

# Coble and Associates, Inc.

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## FREQUENTLY ASKED QUESTIONS ABOUT THE CONTINUATION COVERAGE REQUIREMENTS IN THE AMERICAN RECOVERY AND REINVESTMENT ACT

February 2009

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### Introduction

On February 17, 2009, President Obama signed into law the "American Recovery and Reinvestment Act" (Pub. L. 111-5, the "Recovery Act"). The Recovery Act adopts a broad range of tax and spending incentives designed to promote economic development and provides premium subsidies to help pay for the continuation of health coverage for certain individuals who lose their jobs.<sup>1</sup> In addition, the legislation creates new opportunities for individuals to qualify for continuation coverage provided by a group health plan.

The following frequently asked questions ("FAQs") describe the premium subsidy and other continuation coverage requirements in the Recovery Act. *These FAQs are not intended as a substitute for legal or compliance advice and you should consult your legal counsel for specific guidance. In addition, federal and state regulatory agencies responsible for enforcing continuation coverage requirements are expected to issue guidance regarding the implementation of Recovery Act provisions and the FAQs may be revised to reflect any applicable guidance.*

### 1. What is "continuation coverage?"

In general, group health plans maintained by employers with 20 or more employees are required by federal law to provide plan participants in and beneficiaries with the right to continue their health coverage after the occurrence of certain "qualifying events" such as termination of employment or the divorce from, or death of, a covered spouse. The federal continuation coverage requirements apply to group health plans subject to the Employee Retirement Income Security Act (ERISA), state and local government employee plans, and the Federal Employees Health Benefits Plan (FEHB) (*see*: 5 U.S.C. §8905a, 26 U.S.C. §4980B, 29 U.S.C. §1161 *et seq.*, and 42 U.S.C. §300bb-1 *et seq.*). These requirements are referred to as "federal continuation coverage" in these FAQs.

In addition, many states require employers with fewer than 20 employees to provide continuation coverage. As discussed further below, the Recovery Act also applies to state continuation coverage that is "comparable" to federal continuation coverage. The state requirements are referred to as "state continuation coverage" in these FAQs.

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<sup>1</sup> The continuation coverage provisions are set out in Section 3001 of the Recovery Act beginning on page 341 of H.R. 1.

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## 2. What are the continuation coverage requirements in the Recovery Act?

The Recovery Act establishes new rights for individuals who were involuntarily terminated from employment between September 1, 2008 and December 1, 2009.

- Individuals qualify for a subsidy equal to 65% of the cost paid for state or federal continuation coverage for the individual and his or her dependents.
- Individuals who were eligible for federal continuation coverage but are not enrolled in such coverage have a one-time opportunity to enroll.
- Employers and employee organizations may, but are not required to, offer individuals currently enrolled in state or federal continuation coverage the right to change coverage to a different health coverage option offered through the group health plan.

## 3. Who qualifies for the premium subsidy?

In general, the subsidy is available to any individual who loses health coverage between September 1, 2008 and December 31, 2009 and meets all of the following requirements:

- The loss of health coverage is due to an involuntary termination of employment.
- The individual *is eligible* for one of the following types of state or federal continuation coverage:
  - Continuation coverage offered by a group health plan pursuant to ERISA; or
  - Continuation coverage applicable to state and local government plans; or
  - Temporary continuation coverage offered through FEHB; or
  - Continuation coverage offered under state continuation coverage requirements that are “comparable” to the federal continuation requirements.
- The individual *is not eligible* for:
  - Coverage under another group health plan (except for coverage consisting only of dental, vision, counseling and/or referral services); or
  - Medicare.

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#### **4. What is considered “involuntarily termination” from employment?**

The premium subsidy is available to individuals who were involuntarily terminated from employment between September 1, 2008 and December 31, 2009.<sup>2</sup>

The Recovery Act does not define involuntarily termination. The Department of Labor is expected to release guidance in the near future regarding the definition of “involuntarily.”

#### **5. How much is the premium subsidy?**

The subsidy is equal to 65% of the cost charged to the individual for continuation coverage. The cost of continuation coverage provided by ERISA group health plans is typically 102% of the total premium paid for the coverage (the combined employee and the employer premium plus an administrative fee). The premium subsidy would be 65% of this amount.

If any portion of the premium charged to the individual is paid by the individual’s former employer, that amount is not taken into account in determining the premium subsidy. For example, if the monthly premium is \$1,000 and the employer pays \$500 of this amount pursuant to a severance agreement, the subsidy would be 65% of \$500 or \$325.

#### **6. Does an individual qualify for the subsidy if he or she is eligible for other health coverage?**

No. An individual who is eligible for coverage under another group health plan (except coverage consisting of only dental, vision, counseling, and/or referral services) or under Medicare, *regardless of whether he or she is enrolled in such coverage*, does not qualify for the subsidy. Individuals are required to notify the group health plan when they become eligible for other coverage.

