



THIS MONTH:

- ◆ 4th Quarter 2013 Due Dates
- ◆ Affordable Care Act Delayed Provisions, as of September 2013
- ◆ Notice of Availability of State Health Care Exchanges
- ◆ For Restaurant Owners and Hospitality Service Providers: An Important Tip on Tips



4th Quarter 2013 Due Dates

October 1:

- *Businesses:* Deadline for establishing a new SIMPLE retirement plan
- *Employers:* Deliver to employees Notice of Availability of State Health Care Exchanges

October 15:

- *Individuals:* 2012 Form 1040 due if on extension

October 31:

- *Employers:* File Form 941 for 3rd quarter 2013

During November:

- *Employers:* Request Form W-4s from employees whose withholding allowances will be different in 2014

December 17:

- *Calendar-year C Corporations:* 4th installment of 2013 estimated tax due

Affordable Care Act Delayed Provisions, as of September 2013

The Affordable Care Act (ACA) as passed by Congress on September 23, 2010 contained many tax related provisions with implementation dates that spread over several years. Due to complications and politics, several key provisions that were scheduled to be effective for 2014 (or before) have been delayed. Below are some of the delayed provisions as of September 2013.

- **Employer Mandate** – Shared responsibility penalties for employers, annual certification of coverage reporting, and information return penalties, that were originally effective for 2014 are now delayed until 2015. IRS Notice 2013-45 issued 7/10/13
- **Nondiscrimination Requirements** – Fully insured group health insurance plans that were to eliminate “eligibility and benefit” discrimination effective on 9/23/10 have been delayed. Both existing and new group insurance plans can continue to follow the “old” limited discrimination rules until regulations or other guidance is issued. The Department of Labor and Department of Health and Human Services agree with this delay. IRS Notice 2011-1 issued 12/22/10
- **Co-insurance/Co-pay Limits** – The ACA established standard out-of-pocket cost limits for insurance plans that were originally set to be effective for 2014 are now delayed until 2015. DOL issued 2/20/13
- **Automatic Enrollment Requirements for Large Employers** – Employers with over 200 employees that provide health insurance to employees were to automatically enroll their new employees and provide them with opt-out options. This has been delayed until additional guidance is provided. The Department of Labor and Department of Health and Human Services agree with this delay. IRS Notice 2012-17 issued 2/9/12
- **Quality Control Reporting of Insurance Providers** – The ACA requires quality of care reporting by group health plans and health insurance issuers that offer group or individual policies to the Department of Health and Human Services and participants. DHHS was required to issue regulations by 3/23/12; however guidance has not been issued.

Notice of Availability of State Health Care Exchanges

As required by the Affordable Care Act, all employers who are subject to the Fair Labor Standards Act must distribute the appropriate notice of availability to their employees (regardless of plan enrollment status or part-time/full-time status) by October 1, 2013. The Department of Labor issued two model notices that may be used; one for employers who offer employer-provided health insurance coverage to some or all of their employees and the other for employers who do not offer employer-provided health insurance coverage.

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For Restaurant Owners and Hospitality Service Providers: An Important Tip on Tips

In a June 2012 ruling the IRS issued a substantial clarification on the difference between *tips* and *service charges* for purposes of determining tax. Under the new ruling, the IRS has determined that for tax purposes, automatic gratuities (a percentage automatically added to restaurant bills for large parties, typically in the 15–18% range) are considered service charges rather than tips. Service charges are treated as regular wages and are subject to payroll tax withholding, unlike tips which are left to the employees to report.

The change may substantially complicate payroll accounting for restaurants that choose to continue with automatic gratuities, since those gratuities will now need to be factored into employees' regular payroll.

The 2012 ruling also clarifies the definition of a tip. In order to qualify as a tip rather than a service charge, the payment must satisfy the following criteria:

1. The payment must be made free from compulsion.
2. The customer must have the unrestricted right to determine the amount.
3. The payment should not be the subject of negotiation or dictated by the employer policy.
4. Generally, the customer has the right to determine who receives the payment.

According to the IRS, to ensure a tip is not actually a service charge, the restaurant should make sure the tip line and total amount on any bill is left blank for the customer to complete at his or her discretion. It is acceptable for the restaurant to include sample calculations on the bill of different tip amounts (e.g., "15% of your bill would equal \$X"), it is important that these calculations are clearly identified as suggestions rather than mandates.

While the IRS has announced that this ruling has been delayed and will not go into effect until January 1, 2014 in order to give employers sufficient time to make the changes needed to be in compliance, now is the time for restaurant owners and other hospitality providers to speak with a Padgett representative about how this ruling will impact their business.

Further information is also available at <http://www.irs.gov/taxtopics/tc761.html>.

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