

2009
Year End Informational
Reporting Guidelines



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December 2009

To Our Clients and Friends:

At the end of the calendar year, certain informational documents are required to be filed with the federal government. Following are instructions relating to the most common forms, along with their due dates, and other pertinent information pertaining to payroll tax filings and informational documents required to be filed. We hope that you will find this material useful.

Should you have any questions concerning the enclosed, or require assistance or would like us to prepare any of the documents referred to in this letter, please contact us as soon as possible.

Sincerely,

LATTIMORE BLACK MORGAN & CAIN, P.C.

2009 YEAR END INFORMATIONAL REPORTING GUIDELINES

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1099 INFORMATION REPORTS

For businesses with the principal office in Tennessee, **all** Forms 1099 and 1096 should be mailed to the following:

Federal: Internal Revenue Service Center
 Kansas City, MO 64999

◆ 1099 Miscellaneous

This form is required for all payments made to **unincorporated** payees (i.e., subcontractors, accountants, consultants) of \$600 or more. **Any payment** to an attorney in the course of trade or business must be reported to the attorney on Form 1099-MISC. There is no exception for payments made to a professional corporation for legal services. Payments for legal fees should be reported in box 7 of Form 1099-MISC. Payments of gross proceeds (for settlements) should be reported in box 14 of Form 1099-MISC.

The American Jobs Creation Act of 2004 added section 409A that requires additional reporting requirements for nonqualified deferred compensation plans. The Act requires reporting of the yearly deferrals (plus earnings) under a section 409A nonqualified deferred compensation plan in box 15 a & b. Section 409A, generally, is effective with respect to amounts deferred in tax years beginning after December 31, 2004. If you have not already done so, please consult with your tax advisor **immediately** to determine how you will be treated under this new section.

◆ 1099 Interest and Dividend

These forms are required for interest and dividend payments of \$10 or more.

Any "qualified dividends" should be included in box 1a and 1b of Form 1099-DIV. Qualified dividends are generally dividends paid during the tax year from domestic corporations and qualified foreign corporations. For individuals, estates and trusts, qualified dividends are taxed at a maximum rate of 15%. There are certain exceptions to classification as qualified dividends. If you are not sure about the classification of dividend payments, please contact us for clarification.

The Internal Revenue Service requests your telephone number be included on 1099s provided to recipients so they may contact you with any questions.

The deadline for **distribution** of 1099 forms is **February 1, 2010**. Copy A of the 1099s along with Form 1096 must be filed with the federal government by **March 1, 2010**. The penalties for failure to file a correct 1099 form by the due date are \$15 if filed within 30 days of the due date, \$30 if filed by August 1, and \$50 if filed after August 1. These penalties are applied on a per form basis.

W-2 WAGE AND TAX STATEMENTS

All Forms W-2 (Copy A) and W-3 should be mailed to the following:

Federal: Social Security Administration
 Data Operations Center
 Wilkes-Barre, PA 18769-0001

The Form W-2 reports the earnings and withholding information for all employees and is also required to report the following information.

◆ **Bonuses**

Bonuses paid to employees **are** wages subject to federal and state income tax withholding and are also taxable for FICA (Social Security and Medicare), FUTA and SUTA (federal and state unemployment) tax purposes. A flat rate of 25% should be used for federal income tax withholding when bonuses are paid separately from regular wages.

◆ **Dependent Care**

Dependent care assistance provided under a nondiscriminatory program generally is not includable in gross income and is not subject to withholding or payroll taxes.

Employers are required by law to notify employees in writing as to the total amounts incurred by the employer for dependent care assistance to employees during the year. The total amount of care provided (including the excludable amount) should be reported in Box 10. Up to \$5,000 of such payments can be excluded from income by the employee. The employer can satisfy the reporting requirements by reporting the amount of dependent care assistance in Box 10 of Form W-2. In addition, the amount of care provided in excess of the \$5,000 exclusion should be included in wages in Boxes 1, 3, and 5. Those employers who have cafeteria plans with cash reimbursements for qualified dependent care must include the total amount of cash reimbursements provided for the calendar year. This should include reimbursements made after the end of the year for assistance provided during the year. If the employer does not know the actual amount at the time the W-2 is prepared, the Internal Revenue Service allows the employer to report a reasonable estimate.