#### **7. Do family members qualify for the subsidy?**

Yes. Continuation coverage provided to a qualified individual and any dependents (e.g., family members) qualifies for the subsidy. The dependent must, however, qualify for the continuation coverage as specified by federal or state continuation coverage requirements.

In some cases, the subsidy will continue if the qualified individual is no longer receiving continuation coverage. For example, if the continuation coverage is provided pursuant to ERISA and the qualified individual dies, the surviving spouse and any children will continue to qualify for continuation coverage and for the subsidy.

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<sup>2</sup> The federal continuation coverage requirements disqualify individuals for continuation coverage if they were terminated from employment for reasons of “gross misconduct” (e.g., fraud) (*see*: 5 U.S.C. §8905a, 29 U.S. C. §1163, and 42 U.S.C. §300bb-3).

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**8. May individuals who were involuntarily terminated after September 1, 2008 and did not take continuation coverage still qualify for the subsidy?**

Individuals who were involuntarily terminated after September 1, 2008 and were eligible for federal continuation coverage after September 1, 2008 may still qualify for the subsidy even if they did not enroll in coverage when it was first available or if they enrolled and subsequently discontinued coverage.

Group health plans have 60 days to notify individuals of this special enrollment right. The individual then has 60 days after the notice is provided to exercise his or her right to enroll in the continuation coverage.

Regardless of when the election is made, the continuation coverage enrollment (and any premium subsidy) will be retroactive to March 1, 2009.

**9. Are there income limits on eligibility to receive a subsidy?**

Yes. An individual is not eligible for the subsidy if his or her modified adjusted gross income (“AGI”) exceeds \$145,000 for an individual income tax filer and \$290,000 for a joint income tax filer. The subsidy is phased out if the individual’s modified AGI is between \$125,000 and \$145,000 for individual filers and \$250,000 and \$290,000 for joint filers.<sup>3</sup>

It is up to individual taxpayers to report the amount of any subsidy on their federal income tax returns and repay any subsidy amounts that exceed the income limitations.

**10. Is the amount of the subsidy considered income for purposes of determining an individual’s eligibility for a public assistance program?**

No. The amount of the premium subsidy *is not taken into consideration* for purposes of determining the individual’s eligibility for any public benefit provided under Federal law or the law of any state or political subdivision.

**11. Can you use the premium subsidy for dental and vision continuation coverage?**

Yes. Any health coverage offered by a group health plan subject to federal or state continuation coverage requirements (except for a health Flexible Spending Arrangement), including dental or vision benefits, qualifies for the premium subsidy.

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<sup>3</sup> “Modified” adjusted income is defined as the individual’s adjusted gross income as established under section 162 of the Internal Revenue Code (IRC) increased by amounts otherwise excludable as income or housing expenses for residents of Puerto Rico, U. S. Territories, and foreign countries (*see*: IRC sections 911, 931, and 933).

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## 12. Do all state continuation coverage options qualify for the subsidy?

In order to qualify for the subsidy, the state continuation coverage must be “comparable” to the federal continuation coverage requirements. Although “comparable” coverage is not defined in the Recovery Act, the Conference Report for the legislation includes additional clarification regarding the type of state coverage that would qualify for a subsidy:

Comparable continuation coverage under State law does not include every State law right to continue health coverage, such as a right to continue coverage with no rules that limit the maximum premium that can be charged with respect to such coverage. To be comparable, the right generally must be to continue substantially similar coverage as was provided under the group health plan (or substantially similar coverage as is provided to similarly situated beneficiaries) at a monthly cost that is based on a specified percentage of the group health plan’s cost of providing such coverage.

H. Rept. 111-16, 111<sup>th</sup> Cong., 1<sup>st</sup> Sess., (Feb. 12, 2009) at p. 716.

## 13. When does the subsidy begin?

The subsidy starts with the period of coverage beginning on or after the date of the enactment (February 17, 2009). As a result, for most individuals currently receiving continuation coverage, the premium subsidy will begin with coverage periods on or after March 1, 2009.

The subsidy *does not* apply to coverage periods prior to the date of enactment.

## 14. How long does the subsidy last?

The subsidy continues until *the earliest* of the following events:

- The individual is no longer *enrolled in* state or federal continuation coverage.
- The individual is *eligible for* coverage under a group health plan (except for coverage only for dental, vision, counseling or referral services) or Medicare.
- Nine months after the date the individual begins receiving the subsidy.

## 15. Does the subsidy continue after December 31, 2009?

Yes, in some cases. The subsidy continues for up to nine months for any individual who is eligible for state or federal continuation coverage and is involuntarily terminated from employment between September 1, 2008 and December 31, 2009. For example, if an individual eligible for federal continuation coverage is involuntarily terminated from

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employment and begins coverage September 1, 2009, the subsidy continues until May 31, 2010 (unless the individual is no longer enrolled or becomes eligible for other specified coverage).

