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Starting with this issue of PAYROLL CURRENTLY, references to *The Payroll Source®* refer to the 2024 edition of the book, which is printed and available online on the PayrollOrg Bookshelf. The online version is updated throughout the year.

IRS Announces 2024 Foreign High-Cost Locations

The IRS issued a notice providing adjustments to the limitation on housing expenses for specific locations for purposes of the foreign housing cost exclusion under IRC §911 [Notice 2024-31, 3-20-24].

IRC §911 generally allows a U.S. citizen or resident living abroad to exclude from U.S. taxable income certain foreign earned income. A qualified individual is also allowed an exclusion from gross income for certain housing costs paid or incurred on the individual's behalf that exceed a certain base housing amount.

Under the Tax Increase Prevention and Reconciliation Act of 2005, the Secretary of the Treasury is authorized to make annual adjustments to this limit based on geographic differences in housing costs.

A qualified individual incurring housing expenses in one or more of the listed high-cost localities in 2024 may use the adjusted limit specified (instead of $37,950) in determining the housing cost amount on Form 2555, *Foreign Earned Income*. The $37,950 limit continues to apply to a qualified individual not incurring housing expenses in a listed high-cost locality.

Notice 2024-31, which includes a revised table listing high-cost locations, supersedes Notice 2023-26 (see PAYROLL CURRENTLY, Issue 4, Vol. 31). Notice 2024-31 is effective for taxable years beginning on or after January 1, 2024. However, a taxpayer may elect to apply the 2024 adjusted housing limitations contained in the notice to his/her taxable year beginning in 2023. ■

IRS Grants Waivers for 2023 Foreign Exclusion Requirement

The IRS released a supplemented list of the six countries for which some of the foreign earned income exclusion requirements of IRC §911 are waived for 2023 [Rev. Proc. 2024-17, 3-19-24].

The list contains Belarus (with a departure date of January 26, 2023); Haiti (with a departure date of July 27, 2023); Iraq (with a departure date of October 20, 2023); Niger (with a departure date of August 2, 2023); Sudan (with a departure date of April 20, 2023); and Ukraine (with a departure date of January 18, 2023).

For 2022, waivers were granted for Belarus, China, Ethiopia, Iraq, Mali, and Ukraine (Rev. Proc. 2023-19, 2023-13 IRB 626; see PAYROLL CURRENTLY, Issue 4, Vol. 31).

Background

IRC §911 allows a "qualified individual" to exclude foreign earned income from gross income up to a certain amount ($120,000 in 2023; $126,500 in 2024). An employer need not withhold federal income tax from any wages paid to a qualifying employee it reasonably believes will be excluded under IRC §911. A qualifying individual is an individual who is a U.S. citizen and a bona fide resident of or present in a foreign country for a specified portion of the taxable year (see *The Payroll Source®*, §14.1-4).

IRC §911(d)(4) provides an exception to the residency and presence eligibility requirements if an otherwise qualified individual:

- leaves a listed foreign country because of war, civil unrest, or similar adverse conditions that preclude the normal conduct of business,
- on or after a certain date,
- pursuant to a determination by the Secretary of the Treasury (in consultation with the Secretary of State).

In such a case, the income exclusion will apply even though the individual was not in the foreign country for the statutorily prescribed period, if the individual can show that *but for* the adverse conditions he or she had a reasonable expectation of meeting the requirements of IRC §911. ■

EEOC to Open 2023 EEO-1 Data Collection on April 30

The Equal Employment Opportunity Commission (EEOC) announced it will open the 2023 Employer Information Report (EEO-1) Component 1 data collection on April 30 [EEOC, *2023 EEO-1 Component 1 Announcements*, 2-26-24]. The deadline to file 2023 reports is June 4, 2024.

The EEOC's filer help desk will be available on April 30 to assist filers. The 2023 instruction booklet and file upload specifications are also available. The EEOC will post updates on the EEO-1 Component 1 data collection homepage.