◆ **Life Insurance**

◆ **Group Term Life Insurance**

The taxable cost of group term life insurance coverage is computed using the government table reproduced below. This table shows the amounts that employees are to include in income for coverage exceeding \$50,000. The employee's age for the purpose of computing life insurance cost is based on their age on the last day of the taxable year.

Cost per month for \$1,000 of coverage for one-month period (effective July 1, 1999)

<u>Age</u>	<u>Cost</u>
Under 25	\$.05
25 through 30	.06
30 through 34	.08
35 through 39	.09
40 through 44	.10
45 through 49	.15
50 through 54	.23
55 through 59	.43
60 through 64	.66
65 through 69	1.27
70 and above	2.06

An employer is required to include as income in Box 1 of the W-2, the cost (based upon Internal Revenue Service Uniform Premium Cost Table) of group term life insurance provided to an employee in excess of \$50,000 of coverage. **Employee** contributions reduce the taxable amount. This amount is also subject to FICA taxes and must also be included in Boxes 3 and 5. Finally, the excess coverage must be reported in Box 12 and coded "C".

◆ **Split Dollar Life Insurance**

The employer must include in his employee's gross income an amount equal to the one-year term cost of the declining life insurance benefit. This amount is calculated using the P.S. No. 58 rate table reproduced below. Similar to group term life, any employee contribution reduces the taxable amount. These amounts should be reported on Form-1099R.

The IRS announced significant changes in its treatment of split-dollar insurance arrangements effective January 1, 2004. If you have not already done so, please consult with your tax advisor **immediately** to determine how you will be treated under these provisions.

**Uniform One-Year Term Premiums for \$1,000
Life Insurance Protection**

Age	Premium	Age	Premium
25	\$1.93	48	\$ 7.89
26	2.02	49	8.53
27	2.11	50	9.22
28	2.20	51	9.97
29	2.31	52	10.79
30	2.43	53	11.69
31	2.57	54	12.67
32	2.70	55	13.74
33	2.86	56	14.91
34	3.02	57	16.18
35	3.21	58	17.56
36	3.41	59	19.08
37	3.63	60	20.73
38	3.87	61	22.53
39	4.14	62	24.50
40	4.42	63	26.63
41	4.73	64	28.98
42	5.07	65	31.51
43	5.44	66	34.28
44	5.85	67	37.31
45	6.30	68	40.59
46	6.78	69	44.17
47	7.32	70	48.06

- ◆ **Automobiles**

- ◆ **Employer reimbursement for employee usage of personal vehicle**

The rules governing how reimbursements are treated depends upon whether payments are made under an accountable or nonaccountable plan.

Usually, payments reimbursed under an accountable plan do not have to be reported on Form W-2. However, if payments are made to employees on a per diem or mileage allowance basis and these payments exceed the amounts deemed as substantiated under the Internal Revenue Service rules (Publication 463 and 1542), the excess of the amount treated as substantiated must be reported as wages on Form W-2. This excess amount is subject to income tax withholding, social security, Medicare and federal unemployment taxes and should be reported in Boxes 1, 3, and 5 on Form W-2. The amount deemed as substantiated, per the Internal Revenue Service rules, is reported in Box 12 using code "L". The IRS Publication 1542 details the per diem rates by state and city. The government specific mileage rate is 55¢ per mile effective January 1, 2009. Under a nonaccountable plan, all reimbursements must be included in income in Box 1 and in FICA wages in Boxes 3 and 5.