**16. Who is responsible for the subsidy?**

Responsibility for the premium subsidy depends on the type of continuation coverage:

- The group health plan, in the case of a multiemployer group health plan.
- The employer, in the case of a group health plan subject to the federal continuation coverage requirements.
- The insurance carrier, in the case of continuation coverage offered pursuant to state continuation coverage requirements.

**17. How does the entity that is responsible for the subsidy recover the amount?**

The entity that is responsible for the 65% subsidy (the multiemployer group health plan, employer or insurance carrier) is permitted to offset the amount of any subsidy payments against their payroll tax payments to the federal government. The subsidy may be offset from employee income tax withholding, employee FICA tax withholding or employer FICA tax obligations.

The Internal Revenue Service (IRS) has released a revised Form 941 and Instructions for reporting the amount of the premium subsidy that is taken as a payroll tax set-off.

**18. What happens if the qualified individual has already paid continuation coverage premiums, but qualifies for the subsidy?**

There is a 60 day “grace period” for the premium subsidy to begin in the case of individuals who have already paid for state or federal continuation coverage. For example, if the individual pays 100% of the continuation coverage premium due for March and April, 2009, the entity that is responsible for the subsidy may either: (a) refund the subsidy amounts to the individual; or (b) reduce subsequent premium amounts as a credit for the subsidy.

**19. May individuals who are enrolled in continuation coverage change their coverage options?**

Employers that offer multiple continuation coverage options (e.g., coverage through a health maintenance organization, point-of-service plan, and high deductible health plan), may (but are not required to) allow individuals a one-time opportunity to change to a different continuation coverage option prior to the annual open enrollment period if each of the following conditions is met:

- 
- The individual qualifies for the subsidy (i.e., were involuntarily terminated from employment after September 1, 2008).
  - The premium for the new coverage does not exceed the premium for coverage in which the individual was enrolled.
  - The different coverage is also offered to the active employees of the employer.
  - The different coverage is not:
    - Coverage that provides only dental, vision, counseling, and/or referral services.
    - Coverage under a health Flexible Spending Arrangement.
    - Coverage for services or treatments furnished in an on-site medical facility maintained by the employer consisting primarily of first-aid services, prevention and wellness care, and/or similar care.

As discussed below, individuals must be given a notice of their right to choose a different conversion option, and individuals have 90 days to make a choice.

## **20. What happens if someone requests premium assistance or the right to elect continuation coverage from a group health plan and the request is denied?**

Individuals who request treatment as an eligible individual may appeal if their request is denied by the group health plan. The appeal will be handled by the Department of Labor (in consultation with the Department of the Treasury) in the case of federal continuation coverage provided by a group health plan pursuant to ERISA. The Department of Health and Human Services (in consultation with the Department of the Treasury) will handle the appeals in the case of all other group health plans that are subject to state or federal continuation coverage requirements.

The federal agencies must make a determination regarding the individual's eligibility within 15 business days after the application for review is submitted, and the agency's decision regarding eligibility may be appealed to a reviewing court.

## **21. When are notices required to be sent and who gets the notice?**

All individuals who became qualified for state or federal continuation coverage after September 1, 2008 must be informed of their applicable rights to: (a) the premium subsidy; (b) enrollment in federal continuation coverage (if not already enrolled); and (c) enrollment in a different plan option (if the employer makes such option available). *In general, these notices must be provided to anyone who becomes eligible for state or federal continuation coverage regardless of whether the person qualifies for the premium subsidy.*

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## Amendments to Standard Eligibility Notices

Notices that are provided pursuant state or federal requirements when an individual becomes eligible for continuation coverage must be amended to include the following information:

- The availability of and requirements for the premium subsidy (must be “prominently displayed”).
- The option to enroll in different continuation coverage (if the employer makes such option available).
- A description of the individual’s right to “special enrollment” in federal conversion coverage (e.g., the individual was involuntarily terminated after September 1, 2008 and did not enroll at that time).
- The forms necessary for establishing eligibility for the premium subsidy.
- The name, address, and telephone number to contact the plan administrator (or other person) with relevant information about the subsidy.
- A description of the individual’s obligation to notify the plan if the individual is eligible for Medicare or for other group health plan coverage.

## Special Eligibility Notices

Group health plan administrators must provide a notice to all individuals who become eligible for state or federal continuation coverage after September 1, 2008, but who have not received the amended standard eligibility notice. The notice must include the same information as described above. The notice must be provided within 60 days after enactment (February 17, 2009).

## Model Notices and Notice Rules

The Department of Labor (in consultation with the Departments of Health and Human Services and the Treasury) is required to publish model notice language, within 30 days after enactment (February 17<sup>th</sup>), for group health plans providing state and federal continuation coverage.<sup>4</sup> In addition, the Department of Labor will provide rules for the provision of notices to individuals subject to state continuation coverage requirements.

## Who Sends the Notice

In general, group health plan administrators are responsible for providing continuation coverage notices. However, state or federal law or plan administration agreements may provide that another entity – such as the employer or an insurance carrier – is responsible for sending the notice.