Employers with 100 or more employees and federal contractors with 50 or more employees are required to file an EEO-1 with the EEOC, which includes information on race, ethnicity, and gender by job category. Employers count employees for purposes of this EEO-1 report during a "workforce snapshot period" between October 1 and December 31.

New notice for uploads

The EEO-1 file upload specifications contain a notice at the beginning alerting filers to changes for 2023 data submission. The EEOC requires electronic submission of EEO-1 Component 1 reports through its web-based data collection application – Online Filing System (OFS).

Filers must submit workforce demographic data electronically in OFS by manual data entry or data file upload. The manual data entry option requires users to directly enter workforce demographic data into OFS. The data file upload option requires users to upload a data file using 2023 EEO-1 Component 1 data file upload specifications.

The notice warns filers who choose the data file upload option to read the updated 2023 EEO-1 Component 1 instruction booklet prior to and in conjunction with the 2023 EEO-1 Component 1 data file upload specifications. The notice also states that filers must comply with the EEOC's substantive filing requirements detailed in the instruction booklet and should not refer solely to the data file upload specifications to complete their filing. ■

Court Vacates NLRB Joint Employer Rule

On March 8, the U.S. District Court for the Eastern District of Texas vacated the National Labor Relations Board's (NLRB) final rule on determining joint employer status under the National Labor Relations Act (NLRA) [*Chamber of Commerce v. NLRB*, No. 6:23-cv-553 (E.D. Texas, 3-8-24)]. This court had recently extended the effective date of the rule until March 11; now it has overturned the rule in its entirety (see PAYROLL CURRENTLY, Issue 3, Vol. 32).

Since the challenged final rule had not yet taken effect, the court said the 2020 rule remains as the joint-employer regulation, despite any changes already made in the Code of Federal Regulations. The court also ruled that the NLRB's recission of the 2020 rule was "arbitrary and capricious."

The NLRB is likely to appeal this decision, but until further legal or legislative action is taken, the 2020 rule remains in effect.

Definitions differ under NLRA, FLSA

As a reminder, the definition of a joint employer differs under the NLRA and the Fair Labor Standards Act (FLSA). Under the FLSA, joint employer status is determined under 29 CFR §791.2. In the vacated final rule, the NLRB did not address whether the NLRA conflicts with other rules, such as those under the FLSA. ■

2024 Fiscal Year Budget Funds Government

On March 23, President Biden signed H.R. 2882, the Further Consolidated Appropriations Act, 2024 (FCAA), which funds the federal government for the 2024 fiscal year.

Here are some details of the funding for the IRS, the U.S. Department of Labor (DOL), and the U.S. Department of Homeland Security (DHS).

- **IRS.** The FCAA provides the IRS with $2.8 billion for taxpayer services with $271 million allocated to the Taxpayer Advocate Service. Another $7 million can be used for identity theft and refund fraud casework. The FCAA also provides $5.4 billion for tax enforcement activities.

The FCAA also renews the requirement for the IRS to issue a notice of confirmation of any address change relating to an employer making employment tax payments to both the employer's former and new address. The requirement that the IRS must give special consideration to an offer-in-compromise from a taxpayer who has been the victim of fraud by a third-party payroll tax preparer was also renewed.

• **DOL.** The FCAA provides the DOL with $260 million for the Wage and Hour Division.

The FCAA adds 29 USC §207(s)(1) to the Fair Labor Standards Act, which removes overtime requirements for certain employees in major disaster areas for two years. These employees are defined as adjusting or evaluating claims resulting from major disasters for an employer not engaged in underwriting, selling, or marketing property, casualty, or liability insurance policies. They must receive an average weekly compensation of not less than $591 per week.

• **DHS.** The DHS receives $271 million for U.S. Citizenship and Immigration Services, which includes funding for E-Verify and extending the program until the end of the fiscal year. ■

Biden Administration Releases Fiscal 2025 Budget

On March 11, President Biden released his proposed budget for the 2025 fiscal year, which is available through the Office of Management and Budget.

