



THIS MONTH:

- ◆ SIMPLE Plan Deadline
- ◆ Innocent Spouse Requests
- ◆ Reminder: Tax Filing Deadlines
- ◆ Responsibility for Payroll



SIMPLE Plan Deadline Approaches

A Savings Incentive Match Plan for Employees (SIMPLE plan) is a written arrangement that provides your small business and its employees with a simplified way to make contributions to retirement. Under a SIMPLE plan, employees can choose to defer as much as \$11,500 (for 2011) to the plan rather than receiving these amounts as a part of their regular pay, and there generally is a mandatory employer contribution as well. Plan assets grow tax deferred until withdrawal and participants have complete direction over their own retirement assets held in their account.

New SIMPLE plans must be set up prior to Oct. 1. This requirement does not apply if you are a new employer that comes into existence after October 1 of the year the plan is set up and you set up a SIMPLE plan as soon as administratively feasible after you come into existence.

Two Year Limit No Longer Applies to Many Innocent Spouse Requests

Beginning in 2002, the IRS required that innocent spouse requests be filed within two years after the IRS first takes collection action against the requesting spouse. This time limit was designed to encourage prompt resolution while evidence remained available. In late July 2011, the IRS announced that it will eliminate the 2 year time limit. Specifically,

1) The IRS will no longer apply the two-year limit to new equitable relief requests or requests currently being considered by the agency.

2) A taxpayer whose equitable relief request was previously denied solely due to the two-year limit may reapply using IRS Form 8857, *Request for Innocent Spouse Relief*, if the collection statute of limitations for the tax years involved has not expired. Taxpayers with cases currently in suspense will be automatically afforded the new rule and should not reapply.

3) The IRS will not apply the two-year limit in any pending litigation involving equitable relief, and where litigation is final, the agency will suspend collection action under certain circumstances.

Reminder: Tax Filing Deadlines

Calendar-Year Corporate returns and Partnership returns (Federal Forms 1120, 1120S, and 1065) are due September 15th! This is the final deadline to file returns for both corporations and partnerships, as no additional extensions are available. Late returns will be subject to the following penalties:

C-Corp (Form 1120) - Minimum penalty for late filing if a return is more than 60 days late is lesser of \$135 or 100% of the amount of tax required to be shown on the return. If tax is due, the late filing penalty assessed is 5% of the unpaid balance per month or part of a month with a maximum of 25% plus interest. However, the above penalties will not be imposed if the corporation can show the failure was due to reasonable cause and not willful neglect.

S-Corp (Form 1120S) - The penalty for failure to file a return is \$195 per month per shareholder up to 12 months and is assessed against the corporation. In addition, if tax is due, a late filing penalty may be imposed similar to the C-Corp, 5% of tax owner per month up to 25%, as well as the minimum penalty of the lesser of \$135 or amount of unpaid tax if the return is more than 60 days late. As with C-Corps, the penalties for failure to file an 1120S will not be imposed if reasonable cause is established.

Partnership (Form 1065) - The penalty for failure to file is \$195 per month per partner up to 12 months and is assessed against the partnership. The penalty will be abated if the partnership can show reasonable cause, but please note it is much more difficult for a partnership to qualify for the reasonable cause exception.



Employers Responsibility for Payroll

Employers are ultimately responsible for the payment of income tax withheld, and both the employer and employee portions of Social Security and Medicare taxes, even if they outsource their payroll responsibilities to a third party. Outsourcing payroll to a third party can help ensure that filing deadlines and deposit requirements are met and greatly streamline business operations. However, it's the employer's ultimate responsibility to pay these taxes, even if the failure to pay is entirely due to the payroll service provider's negligence or fraud.

Best Business Practices:

1) DO NOT change the address on file with the IRS to that of the payroll service provider so the IRS will contact the employer. Changing the address may significantly limit the employer's ability to be timely informed of tax matters involving its business.

2) DO ensure the payroll service provider is using the Electronic Federal Tax Payment System (EFTPS), which maintains a business's payment history for 16 months and can be viewed on-line, allowing the employer to confirm payments electronically. Employers should register on the EFTPS system to get their own PIN and use this PIN to periodically verify payments. A red flag should go up the first time a payroll service provider misses or makes a late payment. Employers with an EFTPS account will also be able to make additional tax payments that their payroll service provider isn't making on their behalf (e.g., estimated tax payments).

The IRS cautions that there have been instances of individuals and companies acting under the guise of payroll service providers who have stolen funds intended for payment of employment taxes



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