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<sup>4</sup> Model language for notices provided to individuals eligible for FEHB continuation coverage will be developed by the Office of Personnel Management.

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## 22. What reports are required to be provided?

Entities that are responsible for the premium subsidy and claim the subsidy amount on the entity's payroll taxes are required to report the following information to the Department of the Treasury:

- An attestation of the involuntary termination of employment of each individual who receives the subsidy.
- The amount of payroll taxes that are offset for a reporting period and an estimate of the amounts will be offset for the next reporting period.
- The tax identification numbers (social security numbers) for all individuals who qualify for the subsidy.
- The amount of the subsidy paid for each person.
- Whether the subsidy is for more than one person.

The IRS has released a revised Form 941 and Instructions for reporting the payroll tax set-off.

## 23. Where can I get more information?

The Department of Labor, Employee Benefits Security Administration (EBSA) and the Department of the Treasury, Internal Revenue Service (IRS) have created web pages to post information on the continuation coverage requirements:

*EBSA Website:*

<http://www.dol.gov/ebsa/COBRA.html>

*IRS Website:*

<http://www.irs.gov/newsroom/article/0,,id=204505,00.html>



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601 Pennsylvania Ave., NW  
South Building, Suite 500  
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202.778.3200  
[www.ahip.org](http://www.ahip.org)

Form **941 for 2009: Employer's QUARTERLY Federal Tax Return**  
 (Rev. January 2009) Department of the Treasury — Internal Revenue Service

950109

OMB No. 1545-0029

(EIN) Employer identification number   -

Name (not your trade name)

Trade name (if any)

Address

Number Street Suite or room number

City State ZIP code

**Report for this Quarter of 2009**  
 (Check one.)

1: January, February, March

2: April, May, June

3: July, August, September

4: October, November, December

Read the separate instructions before you complete Form 941. Type or print within the boxes.

**Part 1: Answer these questions for this quarter.**

**1** Number of employees who received wages, tips, or other compensation for the pay period including: *Mar. 12 (Quarter 1), June 12 (Quarter 2), Sept. 12 (Quarter 3), Dec. 12 (Quarter 4)* **1**

**2** Wages, tips, and other compensation **2**

**3** Income tax withheld from wages, tips, and other compensation **3**

**4** If no wages, tips, and other compensation are subject to social security or Medicare tax  Check and go to line 6.

**5** Taxable social security and Medicare wages and tips:

	Column 1		Column 2
<b>5a</b> Taxable social security wages	<input type="text"/>	× .124 =	<input type="text"/>
<b>5b</b> Taxable social security tips	<input type="text"/>	× .124 =	<input type="text"/>
<b>5c</b> Taxable Medicare wages & tips	<input type="text"/>	× .029 =	<input type="text"/>
<b>5d</b> Total social security and Medicare taxes (Column 2, lines 5a + 5b + 5c = line 5d)			<input type="text"/>

**6** Total taxes before adjustments (lines 3 + 5d = line 6) **6**

**7** CURRENT QUARTER'S ADJUSTMENTS, for example, a fractions of cents adjustment. See the instructions.

**7a** Current quarter's fractions of cents

**7b** Current quarter's sick pay

**7c** Current quarter's adjustments for tips and group-term life insurance

**7d** TOTAL ADJUSTMENTS. Combine all amounts on lines 7a through 7c **7d**

**8** Total taxes after adjustments. Combine lines 6 and 7d **8**

**9** Advance earned income credit (EIC) payments made to employees **9**

**10** Total taxes after adjustment for advance EIC (line 8 - line 9 = line 10) **10**

**11** Total deposits for this quarter, including overpayment applied from a prior quarter and overpayment applied from Form 941-X or Form 944-X

**12a** COBRA premium assistance payments (see instructions)

**12b** Number of individuals provided COBRA premium assistance reported on line 12a

**13** Add lines 11 and 12a **13**

**14** Balance due. If line 10 is more than line 13, write the difference here **14**

For information on how to pay, see the instructions.

**15** Overpayment. If line 13 is more than line 10, write the difference here

Apply to next return.  
 Send a refund.

▶ You **MUST** complete both pages of Form 941 and **SIGN** it.

**Next** ➔

Name (not your trade name)

Employer identification number (EIN)

Part 2: Tell us about your deposit schedule and tax liability for this quarter.

If you are unsure about whether you are a monthly schedule depositor or a semiweekly schedule depositor, see Pub. 15 (Circular E), section 11.

16 Write the state abbreviation for the state where you made your deposits OR write "MU" if you made your deposits in multiple states.

17 Check one: Line 10 is less than \$2,500. Go to Part 3.

You were a monthly schedule depositor for the entire quarter. Enter your tax liability for each month. Then go to Part 3.

Tax liability: Month 1

Month 2

Month 3

Total liability for quarter Total must equal line 10.

You were a semiweekly schedule depositor for any part of this quarter. Complete Schedule B (Form 941): Report of Tax Liability for Semiweekly Schedule Depositors, and attach it to Form 941.