Here are some of the proposals for funding for the IRS, U.S. Department of Labor (DOL), Social Security Administration (SSA), and U.S. Department of Homeland Security (DHS).

• **IRS.** For the Department of the Treasury (which includes the IRS), the budget calls for $14.4 billion in discretionary funding for 2025, an increase of $0.2 billion (1.2%) above the 2023 enacted level. The budget also provides for $12.3 billion for the IRS "to administer the tax code and implement key strategic priorities designed to enhance the quality of service provided to the taxpayer."

Increase in credits. The budget proposes to increase the Child Tax Credit from $2,000 per child to $3,000 for children 6 years old and above and to $3,600 for children under 6. The budget also requests that the Earned Income Tax Credit expansion for childless workers be made permanent.

• **DOL.** The proposal includes $13.9 billion in discretionary budget authority for DOL, which is a $318 million or 2.3% increase from the 2023 enacted level. The budget includes $294.9 million for the Wage and Hour Division.

Paid sick leave. The budget includes a legislative proposal that would require employers to provide employees seven paid sick days each year.

Overtime and prevailing wage rules. While not a part of the budget itself, an introductory section reminds readers that the Biden Administration proposed a rule to extend overtime pay for up to 3.6 million workers by raising the income threshold. In addition, a rule was finalized in August 2023 that updated the prevailing wage regulations for construction workers working on federally funded projects.

• **SSA.** For 2025, SSA would receive $15.4 billion in discretionary funding, an increase of $1.3 billion (8.9%) from the 2023 enacted level.

Paid family and medical leave. The budget includes a proposal to establish a national, comprehensive paid family and medical leave program to provide up to 12 weeks of leave to allow eligible workers to: take time off to care for and bond with a new child; care for a seriously ill family member; recover from a serious illness; deal with a family member's military deployment; or find safety from domestic violence, sexual assault, or stalking. The national paid family and medical leave program would be administered by SSA.

• **DHS.** Under DHS, the proposed budget includes $255 million for U.S. Citizenship and Immigration Services for operations and support, which includes the E-Verify program.

Proposal would change Medicare payroll tax

A proposal in the budget would change the payroll tax structure in an effort to extend Medicare's solvency indefinitely [*Fact Sheet: The President's Budget Protects and Strengthens Social Security and Medicare*, 3-11-24].

The proposal recommends increasing the Medicare tax rate on earned and unearned income above $400,000 from 3.8% to 5%. Currently, employees contribute 1.45% of Medicare taxable earnings under $200,000, and an additional 0.9% on all Medicare taxable earnings over $200,000 per year. The proposal would increase the Additional Medicare Tax to 2.1% (from 0.9%) for earnings over $400,000. Employers contribute 1.45% on all of an employee's Medicare taxable earnings. ■

IRS Releases Publication on Withholding for 2024

The IRS released the 2024 Publication 505, *Tax Withholding and Estimated Tax*. While the publication is generally designed to help individuals determine their proper withholding amounts, it also provides an explanation of the withholding rules for salaries and wages, supplemental wages, taxable fringe benefits, sick pay, pensions and annuities, and other payments.

The publication also includes a basic description of the rules pertaining to tip reporting and explains situations where backup withholding is required. Publication 505 also provides a detailed discussion of the requirements that must be met for employees to properly claim that they are exempt from withholding. ■

IRS Revises Substitute Forms 941, 8974 Specifications

The IRS updated the *General Rules and Specifications for Substitute Form 941, Schedule B (Form 941), Schedule D (Form 941), Schedule R (Form 941), and Form 8974*, which contains revised requirements for paper and computer-generated substitutes of Form 941, *Employer's Quarterly Federal Tax Return*; Form 941, Schedule B, *Report of Tax Liability for Semiweekly Schedule Depositors*; Form 941, Schedule D, *Report of Discrepancies Caused by Acquisitions, Statutory Mergers, or Consolidations*; Form 941, Schedule R, *Allocation Schedule for Aggregate Form 941 Filers*; and Form 8974, *Qualified Small Business Payroll Tax Credit for Increasing Research Activities* [Rev. Proc. 2024-11, 2024-13 IRB 721]. The updates are reprinted in Publication 4436.

