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INFORMATION FOR EMPLOYERS PAYING WAGES TO ILLEGAL ALIENS

This article provides a summary of an employer's responsibilities for withholding and reporting of employment taxes on wages paid to illegal aliens. For purposes of this article, an illegal alien is an individual, resident in the United States, who is not a citizen or a lawful permanent resident and who has not been given authorization to work by the Bureau of Citizenship and Immigration Services (formerly, the Immigration and Naturalization Service).

Employment Eligibility Verification

The Immigration Reform and Control Act made all U.S. employers responsible to verify the employment eligibility and identity of all employees hired to work in the United States after November 6, 1986. To implement the law, employers are required to complete Employment Eligibility Verification forms (Form I-9) for all employees, including U.S. citizens. Anyone employing an illegal alien without verifying his or her work authorization status is guilty of a misdemeanor.

Employment Taxes

In general, if employers pay wages to illegal aliens, they must withhold income tax, social security, and Medicare taxes in the same manner as they would for their employees who are U.S. citizens or lawful permanent residents. Wages paid are subject to graduated income tax withholding based on information reported to the employer on Form W-4, Employee's Withholding Certificate. Employers are also required to withhold Social Security and Medicare taxes from their employees' wages and pay a matching amount of these taxes. Wages paid to illegal aliens are subject to social security and Medicare taxes even though the illegal aliens are not eligible for social security benefits. The Federal Unemployment Tax Act (FUTA) provides for payments of unemployment compensation to workers who have lost their jobs. Employers are required to pay FUTA tax; it is not deducted from the employee's wages.

Each year employers are required to file a Form W-2, Wage and Tax Statement, for each employee from whom income, Social Security or Medicare taxes were withheld. Forms W-2 are filed with the Social Security Administration (SSA) and a copy is required to be furnished to each employee. Employers are required to report their employees' Social Security numbers on Forms W-2 to ensure that earnings are properly posted to the employees' Social Security accounts. When SSA receives forms W-2, a match is performed against the name and Social Security number on the forms and SSA's records. If the information does not match, the earnings are held in a suspense file waiting for reconciliation.

IRS Individual Taxpayer Identification Numbers (ITINs)

An ITIN is a tax processing number for certain nonresident and resident aliens, their spouses and dependents. The ITIN is only available for individuals who cannot receive a Social Security Number (SSN) and is utilized for tax purposes **ONLY**. The Internal Revenue Service, not the Social Security Administration, assigns a tax identification number. It is issued to certain nonresident and resident aliens, their spouse, and dependents. Taxpayers need to file Form W-7, Application for IRS Individual Taxpayer Identification Number, with the IRS to obtain an ITIN. For detailed information, see www.irs.gov/pub/irs-fill/fw7.pdf

The ITIN is only available to individuals who cannot get a Social Security Number (SSN). It is a 9-digit number, beginning with the number “9,” formatted like an SSN (NNN-NN-NNN) with the fourth and fifth digits ranging from 70-80. ITINs are used exclusively for tax purposes in order to identify and process the individual tax returns.

The issuance of an ITIN **does not**:

- ◆ Entitle a recipient to Social Security benefits or the Earned Income Tax Credit (EITC)
- ◆ Create an inference regarding the individual’s immigration status.

Give the individual the right to work in the U.S.

Caution: *An individual with an ITIN who later becomes eligible to work in the United States must obtain an SSN. The ITIN is not valid for employment purposes.*

For more information on ITINs, visit the IRS Web site’s information on “Individual Taxpayer Identification Numbers” at www.irs.gov/individuals/article/0,,id=96287,00.html or refer to IRS Publication 1915, *IRS Individual Taxpayer Identification Numbers* which is available online at www.irs.gov or call 800-829-3676.

Illegal Use of Social Security Numbers (SSNs)

Since ITINs are for tax purposes only and are by no means a legal identification number for employment, individuals are utilizing erroneous or stolen SSNs when applying for employment.

Correct names and Social Security Numbers (SSN) on W-2 wage documents are keys to successful processing of annual wage report submissions.

Verification of Social Security Numbers

The Social Security Administration (SSA) offers employers and authorized reporting agents two methods for verifying employee SSNs. Both methods match employee names and SSNs.

Telephone Verification

To verify up to five names and numbers, call 800-772-6270. To verify up to 50 names and numbers, contact your local Social Security office.

Large Volume Verification - The Employee Verification Service may be used to verify more than 50 employee names and SSNs. Pre-registration is required for EVS or

for requests made on magnetic media. For more information, call the EVS information line at 410-965-7140 or visit SSA's Website for employers at www.ssa.gov/employer/SSNV.htm.

**** IRS Reminds Businesses of Retirement Plan Deadlines ****

The IRS is reminding businesses using the "off-the-shelf" retirement plan documents that they must update their plans by September 30, 2003. The businesses must formally adopt updates to maintain the tax benefits associated with retirement plans.

The deadline resulted from the rules that apply to so-called Master and Prototype plans and Volume Submitter plans. These off-the-shelf retirement plans are IRS-approved templates intended to standardize and simplify the complex employee plan area. Employers providing such plans are usually small to mid-size businesses, including self-employed persons, such as some doctors and lawyers.

Failure to act by the deadline could cost a retirement plan its tax-favored status. Many employers will only need to make sure that they adopt their plan amendments with the IRS by September 30 to keep their plans tax qualified. Others; however, will also have to file the amendments with the IRS by September 30 to keep their plans tax qualified. Employers or plan sponsors who need more information should call the customer account services toll-free at 877.829.5500. [IR-2003-81]

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