Part 3: Tell us about your business. If a question does NOT apply to your business, leave it blank.

18 If your business has closed or you stopped paying wages Check here, and enter the final date you paid wages

19 If you are a seasonal employer and you do not have to file a return for every quarter of the year Check here.

Part 4: May we speak with your third-party designee?

Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the instructions for details.

Yes. Designee's name and phone number

Select a 5-digit Personal Identification Number (PIN) to use when talking to the IRS.

No.

Part 5: Sign here. You MUST complete both pages of Form 941 and SIGN it.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign your name here

Signature box

Print your name here

Print your title here

Date

Best daytime phone

Paid preparer's use only

Check if you are self-employed

Preparer's name

Preparer's SSN/PTIN

Preparer's signature

Date

Firm's name (or yours if self-employed)

EIN

Address

Phone

City

State

ZIP code

# Form 941-V, Payment Voucher

## Purpose of Form

Complete Form 941-V, Payment Voucher, if you are making a payment with Form 941, Employer's QUARTERLY Federal Tax Return. We will use the completed voucher to credit your payment more promptly and accurately, and to improve our service to you.

If you have your return prepared by a third party and make a payment with that return, please provide this payment voucher to the return preparer.

## Making Payments With Form 941

To avoid a penalty, make your payment with Form 941 **only if**:

- Your net taxes for the quarter (line 10 on Form 941) are less than \$2,500 and you are paying in full with a timely filed return or
- You are a monthly schedule depositor making a payment in accordance with the Accuracy of Deposits Rule. See section 11 of Pub. 15 (Circular E), Employer's Tax Guide, for details. In this case, the amount of your payment may be \$2,500 or more.

Otherwise, you must deposit your payment at an authorized financial institution or by using the Electronic Federal Tax Payment System (EFTPS). See section 11 of Pub. 15 (Circular E) for deposit instructions. Do not use Form 941-V to make federal tax deposits.

**Caution.** Use Form 941-V when making any payment with Form 941. However, if you pay an amount with Form 941 that should have been deposited, you may be subject to a penalty. See Deposit Penalties in section 11 of Pub. 15 (Circular E).

## Specific Instructions

**Box 1—Employer identification number (EIN).** If you do not have an EIN, apply for one on Form SS-4, Application for Employer Identification Number, and write "Applied For" and the date you applied in this entry space.

**Box 2—Amount paid.** Enter the amount paid with Form 941.

**Box 3—Tax period.** Darken the capsule identifying the quarter for which the payment is made. Darken only one capsule.

**Box 4—Name and address.** Enter your name and address as shown on Form 941.

- Enclose your check or money order made payable to the "United States Treasury." Be sure to enter your EIN, "Form 941," and the tax period on your check or money order. Do not send cash. Do not staple Form 941-V or your payment to Form 941 (or to each other).

- Detach Form 941-V and send it with your payment and Form 941 to the address in the Instructions for Form 941.

**Note.** You must also complete the entity information above Part 1 on Form 941.



▼ Detach Here and Mail With Your Payment and Form 941. ▼



Form **941-V**

Department of the Treasury  
Internal Revenue Service

## Payment Voucher

OMB No. 1545-0029

**2009**

▶ Do not staple this voucher or your payment to Form 941.

<b>1</b> Enter your employer identification number (EIN).		<b>2</b> Enter the amount of your payment. ▶		Dollars	Cents
<b>3</b> Tax period		<b>4</b> Enter your business name (individual name if sole proprietor).			
<input type="radio"/> 1st Quarter	<input type="radio"/> 3rd Quarter	Enter your address.			
<input type="radio"/> 2nd Quarter	<input type="radio"/> 4th Quarter	Enter your city, state, and ZIP code.			

**Privacy Act and Paperwork Reduction Act Notice.**

We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to figure and collect the right amount of tax. Subtitle C, Employment Taxes, of the Internal Revenue Code imposes employment taxes on wages, including income tax withholding. This form is used to determine the amount of the taxes that you owe. Section 6011 requires you to provide the requested information if the tax is applicable to you. Section 6109 requires you to provide your identifying number. If you fail to provide this information in a timely manner, you may be subject to penalties and interest.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books and records relating to a form or instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

Generally, tax returns and return information are confidential, as required by section 6103. However, section 6103 allows or requires the IRS to disclose or give the information shown on your tax return to others as described in the Code. For example, we may disclose your tax information to the Department of

Justice for civil and criminal litigation, and to cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

The time needed to complete and file Form 941 will vary depending on individual circumstances. The estimated average time is:

Recordkeeping . . . . .	12 hr., 39 min.
Learning about the law or the form . . . . .	40 min.
Preparing the form . . . . .	1 hr., 49 min.
Copying, assembling, and sending the form to the IRS . . . . .	16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making Form 941 simpler, we would be happy to hear from you. You can write to: Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send Form 941 to this address. Instead, see *Where Should You File?* on page 4 of the Instructions for Form 941.