Rev. Proc 2024-11 supersedes Rev. Proc. 2023-13 (see PAYROLL CURRENTLY, Issue 4, Vol. 31). To be acceptable to the IRS, a substitute Form 941 or Schedule B, D, or R must conform to the specifications that have been set out in the revised version of Publication 4436.

What's new

Form 941 was revised to delete all lines related to the credit for qualified sick and family leave wages. All lines previously reserved for future use were deleted. Form 941 is now two pages instead of three.

Form 941-SS and Form 941-PR are no longer available. Employers in the U.S. territories can file Form 941 or the new Form 941 (sp), *Declaración del Impuesto Federal TRIMESTRAL del Empleador*.

Approval

Forms that follow the guidelines in Publication 4436 and are exact replicas of the official IRS forms do not need to be submitted to the IRS for specific approval. Users uncertain of any specification and want clarification may submit a letter or email citing the specification and their understanding of the specification. Enclose an example (if appropriate) of how the form would appear if produced using this understanding.

Email submissions to: SCRIPS@irs.gov. Send questions to: SubstituteForms@irs.gov or Internal Revenue Service, Attention: Substitute Forms Program, SE:W:CAR:MP:P:TP:TP, ATSC, 4800 Buford Highway, Mail Stop 061-N, Chamblee, GA 30341. Be sure to include the name, complete address, phone number, and, if applicable, email address with the correspondence. Allow at least 30 days for the IRS to respond.

Software developers and form producers should send a blank copy of their substitute Form 941 or Schedules B and R in PDF format to SCRIPS@irs.gov. Because the purpose of this submission is not specifically for approval but to assist the IRS in preparing to scan these forms, submitters will receive comments only if a significant problem is discovered. Submitters are not expected to delay marketing their forms to receive feedback. In no case should submitters include "live" taxpayer data. ■

IRS Updates Application for Extension to Furnish Statements

The IRS released an updated Form 15397, *Application for Extension of Time to Furnish Recipient Statements (For Forms W-2, W-2G, 1042-S, 1094-C, 1095, 1097, 1098, 1099, 3921, 3922, 5498, and 8596)*, with no substantial changes.

Box 5 was updated to clarify that if an extension is being requested to furnish recipient copies of Forms W-2, *Wage and Tax Statement*, or 1099-NEC, *Nonemployee Compensation*, the transmitter must meet one of these criteria:

- The transmitter suffered a catastrophic event in a federally declared disaster area that made the transmitter unable to resume operations or made necessary records unavailable.
- Fire, casualty, or natural disaster affected the operation of the transmitter.
- Death, serious illness, or unavoidable absence of the individual responsible for filing the information returns affected the operation of the transmitter.
- The transmitter was in the first year of establishment.
- The transmitter did not receive data on a payee statement in time to prepare an accurate information return.

Box 5 does not need to be completed for any other information returns.

Requesting an extension

Form 15397 can be used to request a one-time extension of up to 30 days to furnish copies of information returns to recipients. Form 15397 cannot be used to request an extension to file information returns with the IRS. Those requests must be made by filing Form 8809, *Application for Extension of Time to File Information Returns*.

A completed Form 15397 must be faxed, by the date the statements are due, to: Internal Revenue Service Technical Services Operation, Attn: Extension of Time Coordinator, Fax: 877-477-0572. Form 15397 must be faxed, not mailed (IRS, Post Release Changes to Forms, *Extension of Time to Furnish Statements to Recipients*, 3-11-24). ■