Generally, for an arrangement to qualify as an accountable plan, it must satisfy **three requirements**. **First**, the reimbursement or allowance must be for deductible business expenses incurred by an employee in connection with the performance of services for the employer. **Second**, the employee must be required to substantiate the actual expenses to his employer within a reasonable period of time. **Third**, the employee must be required to return to the employer any reimbursement in excess of substantiated expenses.

If all the rules above are followed, the entire reimbursement is treated as under an accountable plan, and no reporting is required on the W-2. If an employee fails to return the unsubstantiated portion of his allowance, that portion is treated as made under a nonaccountable plan, and must be included in both federal wages and FICA wages and reported on the W-2. It is possible for one employer to treat some employees entirely as under an accountable plan, some entirely under a nonaccountable plan, and others as partly accountable and partly nonaccountable.

- ◆ **Employer provided automobiles**

The personal use of employer provided automobiles is considered a fringe benefit. The value of this fringe benefit is subject to income and employment taxes. Commuting to and from work is includable in an employee's gross income as personal wages. The following discussion does not cover special situations such as transportation provided for security reasons or qualified automobile demonstration use.

There are three special valuation methods for personal use of company cars.

Annual Lease Value -- If an employer provides an employee with an automobile that is available to the employee for an entire calendar year, the value of the benefit provided is the Annual Lease Value of that automobile. For an automobile that is available to an employee for less than an entire calendar year, the value of the benefit provided is either a pro-rated Annual Lease Value or the Daily Lease Value, whichever is applicable. The Annual Lease Value of a particular automobile is calculated as follows:

(A) Determine the fair market value of the automobile as of the first date on which the automobile is made available to any employee of the employer for personal use.

(B) Select the dollar range in column 1 of the Annual Lease Value Table corresponding to the fair market value of the automobile.

The Annual Lease Values are based on a four-year lease term. The Annual Lease Value calculated shall remain in effect for the period that begins with the first date it is applied by the employer to the automobile and ends on December 31 of the fourth full calendar year following that date. The Annual Lease Value for each subsequent four-year period is calculated by determining the fair market value of the automobile as of the January 1 following the period described in the previous sentence and selecting the amount in column 2 of the Annual Lease Value Table corresponding to the appropriate dollar range in column 1 of the Table.

The Annual Lease Values contained in the Annual Lease Value Table include the fair market value of maintenance of, and insurance for, the automobile. Neither an employer nor an employee may reduce the Annual Lease Value by the fair market value of any service included in the Annual Lease Value that is not provided by the employer, such as reducing the Annual Lease Value by the fair market value of a maintenance service contract or insurance.

The Annual Lease Values do not include the fair market value of fuel provided by the employer, regardless of whether fuel is provided in kind or its cost is reimbursed by or charged to the employer. The provision of fuel in kind may be valued at fair market value based on all the facts and circumstances or, in the alternative, it may be valued at 5.5 cents per mile for all miles driven by the employee.

For periods of continuous availability of 30 or more days, but less than an entire calendar year, the value of the availability of the employer-provided automobile is the pro-rated Annual Lease Value. The pro-rated Annual Lease Value is calculated by multiplying the applicable Annual Lease Value by a fraction, the numerator of which is the number of days of availability and the denominator of which is 365.

For periods of continuous availability of one or more but less than 30 days, the value of the availability of the employer-provided automobile is the Daily Lease Value. The Daily Lease Value is calculated by multiplying the applicable Annual Lease Value by a fraction, the numerator of which is four times the number of days of availability and the denominator of which is 365.

Once the automobile lease valuation rule has been adopted for an automobile by an employer, the rule must be used by the employer for all subsequent periods in which the employer

makes the automobile available to any employee, except that the employer may, for any period during which use of the automobile qualifies for the commuting valuation rule, use the commuting valuation rule with respect to the automobile.

