



## THIS MONTH:

- ◆ 4th Quarter Due Dates
- ◆ Are Retirement Plan Distributions Subject to Withholding?
- ◆ Plan Now, 3.8% Surtax Begins in 2013
- ◆ Filing a Late S-Election



### 4th Quarter 2012 Due Dates

#### October 1:

- *Businesses:* Deadline for establishing a new SIMPLE retirement plan

#### October 15

- *Individuals:* 2011 Form 1040 due if on extension

#### October 31:

- *Employers:* File Form 941 for 3rd quarter 2012

#### During November:

- *Employers:* Request Form W-4s from employees whose withholding allowances will be different in 2013.
- *Employers:* Request Form W-5 from each eligible employee who wants to receive advance payments of the Earned Income Credit during 2013.

#### December 17:

- *Calendar-year C Corporations:* 4th installment of 2012 estimated tax due

## Are Retirement Plan Distributions Subject To Withholding?

Distributions from an employer-sponsored retirement plan may be subject to withholding. In some cases, withholding is mandatory and in others the recipient can elect out.

Eligible Rollover Distributions. In general, the payor of any designated distribution that is an eligible rollover distribution must withhold an amount equal to 20% of the distribution. The recipient may not elect out of the withholding requirement.

*\*Exception: Eligible rollover distributions are not subject to withholding if expected distributions are less than \$200 for the year. Also, 20% withholding generally only applies to any previously untaxed amount. The most important exception by far is that no withholding is required if the plan directly rolls over (in a trustee-to-trustee transfer) the eligible rollover distribution amount to another qualified retirement plan or IRA.*

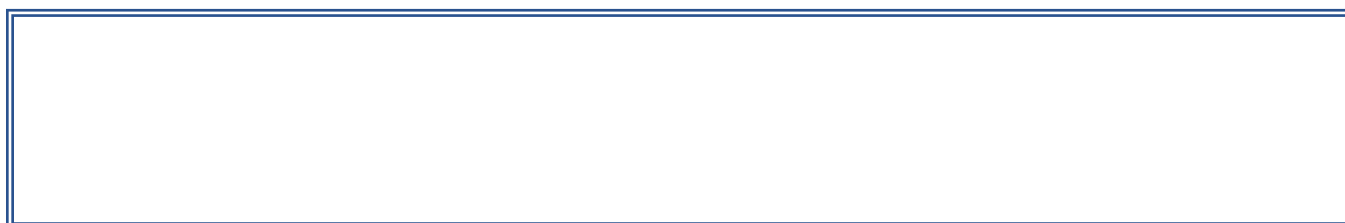
Periodic Payments. The payor of a periodic payment (one made at regular intervals for more than one year) that isn't an eligible rollover distribution must withhold from the payment as if it were a wage payment for the appropriate payroll period.

*\*Exception: Generally, the plan administrator must withhold at the rate for a married individual with 3 withholding exemptions. However, recipients have the right to elect no withholding or elect to have a different amount withheld and revoke the election at any time.*

Nonperiodic Payments. A nonperiodic payment is a distribution that usually isn't made at regular intervals and isn't an eligible rollover distribution. Nonperiodic payments generally are subject to 10% withholding.

*\*Exception: The recipient may elect no withholding or have a different amount withheld by filing a Form W-4P with the plan administrator.*

Reminder: Distributions from designated Roth accounts in 401(k), 403(b), or 457(b) plans have no withholding requirement because the distribution is not taxable. If a non-qualified distribution is made from such an account, withholding is required only from any distributed earnings that the recipient must include in gross income.



## Plan Now, 3.8% Surtax Begins in 2013

One tax element of the Affordable Care Act begins January 1, 2013 and may affect your 2012 year-end tax planning. The new 3.8% Medicare contribution surtax will apply to either your “investment income” or the amount of your modified adjusted gross income (MAGI) in excess of the thresholds, whichever is smaller. **Therefore, taxpayers who have no investment income or a MAGI under the threshold amounts will not be subject to the new surtax.** The MAGI threshold limits are \$250,000 for joint filers and surviving spouses, \$125,000 for married taxpayers filing separately, and \$200,000 for all others. Net investment income is broadly defined as the sum of interest, dividends, annuities, royalties, rents, income from a passive business, capital gains and other net gains from the sale of property not used in a trade of business, as well as, the trading of financial instruments and commodities. Personal residence gain exclusion under § 121, is NOT included in the calculation of investment income. In a nutshell, small business owners who expect to have MAGI above the threshold limits need to plan ahead for the Medicare surtax.

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## Filing a Late S-Election

When an entity desires to be taxed as an S-corporation, they must file Form 2553 before the 15<sup>th</sup> day of the third month during the year in which the S-Election is to begin. Most small businesses are calendar year tax filers, so typically this date is March 15. If the S-Election is not made on time, there are some relief remedies available for late elections.

*The three most commonly used late election relief provisions are:*

\* Rev. Proc. 2007-62, which allows Form 2553 to be filed with the timely filed Form 1120S for the first year in which the S-Election is desired to begin. Corporations which meet the requirements for this relief method must include a “reasonable cause” for their late election on the blank space provided within the Form 2553.

\* Rev. Proc. 2003-43, which allows a corporation to elect S-Status if the request is filed within 18 months of the original due date of Form 2553. Again, the “reasonable cause” for a late election must be included in the provided space on Form 2553.

\* Rev. Proc. 97-48, which will apply in many situations where Rev. Proc. 2007-62 and Rev. Proc. 2003-43 cannot be used. To satisfy the requirements under Rev. Proc. 97-48, the corporation must have filed Form 1120S for all years in which they are requesting the S-Election. Additionally, all income earned during that period must have been treated as though it was income from an S-corporation.

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