# Instructions for Form 941

(Rev. January 2009)

## Employer's QUARTERLY Federal Tax Return

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Section references are to the Internal Revenue Code unless otherwise noted.

### What's New

**Social security wage base for 2009.** Do not withhold social security tax after an employee reaches \$106,800 in social security wages in 2009.

**Disregarded entities and qualified subchapter S subsidiaries (QSubs).** The IRS has published final regulations (Treasury Decision 9356) under which QSubs and eligible single-owner disregarded entities are treated as separate entities for employment tax purposes. The final regulations apply beginning January 1, 2009. For more information, see *Disregarded entities and qualified subchapter S subsidiaries* in the introduction to Publication 15 (Circular E), Employer's Tax Guide.

**Correcting a previously filed Form 941.** If you discover an error on a previously filed Form 941, make the correction using Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund. Form 941-X is an adjusted return and is filed separately from Form 941. For more information, see section 13 of Pub. 15 or visit the IRS website at [www.irs.gov](http://www.irs.gov) and enter the keyword *Correcting Employment Taxes*.

**COBRA premium assistance payments credit.** Employers who make COBRA premium assistance payments for assistance eligible individuals are allowed a credit for the payments on Form 941. See 12a. *COBRA premium assistance payments* on page 6.

### Reminders

**Annual employment tax filing for small employers.** Certain small employers must file Form 944, Employer's ANNUAL Federal Tax Return, rather than Form 941, Employer's QUARTERLY Federal Tax Return, to report their employment taxes. The IRS will notify employers who must file Form 944 in February of each year. For more information, see the Instructions for Form 944.

**Paid preparer's must sign Form 941.** Paid preparer's must complete and sign the paid preparer's section of Form 941.

**Electronic filing and payment.** Now, more than ever before, businesses can enjoy the benefits of filing and paying their federal taxes electronically. Whether you rely on a tax professional or handle your own taxes, the IRS offers you convenient programs to make filing and paying easier. Spend less time and worry on taxes and more time running your business. Use e-file and the Electronic Federal Tax Payment System (EFTPS) to your benefit.

- For e-file, visit [www.irs.gov](http://www.irs.gov) for additional information.
- For EFTPS, visit [www.eftps.gov](http://www.eftps.gov) or call EFTPS Customer Service at 1-800-555-4477, 1-800-733-4829 (TDD), or 1-800-244-4829 (Spanish).

**Electronic funds withdrawal (EFW).** If you file Form 941 electronically, you can e-file and e-pay (electronic funds withdrawal) the balance due in a single step using tax preparation software or through a tax professional. However, **do not** use EFW to make federal tax deposits. For more information on paying your taxes using EFW, visit

the IRS website at [www.irs.gov](http://www.irs.gov) and click on the *Online Services* link. A fee may be charged to file electronically.

**Credit card payments.** Employers can pay the balance due shown on Form 941 by credit card. **Do not** use a credit card to make federal tax deposits. For more information on paying your taxes with a credit card, visit the IRS website at [www.irs.gov](http://www.irs.gov) and click on the *Online Services* link.

**Employer's liability.** Employers are responsible to ensure that tax returns are filed and deposits and payments are made, even if the employer contracts with a third-party. The employer remains liable if the third party fails to perform a required action.

**Where can you get telephone help?** You can call the IRS Business and Specialty Tax Line toll free at 1-800-829-4933, Monday through Friday from 7 a.m. to 10 p.m. local time (Alaska and Hawaii follow Pacific time) to order tax deposit coupons (Form 8109) and for answers to your questions about completing Form 941, tax deposit rules, or obtaining an employer identification number (EIN).

**Photographs of missing children.** The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in instructions on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

### General Instructions:

#### Purpose of Form 941

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These instructions give you some background information about Form 941. They tell you who must file Form 941, how to complete it line by line, and when and where to file it.

If you want more in-depth information about payroll tax topics relating to Form 941, see Pub. 15 (Circular E), Employer's Tax Guide, or visit the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and click on the *Employment Taxes* link.

Federal law requires you, as an employer, to withhold taxes from your employees' paychecks. Each time you pay wages, you must withhold – or take out of your employees' paychecks – certain amounts for federal income tax, social security tax, and Medicare tax. Under the withholding system, taxes withheld from your employees are credited to your employees in payment of their tax liabilities.

Federal law also requires you to pay any liability for the employer's portion of social security and Medicare taxes. This portion of social security and Medicare taxes is not withheld from employees.

#### Who Must File Form 941?

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Use Form 941 to report the following amounts.

- Wages you have paid.
- Tips your employees have received.
- Federal income tax you withheld.
- Both the employer's and the employee's share of social security and Medicare taxes.
- Current quarter's adjustments to social security and Medicare taxes for fractions of cents, sick pay, tips, and group-term life insurance.
- Advance earned income tax credit (EIC) payments.

- Credit for COBRA premium assistance payments.