Vehicle cents-per-mile Valuation Rule -- If an employer provides an employee with the use of a vehicle that (A) the employer reasonably expects will be regularly used in the employer's trade or business throughout the calendar year (or such shorter period as the vehicle may be owned or leased by the employer) or (B) it is actually driven at least 10,000 miles in that year, and use of the vehicle during the year is primarily by employees, the value of the benefit provided in the calendar year is the standard mileage rate (55 cents for 2009) multiplied by the total number of miles the vehicle is driven by the employee for personal purposes. For purposes of this section, the use of a vehicle for personal purposes is any use of the vehicle other than use in the employee's trade or business of being an employee of the employer. Infrequent use of the vehicle, such as for trips to the airport or between the employer's multiple business premises, does not constitute regular use of the vehicle in the employer's trade or business.

The value of the use of an automobile may not be determined under the vehicle cents-per-mile valuation rule if the fair market value of the automobile (as of the first date on which the automobile is made available to any employee of the employer for personal use) exceeds \$15,000.

The cents-per-mile rate includes the fair market value of maintenance of, and insurance for, the vehicle. An employer may not reduce the cents-per-mile rate by the fair market value of any service included in the cents-per-mile rate but not provided by the employer. With respect to miles driven in the United States, Canada, and Mexico, the cents-per-mile rate includes the fair market value of fuel provided by the employer. If fuel is not provided by the employer, the cents-per-mile rate may be reduced by no more than 5.5 cents or the amount specified in any applicable Revenue Ruling or Revenue Procedure.

The vehicle cents-per-mile valuation rule may only be used to value the miles driven for personal purposes. Thus, the employer must include an amount in an employee's income with respect to the use of a vehicle that is equal to the product of the number of personal miles driven by the employee and the appropriate cents-per-mile rate. The employer may not include in income a greater or lesser amount; for example, the employer may not include in income 100 percent (all business and personal miles) of the value of the use of the vehicle. The term "personal miles" means all miles driven by the employee except miles driven by the employee in the employer's trade or business of being an employee of the employer.

Once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employer, the rule must be used by the employer for all subsequent periods in which the vehicle qualifies for use of the rule, except that (A) the employer may, for any period during which use of the vehicle qualifies for the commuting valuation rule use the commuting valuation rule with respect to the vehicle, and (B) if the employer elects to use the automobile lease valuation rule for a period in which the vehicle does not qualify for use of the vehicle cents-per-mile valuation rule, then the employer must comply with those requirements. If the vehicle fails to qualify for use of the vehicle cents-per-mile valuation rule during a

subsequent period, the employer may adopt for such subsequent period and thereafter any other special valuation rule for which the vehicle then qualifies. The first day on which an automobile with respect to which the vehicle cents-per-mile rule had been used fails to qualify for use of the vehicle cents-per-mile valuation rule may be deemed to be the first day on which the automobile is available to an employee of the employer for personal use.

Commuting Valuation Rule -- the value of the commuting use of an employer-provided vehicle may be determined under this method if the following criteria are met by the employer and employees with respect to the vehicle -- (i) the vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business and is used in the employer's trade or business; (ii) For bona fide non-compensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle; (iii) The employer has established a written policy under which the employee may not use the vehicle for personal purposes, other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home); (iv) Except for de minimis personal use, the employee does not use the vehicle for any personal purpose other than commuting; and (v) The employee required to use the vehicle for commuting is not a control employee (Board- or shareholder- appointed, confirmed, or elected officer of the employer, director of the employer, or owns a one-percent or greater equity, capital, or profits interest in the employer) of the employer.

If the requirements are satisfied, the value of the commuting use of an employer-provided vehicle is \$1.50 per one-way commute (e.g., from home to work or from work to home). If there is more than one employee who commutes in the vehicle, such as in the case of an employer-sponsored car pool, the amount includible in the income of each employee is \$1.50 per one-way commute. Thus, the amount includible for each round-trip commute is \$3.00 per employee.

