendor before the new rules become effective.*

Do I already have EFTPS credentials from using Form 8109? PROBABLY. The IRS and US Treasury sent a mailing to clients that used coupons between June 2009 and June 2010. It had a PIN and **EFTPS** activation instructions. If you did not receive the letter or can't find it, go to the EFTPS website shown below, or call 1-800-555-4477, to see if you have been given a PIN. The easiest way to check is to call EFTPS to verify your enrollment status by giving your business address and EIN.

If you know you are not pre-enrolled, go to the EFTPS website and pre-enroll. You should receive a letter within 7 business days with your PIN and activation instructions. Once you have a PIN, go to the EFTPS website and follow the activation instructions.

What should be done now? With the elimination of the Form 8109 paper coupon, and the continued shift to electronic tax filings, it may be advisable to simply **start making electronic deposits through EFTPS as taxes are withheld during the year.** This will help ensure compliance and avoid penalties. Also check with your Plan's broker, adviser or custodian to see what changes, if any, are needed to use **EFTPS.**

Are the deposit deadlines also changing? **NO.** The timing for **when** the taxes must be paid is not changed by the new rules – only the required **payment method** is affected. For more information on determining deposit deadlines, you can go to:

- <http://www.irs.gov/instructions/i945/index.html> - Instructions to 2010 Form 945
- <http://www.irs.gov/publications/p15/index.html> IRS Publication 15 (Circular E), Employer's Tax Guide; Section 11

What about legal holidays and weekends? The elimination of the Form 8109 paper coupon means payments are no longer restricted to days when banks are open ("banking days"). Thus the deadlines now refer to "business days" which are every day except Saturdays, Sundays and **legal holidays.**

NOTE: Legal holidays are only those recognized in the District of Columbia (DC) - State holidays that differ from these are no longer recognized as such. Thus, if a payment deadline falls on a State holiday that differs from the DC holiday, the payment must be made on or before that date through EFTPS. A list of DC holidays can be found at http://www.irs.gov/irm/part20/irm_20-002-002.html. (Note that list includes a reference to "Certain Statewide Legal Holidays" which is no longer valid for payment of withheld taxes).

IRS Notice 2010-89 provides transitional relief for 2011 from late payment penalties due solely to a due date falling on a State holiday that is not a DC holiday.

What if I can't make the payment myself through EFTPS? Certain financial institutions, tax professionals and payroll services may make payments on your behalf. Same day wire transfers through a financial institution may also be available. You may be charged a fee for these services.

Are there penalties for incorrect/late deposits? **YES.** A 10% penalty will be charged for failure to deposit taxes correctly. In addition, interest will be charged for late payment. These penalties can NOT be paid out of retirement plan assets. The Plan Trustee or Administrator is responsible for payment of penalties and interest assessments.

For information on signing up under **EFTPS** go to <https://www.eftps.gov/eftps/>

NOTE: When enrolling, you must use **the Plan's Trust Identification Number (TIN).** **Do NOT use the Company's Employer Identification Number (EIN).**