

TO: Our Clients and Friends
FROM: Grossman Yanak & Ford LLP
DATE: December 2008
RE: 2009 Payroll and Other Important Tax Developments

As you look forward to the new year, we would like to remind you of the changes that have been implemented by Congress, the Internal Revenue Service, and other authorities for calendar year 2009. We hope that you will find this information helpful.

Social Security Tax (FICA)

The combined social security rate of 7.65% (FICA) will remain unchanged. This rate is composed of 6.2% on wages up to \$106,800 for Social Security and 1.45% for Hospital Insurance on all earned income.

The overall self-employment tax rate will stay at 15.3%; 12.4% for social security up to \$106,800 and 2.9% Hospital Insurance on all earned income. As in 2008, self-employed individuals will be able to reduce their total gross income by one-half of their self-employment tax. The deduction will be taken in computing the taxpayer's adjusted gross income.

	<u>2008</u>	<u>2009</u>
Maximum Social Security	\$ 6,324	\$ 6,622
Maximum for self-employed taxpayer	\$12,648	\$13,243

The minimum amount a household employee/domestic worker must earn so that such earnings are covered under Social Security or Medicare will increase to \$1,000 in 2009.

Federal Unemployment Tax (FUTA)

The *Tax Relief Act of 1997*, which extended the surtax on the federal unemployment tax, expired at the end of 2007. This change results in a decrease in the FUTA rate from 6.2% thru 2009 to 6% for 2010 and later on the first \$7,000 paid to each employee as wages during the calendar year.

As most employers are allowed a 5.4% credit against the FUTA tax for timely paid state unemployment taxes, the net FUTA rate for most employees will be 0.8% for 2009.

Pennsylvania Unemployment Tax

The Pennsylvania unemployment tax wage base will remain at \$8,000 per employee in calendar year 2009. The newly liable non-construction employer experience rate is 3.7030% if there was no prior history with the Commonwealth. The new construction employer rate is 10.2626%. Pennsylvania's maximum non-construction, non-delinquent unemployment rate is 9.9836%.

The Pennsylvania State Unemployment Insurance rate will remain at 0.06%. Please note that the employee withholding is not limited to the \$8,000 taxable wage base for employer contributions; it applies to the total wages paid in 2009.

State Income Tax – Pennsylvania

The Pennsylvania income tax rate will remain the same in 2009 at 3.07%.

The Pennsylvania Legislature passed *Act 7 of 1997*, which exempted some cafeteria fringe benefits from Pennsylvania income taxes. Employee contributions into cafeteria plans qualifying under Internal Revenue Code Section 125 covering hospital, sickness, disability or death may be benefits that are no longer taxable.

Also, *Act 45 of 1998*, passed by the Pennsylvania Legislature in April of 1998, exempts employee personal use of an employer's owned and leased property from taxable compensation. This exception also applies to employer provided services. The most common example would be the personal use of an employer's automobile by an employee. This situation is not subject to Pennsylvania income tax. This provision was made retroactive to January 1, 1998. Please contact our office for help on determining the proper reporting of Pennsylvania compensation.

Paperless Filing Options - Pennsylvania

After eliminating paper coupons for Sales Tax in 2005, the Pennsylvania Department of Revenue has made it easier for you to file and pay your Employer Withholding Tax by replacing its current paper-based system with three electronic filing options:

- **Internet** – The PA Departments of Revenue and Labor & Industry have partnered to bring you e-TIDES (Electronic Tax Information Data and Exchange System). e-TIDES is an internet filing system that allows electronic filing of returns, payments, and extension requests for multiple taxes and services which are listed on the website. For more information, visit www.etides.state.pa.us.
- **Telefile** – Use the Department's TeleFile system to quickly and easily file Sales Tax and Employer Withholding using a touch-tone telephone. The toll-free number is 1-800-748-8299.
- **Third Party Software** – The Pennsylvania Department of Revenue has approved the use of two third party software packages to prepare and file Employer Withholding Tax: *Payroll CS* by Creative Solutions and *Quickbooks* by Intuit Inc. You can visit www.cs.thomson.com for more information about Payroll CS, or http://payroll.intuit.com/payroll_services/enhanced_payroll.jhtml for more information on Quickbooks.

All of these methods are fast, easy, and safe ways to file and make payments. Electronic filing allows you to receive immediate confirmation that the Department received your returns and payments. You can also calculate your return automatically, preventing costly assessments due to math errors, and set up automated payments.

Ohio and West Virginia Unemployment Tax

The Ohio unemployment tax wage base is *expected** to remain at \$9,000 in 2009. The experience rate for all new businesses except those involved in construction is *expected* to remain unchanged at 2.7%. The rates for new construction businesses are *expected* to remain unchanged at 5.8%.