Annual Lease Value Table

<i>Automobile fair market value</i> (1)	<i>Annual Lease Value</i> (2)
\$0 to 999.....	\$600
1,000 to 1,999.....	850
2,000 to 2,999.....	1,100
3,000 to 3,999.....	1,350
4,000 to 4,999.....	1,600
5,000 to 5,999.....	1,850
6,000 to 6,999.....	2,100
7,000 to 7,999.....	2,350
8,000 to 8,999.....	2,600
9,000 to 9,999.....	2,850
10,000 to 10,999.....	3,100
11,000 to 11,999.....	3,350
12,000 to 12,999.....	3,600
13,000 to 13,999.....	3,850
14,000 to 14,999.....	4,100
15,000 to 15,999.....	4,350
16,000 to 16,999.....	4,600
17,000 to 17,999.....	4,850
18,000 to 18,999.....	5,100
19,000 to 19,999.....	5,350
20,000 to 20,999.....	5,600
21,000 to 21,999.....	5,850
22,000 to 22,999.....	6,100
23,000 to 23,999.....	6,350
24,000 to 24,999.....	6,600
25,000 to 25,999.....	6,850
26,000 to 27,999.....	7,250
28,000 to 29,999.....	7,750
30,000 to 31,999.....	8,250
32,000 to 33,999.....	8,750
34,000 to 35,999.....	9,250
36,000 to 37,999.....	9,750
38,000 to 39,999.....	10,250
40,000 to 41,999.....	10,750
42,000 to 43,999.....	11,250
44,000 to 45,999.....	11,750
46,000 to 47,999.....	12,250
48,000 to 49,999.....	12,750
50,000 to 51,999.....	13,250
52,000 to 53,999.....	13,750
54,000 to 55,999.....	14,250
56,000 to 57,999.....	14,750
58,000 to 59,999.....	15,250

For vehicles having a fair market value in excess of \$59,999, the Annual Lease Value is equal to: $(.25 \times \text{the fair market value of the automobile}) + \500 .

◆ Health Insurance

The amount of health insurance premiums paid on the behalf of an S corporation shareholder who owns more than 2% of the company's stock is included as wages in Box 1 and separately stated in Box 14.

◆ Retirement Contributions

There are many types of retirement plans for which contributions can be made. Deferred Compensation Plans, Simplified Employee Pensions (SEPs), Cafeteria Plans, Medical Savings Account and Flexible Spending Plans, to name a few. The reporting regulations are numerous and complex. If you have a retirement plan and require assistance or have questions concerning these requirements, call the benefit plan department in our office.

◆ Sick Pay

The continuation of wages an employee receives while temporarily absent from work is considered sick pay. Sick pay is usually includable in the employee's income and is subject to all withholding taxes as long as it is not received under a worker's compensation law, as settlement on account of personal injuries or sickness, or from health or accident insurance that is paid in whole or in part by the employee. Sick pay can be paid by the company or through a third party. In instances where the company pays the sick pay directly to the employee, it is treated like other taxable compensation.

Income tax is generally not withheld on payments made by third parties unless requested by the employee on Form W-4. The third party may transfer the liability for the employer's portion to the company, if he satisfies the following requirements:

1. Payer must withhold the employee's share of FICA taxes from the sick pay,
2. deposit the taxes according to the federal deposit tax rules, and
3. notify the employer of the amount of the wages paid on which tax was withheld and deposited.

Sick pay is then reported in Boxes 1 and 5 on Form W-2 and in Box 3 if the employee earned less than the Social Security taxable wage base. The taxes withheld are included in Box 2 and Boxes 4 and 6 if FICA taxes are applicable.

A statement outlining the total payments made, the amount of tax withheld, and the employee's share of FICA tax paid must be provided to the company by the third party on or before January 15 of the following year. This information is included on the employee's

W-2. The sick pay is included in Boxes 1, 3, and 5 as taxable wages and FICA wages. The respective payroll taxes withheld are reported in the appropriate boxes (Boxes 2, 4, and 6).

Payment, or parts of payments, made to or on behalf of an employee, where the employee contributed to a sick-pay plan using **after-tax** dollars, are FICA, federal, and federal unemployment tax exempt. These amounts should be reported on Form W-2, in Box 12, using code "J".