**Do not** use the Form 941 to report backup withholding or income tax withholding on **nonpayroll** payments such as pensions, annuities, and gambling winnings. Report these types of withholding on Form 945, Annual Return of Withheld Federal Income Tax.

After you file your first Form 941, you must file a return for each quarter, even if you have no taxes to report, unless you filed a **final return** or one of the exceptions listed below applies.

## Exceptions

Special rules apply to some employers.

- **Seasonal employers** do not have to file a Form 941 for quarters in which they have no tax liability because they have paid no wages. To tell the IRS that you will not file a return for one or more quarters during the year, check the box on line 17 **every quarter** you file Form 941. See section 12 of Pub. 15 (Circular E) for more information.
- Employers of **household employees** do not usually file Form 941. See Pub. 926, Household Employer's Tax Guide, and Schedule H (Form 1040), Household Employment Taxes, for more information.
- Employers of **farm employees** do not usually file Form 941. See Form 943, Employer's Annual Tax Return for Agricultural Employees, and Pub. 51 (Circular A), Agricultural Employer's Tax Guide.



*If none of the above exceptions applies and you have not filed a final return, you **must** file Form 941 each quarter even if you did not pay wages during the quarter. Use IRS e-file, if possible.*

## What if you reorganize or close your business?

### If you sell or transfer your business . . .

If you sell or transfer your business, you and the new owner must each file a Form 941 for the quarter in which the transfer occurred. Report only the wages you paid.

When two businesses merge, the continuing firm must file a return for the quarter in which the change took place and the other firm should file a **final return**.

Changing from one form of business to another—such as from a sole proprietorship to a partnership or corporation—is considered a transfer. If a transfer occurs, you may need a new EIN. See section 1 of Pub. 15 (Circular E). Attach a statement to your return with:

- The new owner's name (or the new name of the business);
- Whether the business is now a sole proprietorship, partnership, or corporation;
- The kind of change that occurred (a sale or transfer);
- The date of the change; and
- The name of the person keeping the payroll records and the address where those records will be kept.

### If your business has closed . . .

If you go out of business or stop paying wages to your employees, you must file a **final return**. To tell the IRS that Form 941 for a particular quarter is your final return, check the box on line 16 and enter the date you last paid wages. Also attach a statement to your return showing the name of the person keeping the payroll records and the address where those records will be kept.

See the Instructions for Forms W-2 and W-3 for information about earlier dates for the expedited furnishing and filing of Forms W-2 when a final Form 941 is filed.

If you participated in a statutory merger or consolidation, or qualify for predecessor-successor status due to an acquisition, you should generally file Schedule D (Form 941), Report of Discrepancies Caused by Acquisitions, Statutory Mergers, or Consolidations. See the Instructions

for Schedule D (Form 941) to determine whether you should file Schedule D (Form 941) and when you should file it.

## When Must You File?

File your initial Form 941 for the quarter in which you first paid wages that are subject to social security and Medicare taxes or subject to federal income tax withholding. See the table below titled, *When To File Form 941*.

Then you must file for every quarter after that—every 3 months—even if you have no taxes to report, unless you are a seasonal employer or are filing your final return. See *Seasonal employers* and *If your business has closed . . .* above.

File Form 941 only once for each quarter. If you filed electronically, do not file a paper Form 941. For more information about filing Form 941 electronically, see *Electronic filing and payment* on page 1.

### When To File Form 941

Your Form 941 is due by the last day of the month that follows the end of the quarter.		
The Quarter Includes . . .	Quarter Ends	Form 941 Is Due
1. January, February, March	March 31	April 30
2. April, May, June	June 30	July 31
3. July, August, September	September 30	October 31
4. October, November, December	December 31	January 31

For example, generally you must report wages you pay during the first quarter—which is January through March—by April 30th. If you made timely deposits in full payment of your taxes for a quarter, you have 10 more days after the due dates shown above to file your Form 941.

If we receive Form 941 after the due date, we will treat Form 941 as filed on time if the envelope containing Form 941 is properly addressed, contains sufficient postage, and is postmarked by the U.S. Postal Service on or before the due date, or sent by an IRS-designated private delivery service on or before the due date. If you do not follow these guidelines, we will consider Form 941 filed when it is actually received. See Pub. 15 (Circular E) for more information on IRS-designated private delivery services.

If any due date for filing shown above falls on a Saturday, Sunday, or legal holiday, you may file your return on the next business day.

## How Should You Complete Form 941?

### Review Your Business Information at the Top of the Form

If you are using a copy of Form 941 that has your business name and address preprinted at the top of the form, check to make sure the information is correct. Carefully review your EIN to make sure it exactly matches the EIN assigned to your business by the IRS. If any information is incorrect, cross it out and type or print the correct information. See *If you change your name or address...* below.

If you use a tax preparer to fill out Form 941, make sure the preparer uses your business name and EIN **exactly** as they appear on the preprinted form we sent you.