The West Virginia unemployment tax wage base is to remain the same in 2009 at \$8,000. The experience rate for new businesses and foreign construction companies are also *expected* to remain unchanged at 2.7% and 7.5%, respectively. The rate for out of state construction is 8.5%.

*Rates will not be official until 12/31/08.

Qualified Retirement Plan Cost of Living Adjustments for 2009

The limit on elective deferrals to qualified retirement plans will increase in 2009 from \$15,500 to \$16,500, and the maximum annual deductible contribution to a defined contribution plan will increase from \$46,000 to \$49,000. The annual compensation limit for figuring contributions to qualified plans and simplified employee pensions (SEPs) increased to \$245,000. The maximum annual benefit for qualified benefit plans will increase to \$195,000. In addition, the limit on compensation deferred under a SIMPLE retirement plan will increase to \$11,500. The earnings limitation used to define highly compensated employees will increase to \$110,000.

Employees age 50 or over will be able to make "catch-up" elective deferrals to 401(k) plans of as much as \$5,500 in 2009.

Social Security Recipients

The maximum amount of earnings that a Social Security recipient may receive without losing any benefits are as follows:

<u>Age</u>	<u>2008</u>	<u>2009</u>
Younger than 65	\$13,560	\$14,160
65 and over	Unlimited	Unlimited
The year an individual turns 65	\$36,120	\$37,680

Note: One dollar in benefits will be withheld for every \$2 in earnings above the limit.

Note: Applies only to earnings for months prior to attaining full retirement age. One dollar in benefits will be withheld for every \$3 in earnings above the limit.

Legislative Updates Regarding Pension Plans

The *Worker, Retiree, and Employer Recovery Act of 2008 (H.R. 7327)*, approved by Congress on December 11, 2008, suspends required minimum distributions (RMDs) from 401(k) plans, IRAs and similar retirement accounts for 2009. It also contains a number of pension plan funding relief measures relevant to employers with defined benefit plans or multi-employer plans. If you have a defined benefit plan or a multi-employer plan and would like to discuss these changes in more detail, please contact us.

Form 1099 Filing Requirements

Forms 1099-MISC should be issued to independent contractors, sole proprietors, and partnerships from which services were purchased in an aggregate amount equal to or in excess of \$600. Reportable payments include rent, salaries, wages, premiums, compensations, and determinable gains, profits, and income. Any payment of interest or dividends made to an officer or shareholder should also be included on Forms 1099-INT and 1099-DIV for amounts over \$10.

The Tax Reform Act of 1997 provided that gross proceeds must be reported to the Internal Revenue Service on Form 1099-B on all payments made to an attorney by a business. The only exception is for payments reported on either Form 1099-MISC or Form W-2. Attorneys are required to promptly supply their taxpayer identification numbers to persons required to file these information reports. Payments must be reported even if the law firm is a corporation.

All Forms 1099 need to be issued no later than January 31, 2009. The employer's report is to be filed with the federal government no later than February 28, 2009. If the 1099 is filed electronically, the due date is March 31.

Grossman Yanak & Ford LLP can assist you with respect to filing Forms 1099 as well as in determining the proper classification of independent contractors versus employees.

Forms W-2/W-3 Filing Requirements & Changes

There have been no significant changes to the 2008 Form W-2.

Please note: if you file your 2008 Forms W-2 with the Social Security Administration (SSA) electronically, the due date is extended to March 31, 2009. Otherwise, mail File Copy A of Form W-2 with the entire page of Form W-3 by March 2, 2009. You are required to furnish Forms W-2 to your employees no later than February 2, 2009.

Standard Mileage Rate

The Internal Revenue Service has announced that the standard mileage rate for business use of an automobile starting January 1, 2009, will decrease from 58.5 to 55 cents per mile. The rate for use of an automobile for charitable purposes will remain at 14 cents per mile. The rate for the use of an automobile for medical or moving purposes will decrease from 27 to 24 cents per mile.