Contributions to a sick-pay plan made on behalf of employees with employees' **pre-tax** dollars under a cafeteria plan are considered **employer contributions**. Therefore, any payments, or parts of payments, made to or on behalf of an employee **are** taxable to that employee and should be reported as such.

Payments made after the first six months an employee is on sick leave and amounts received under a worker's compensation law are not FICA or FUTA taxable.

◆ **Moving Expense Reimbursements**

Reimbursements or payments for a job-related move, made to or on behalf of an employee by his or her employer for an employee's moving expenses, are to be treated as excludable fringe benefits if the following requirements are satisfied:

1. The employee would be able to deduct these expenses under IRC Sec. 217, and
2. the employee has not deducted these expenses in a prior year.

Qualified moving expenses paid to a third party on behalf of the employee and services furnished in kind to an employee will not be reported on Form W-2. Qualified moving expenses reimbursements paid directly to an employee are reported on Form W-2 in Box 12, using code "P".

Moving expense reimbursements not listed in IRC Sec. 217 are taxable wages and should be reported on Form W-2, in Boxes 1, 3, and 5. The corresponding taxes withheld on this amount must be reported in Boxes 2, 4, and 6.

◆ **Employee Business Expenses**

Payments made to an employee under an accountable plan do not have to be reported on Form W-2. Under an accountable plan, any expense must be business related and the employer must require the employee to adequately substantiate the expense. If payments cannot be substantiated, the employee must return the amounts to the employer within a reasonable period of time.

Any amount of per diem mileage allowance paid in excess of the applicable government rate is considered as being paid under a nonaccountable plan and is reported on Form W-2 in the employee's gross income. This amount is subject to withholding and employment taxes. Report the amount treated as substantiated in Box 12, using code "L".

◆ Awards and Prizes

Awards and prizes are usually included as taxable wages and are subject to income and employment taxes. An employee **can** exclude the value of a length-of-service or safety award if it is allowable as a deduction to the employer.

The employer's deduction for a qualified award (under a written plan) per employee is limited to \$1,600 per year, taking into account all other qualified and nonqualified awards made to an employee during the taxable year. The employer can deduct up to \$400 per employee for nonqualified awards (not a written plan).

Health Savings Accounts (HSA)

An **employer's** contribution to an employee's Health Savings Account (HSA) is generally not subject to income tax withholding, social security, Medicare or FUTA tax. You must report all employer contributions to an HSA in box 12 of Form W-2 with code **W**. An **employee's** contributions to an HSA are includible in income as wages and are subject to income tax withholding, social security and Medicare taxes. Employee contributions are deductible, within limits, on the employee's Form 1040. See IRS publication 969, Health Savings Accounts and Other Tax-Favored Health Plans for more information.

Nonqualified Deferred Compensation Plans

The American Jobs Creation Act of 2004 added section 409A that requires additional reporting requirements for nonqualified deferred compensation plans. The Act requires reporting of the yearly deferrals under a section 409A nonqualified deferred compensation plan, using Code **Y** in box 12. Section 409A, generally, is effective with respect to amounts deferred in tax years beginning after December 31, 2004. If you have not already done so, please consult with your tax advisor **immediately** to determine how you will be treated under this new section.

THE DEADLINE FOR DISTRIBUTING W-2s TO YOUR EMPLOYEES IS FEBRUARY 1, 2010. THE DEADLINE FOR FILING W-2s WITH THE FEDERAL GOVERNMENT IS MARCH 1, 2010. IF YOU FILE YOUR FORMS W-2 ELECTRONICALLY, THE DUE DATE IS MARCH 31, 2010.

INFORMATION REPORTING PENALTIES

Failure to file required information reports and payee statements can generate various penalties. Three distinct penalties can arise from this situation: (1) failure to file an information report or failure to include correct information on an information report; (2) failure to file a payee statement or failure to include correct information on a payee statement; and (3) failure to comply with other information reporting requirements, which includes all reporting failures not covered by the other two categories.

2009/2010 SOCIAL SECURITY INFORMATION

Below is a table showing the Social Security changes for the FICA taxable wage base from 2009 to 2010. Please note the “no limit” maximum taxable wage base for the Medicare portion of FICA.

<u>Taxable FICA and self-employment wage/tax base:</u>	<u>2009</u>	<u>2010</u>
Old age, survivors and disability insurance portion (OASDI)	\$106,800	\$106,800
Medicare Portion	No Limit	No Limit
<u>Employee FICA tax rate:</u>		
OASDI	6.20%	6.20%
Medicare	1.45%	1.45%
	<u>7.65%</u>	<u>7.65%</u>
<u>Employer FICA tax rate:</u>		
OASDI	6.20%	6.20%
Medicare	1.45%	1.45%
	<u>7.65%</u>	<u>7.65%</u>
<u>Maximum FICA tax to be withheld from employee:</u>		
OASDI	\$6,621.60	\$6,621.60
Medicare	No Limit	No Limit
<u>Self-employment rate:</u>		
OASDI	12.4%	12.4%
Medicare	2.9%	2.9%
	<u>15.3%</u>	<u>15.3%</u>
<u>Maximum amount of self-employment tax:</u>		
OASDI	\$13,243.20	\$13,243.20
Medicare	No Limit	No Limit

REVIEW OF FEDERAL DEPOSIT RULES

- ◆ **Household Employers:** The following deposit rules do not apply to household employers unless the employer is required to file a Form 941. The wages an Employer pays for domestic service in their home are not considered FICA wages if the amount paid during the year is less than \$1,700 for the year 2009, and less than \$1,700 for the year 2010.
- ◆ **New Employers:** A new employer is considered a monthly depositor for the entire calendar year unless a deposit liability of \$100,000 or more is incurred. Once the new employer exceeds the \$100,000 threshold, it becomes a semiweekly depositor for the remainder of the calendar year and through the end of the following calendar year.
 - ◆ The Internal Revenue Service will notify employers by November of each year which schedule they will follow for the next taxable year.

◆ **Monthly Deposit Rule**

An employer is a monthly depositor for the entire calendar year if the total employment taxes in the look back period were \$50,000 or less. All employment and other taxes withheld on payments made during a calendar month are due by the 15th day of the succeeding month.

◆ **Semiweekly Deposit Rule**

An employer is a semiweekly depositor for the calendar year if the total employment taxes in the look back period were more than \$50,000.

Under the semiweekly rule, payroll tax liabilities that relate to wages paid on Wednesday, Thursday, and/or Friday must be deposited on or before the following Wednesday. Payroll tax liabilities that relate to wages paid on Saturday, Sunday, Monday, and/or Tuesday must be deposited on or before the following Friday.

◆ **\$2,500 Rule**

If an employer accumulates less than \$2,500 payroll tax liability during a quarter, no deposits are required and this liability may be paid with the tax report for the quarter. If you are unsure whether you will accumulate less than \$2,500, make your deposit in accordance with the monthly depositor rules. You will be subject to deposit penalties if you were required to make monthly deposits and you fail to do so.

◆ **\$100,000 One-Day Rule**

If the total accumulated tax reaches \$100,000 or more on any day during a deposit period, it must be deposited by the **next banking day**, whether an employer is a monthly or semiweekly depositor. For monthly depositors, the deposit period is a calendar month. The deposit periods for a semiweekly depositor are Wednesday through Friday and Saturday through Tuesday. In regard to the \$100,000 rule, do not continue accumulating employment tax liability after the end of a deposit period. For example, if a semiweekly depositor has accumulated a liability of \$95,000 on a Tuesday (of a Saturday-through-Tuesday accumulation period) and accumulated a \$10,000 liability on Wednesday, the \$100,000 one-day rule does not apply.