Payroll Tax Deposits

Unless exempted, taxpayers whose aggregate annual deposits of certain taxes exceeded \$200,000 for 1998 or any later year must deposit taxes by electronic funds transfer. Once taxpayers exceed the \$200,000 threshold, they have a one-year grace period before being required to use EFT. They must then use EFT in all later years even if their deposits fall below the threshold. The following taxes are subject to the EFT deposit requirement:

- Withheld income and FICA taxes
- Corporate income and estimated taxes and certain taxes of tax-exempt organizations
- Taxes withheld on nonresident aliens and foreign corporations
- Estimated taxes of certain trusts
- FUTA tax payments
- Excise taxes
- Railroad retirement taxes
- Backup withholding
- Nonpayroll payments

The above EFT rules apply to return periods beginning after December 31st of the year following the year in which the threshold is exceeded. For example, a taxpayer that exceeded the \$200,000 threshold during 2007 must deposit by EFT for return periods beginning in January 2009. Taxpayers required to deposit electronically under stricter previous rules (\$50,000 threshold) do not have to deposit by EFT unless they exceed the \$200,000 threshold for a year after 1997.

A taxpayer required to deposit by EFT must use the Electronic Federal Tax Payment System (EFTPS) to make federal tax deposits. Taxpayers must enroll in EFTPS before they can make EFT deposits. Using Form 9779, EFTPS deposits may be made using an Automated Clearing House (ACH) debit or credit payment option. Federal income taxes (including estimated taxes), estate and gift taxes, employment taxes and various excise taxes may be made voluntarily by EFT.

For filings done in the state of Pennsylvania, EFT is mandatory for payments over \$20,000. EFT enables taxpayers to remit certain tax payments electronically and payments can be made without any significant up-front investment, such as additional computers or remittance processing hardware.

Social Security Numbers for Dependents

The grace period for not being required to include the social security number for a child born late in the year has been reduced from two months to one month. All children born prior to December 2008 must have their SSN included on the tax returns.

Failure to include a required SSN will result in the disallowance of the dependency exemption or in the reduction or disallowance of the earned income credit and child care credit, instead of a mere delay in the issuance of a refund, as in prior years.

Deadline for Depositing Participant Contributions to Employee Benefits Plans

Final Regulations (DOL Reg. 2510.3-102) have been issued by the Department of Labor regarding when participant contributions to an employee benefit plan [i.e., a 401(k) plan] must be deposited by the employer to the plan.

The general guideline for depositing employer contributions is to do so as soon as administratively feasible within the required time period. The absolute deadline for transferring funds to a welfare benefit plan to which the rules apply (such as a contributory health insurance plan) remains 90 calendar days after the employer receives the contribution from the plan participant or withholds it from the employee's pay. However, for pension-related plans [such as a 401(k) plan], the new rules generally shorten the absolute deadline from 90 days to the **15th business day** after the month in which the participant's contribution is withheld from their pay or otherwise received by the employer.

As with the 90-day rule, the new 15-day rule is a maximum limit, not a safe harbor. Employers are still required to transfer a participant's benefit plan contributions to the plan as soon as administratively feasible. The rules were effective February 3, 1997.

City of Pittsburgh Tax Updates

Pittsburgh taxes are administered by: The Pittsburgh Department of Finance
200 City-County Building
414 Grant Street
Pittsburgh, PA 15219
412-255-8649 or 412-255-8822 (Taxpayer Services)

- ***Payroll Expense Tax*** – imposes a Payroll Expense Tax on all persons conducting business activity within the City of Pittsburgh. The Payroll Expense Tax rate is 0.0055 on payroll expenses paid to employees working within the city of Pittsburgh.

The Payroll Expense Tax is computed on the employer’s payroll expense and on the net earnings distribution of sole proprietors, individuals, partnerships, associations, joint ventures or other entities which perform work, provide service or make sales within the City of Pittsburgh.

The Payroll Expense Tax return is paid quarterly as follows:

<u>Payroll Expense for Months</u>	<u>Due</u>
October, November, December	February 28
January, February, March	May 31
April, May, June	August 31
July, August, September	November 30

- ***Business Privilege Tax*** – The tax rate will remain at 1 mill (0.001) through 2009 and will be phased out by the year 2010. The business must be located within the City of Pittsburgh to be subject to the Business Privilege Tax.
- ***Local Services Tax*** – This tax was formerly the Emergency and Municipal Services Tax, which replaced the Occupation Tax. The tax will remain at \$52.00 per person per year. The employer is required to withhold the pro-rata share of the tax by dividing the \$52.00 by the number of payroll periods established by the employer. Pennsylvania law limits total payment by one person to a maximum of \$52.00 per year, regardless of the number of employers in a year.

Employers liable for the withholding of \$200 or more per month in City or School Earned Income Taxes for their employees must make monthly deposits of the tax withheld.

Wages, salaries, tips, bonuses, stock options, or compensation of any form that is taxable as compensation for the State of Pennsylvania is also taxable by the City of Pittsburgh.

Our best wishes to you, your family, and your Company for a healthy and prosperous 2009!

GROSSMAN YANAK & FORD LLP