If a monthly depositor accumulates a \$100,000 employment tax liability on any day, it becomes a semiweekly depositor on the next day and **remains** so for at least the remainder of the calendar year and for the following calendar year.

◆ **Accuracy of Deposits (98% Rule)**

An employer will be considered to have satisfied the above deposit requirements if he timely deposits at least **98%** of his tax liability or if the deposit shortfall does not exceed \$100. No deposit penalties will be applied if the above shortfall is deposited by the shortfall make-up date. The shortfall make-up date for monthly depositors is the due date for the report period in which the shortfall occurs. The make-up date for semiweekly or one-day rule depositors is the first Wednesday or Friday, whichever is earlier, falling on or after the 15th day of the month following the month in which the shortfall occurred.

◆ **Federal Unemployment Tax Deposits**

For deposit purposes, Federal Unemployment Tax (FUTA) liability is to be calculated quarterly by multiplying the amount of wages paid during the quarter by 0.8%. Once an employee's wages reach \$7,000 in a calendar year, you no longer have to deposit FUTA tax for that employee. If your FUTA tax liability (for all employees) for any calendar quarter is over \$500 (including any FUTA tax carried forward from an earlier quarter), you must deposit the tax using the same method used for all other federal tax deposits. If the liability for the year is \$500 or less, you can either make a deposit or pay the tax with your Form 940 or Form 940-EZ by February 2.

ELECTRONIC FEDERAL TAX PAYMENT SYSTEM (EFTPS)

Internal Revenue Service regulations have mandated the usage of EFTPS for federal tax deposits. There are certain criteria an employer must meet before having to implement these changes.

If a taxpayer deposits more than \$200,000 of certain kinds of depository taxes (employment tax, excise tax, corporate income tax, etc.) the taxpayer must use EFTPS for depository taxes that are required to be made for return periods beginning after December 31 of the following year, and must continue to deposit by electronic funds transfer in all succeeding years. For example, if a taxpayer exceeds the \$200,000 deposit threshold during 2004, it is required to make deposits for return periods beginning in or after calendar year 2006 by electronic funds transfer, and this obligation continues even if the taxpayer never again exceeds \$200,000 in future years. If a taxpayer exceeds the \$200,000 limit and fails to comply, a **10% penalty** will be assessed for each deposit that is not made through the EFTPS system.

Participation in EFTPS is voluntary if your deposits do not exceed the new \$200,000 threshold. However, once a taxpayer exceeds the \$200,000 threshold, all federal business tax payments must be made using the EFTPS in later years. The following are the business taxes affected:

11-C	944	1042	4720	8697
706GS(D)	945	1065	5227	8725
706GS(T)	990	1066	6069	8752
720	990-BL	1120	8038	8804
730	990-C	1120DISC	8038-T	8805
926	990-PF	2290	8288	8813
940	990-T	2438	8404	8831
941	1041		8612	8876
943	1041A		8613	CT-1

If you have any questions or need assistance with compliance, please contact our office.

CAN WE HELP?

As experienced professionals and business advisors, we can provide you and your business with a wide range of accounting, auditing, tax, employee benefit and management consulting services.

Lattimore Black Morgan & Cain, P.C. and Affiliates provide services that complement traditional tax and accounting services and enhance administration, management, and profitability. Our extensive menu of services, some of which are shown below, can be customized to fit your needs.

- Estate Planning
- Litigation Support
- Valuation Services
- Family Office Services
- Investment Management
- Human Resource Consulting
- Insurance Services
- Software Development
- State and Local Tax Service
- Cafeteria Plans
- Technology Consulting
- Computer Training
- Executive Recruiting
- Systems Integration
- Mergers & Acquisitions
- Risk Services

We are required by IRS Circular 230 to inform you that the advice contained herein (including all attachments) was not intended or written to be used for the purpose of avoiding any penalties that may be imposed under Federal tax law and cannot be used by you or any other taxpayer for the purpose of avoiding such penalties.