If you are not using a preprinted Form 941, type or print your EIN, name, and address in the spaces provided. Also enter your name and EIN on the top of page 2. **Do not** use your social security number (SSN) or individual taxpayer identification number (ITIN). Generally, enter the business (legal) name you used when you applied for your EIN on Form SS-4, Application for Employer Identification Number. For example, if you are a sole proprietor, enter "Haleigh

Smith” on the “Name” line and “Haleigh’s Cycles” on the “Trade name” line. Leave the “Trade name” line blank if it is the same as your “Name.”

**Employer identification number (EIN).** To make sure businesses comply with federal tax laws, the IRS monitors tax filings and payments by using a numerical system to identify taxpayers. A unique 9-digit employer identification number (EIN) is assigned to all corporations, partnerships, and some sole proprietors. Businesses needing an EIN must apply for a number and use it throughout the life of the business on all tax returns, payments, and reports.

Your business should have only one EIN. If you have more than one and are not sure which one to use, write to the IRS office where you file your returns (using the *Without a payment* address on page 4) or call the IRS at 1-800-829-4933.

If you do not have an EIN, you may apply for one online. Go to the IRS website at [www.irs.gov](http://www.irs.gov) and click on the *Online Services* link, then the *Obtain an Employer Identification Number (EIN) online* link. You may also apply for an EIN by calling 1-800-829-4933, or you can fax or mail Form SS-4 to the IRS. If you have applied for an EIN but do not have your EIN by the time a return is due, write “Applied For” and the date you applied in the space shown for the number.

**TIP** Always be sure the EIN on the form you file exactly matches the EIN the IRS assigned to your business. Do not use your social security number on forms that ask for an EIN. Filing a Form 941 with an incorrect EIN or using another business’s EIN may result in penalties and delays in processing your return.

**If you change your name or address...** Notify the IRS immediately if you change your business name or address.

- Write to the IRS office where you file your returns (using the *Without a payment* address on page 4) to notify the IRS of any name change. Get Pub. 1635, Understanding Your Employer Identification Number (EIN), to see if you need to apply for a new EIN.
- Complete and mail Form 8822, Change of Address, for any address change.

### Check the Box for the Quarter

Under “Report for this Quarter of 2009” at the top of Form 941, check the appropriate box of the quarter for which you are filing. Make sure the quarter checked is the same as shown on any attached Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors.

### Completing and Filing Form 941

Make entries on Form 941 as follows to enable accurate scanning and processing.

- Use 12-point Courier font (if possible) for all entries if you are typing or using a computer to fill out your form.
- Omit dollar signs and decimal points. Commas are optional. Report dollars to the left of the preprinted decimal point and cents to the right of it.
- Leave blank any data field (except lines 1, 2, and 10) with a value of zero.
- Enter negative amounts using a minus sign (if possible). Otherwise, use parentheses.
- Enter your name and EIN on all pages and attachments. Filers using the IRS-preaddressed Form 941 do not have to enter their name and EIN on page 2.
- Staple multiple sheets in the upper left corner when filing.

### Other Forms You Must Use

Give each eligible employee Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC). Then each eligible employee who wishes to receive any advance earned income credit (EIC) payments must give you a completed Form W-5, Earned Income Credit Advance Payment Certificate. For more information, see section 10 of

Pub. 15 (Circular E) and also Pub. 596, Earned Income Credit.

### Reconciling Forms 941 and Form W-3

The IRS matches amounts reported on your four quarterly Forms 941 with Form W-2 amounts totaled on your yearly Form W-3, Transmittal of Wage and Tax Statements. If the amounts do not agree, you may be contacted by the IRS or the Social Security Administration (SSA). The following amounts are reconciled.

- Federal income tax withholding.
- Social security wages.
- Social security tips.
- Medicare wages and tips.
- Advance earned income credit (EIC) payments.

For more information, see section 12 of Pub. 15 (Circular E) and the Instructions for Schedule D (Form 941).

## Depositing Your Taxes: When Must You Deposit Your Taxes?

### Determine if you are a monthly or semiweekly schedule depositor for the quarter.

The IRS uses two different sets of deposit rules to determine when businesses must deposit their social security, Medicare, and withheld federal income taxes. These schedules tell you when a deposit is due after you have a payday.

Your deposit schedule is not determined by how often you pay your employees. Your deposit schedule depends on the total tax liability you reported on Form 941 during the previous four-quarter **lookback period** (July 1 of the second preceding calendar year through June 30 of last year). See section 11 of Pub. 15 (Circular E) for details. If you filed Form 944 in either 2007 or 2008, your lookback period is the 2007 calendar year.

Before the beginning of each calendar year, determine which type of deposit schedule you must use. If you reported:

- \$50,000 or less in taxes during the lookback period, you are a **monthly schedule depositor**. Check the appropriate box on line 17 and, if your tax liability for the quarter was \$2,500 or more, fill out the tax liability for each month in the quarter.
- More than \$50,000 of taxes for the lookback period, you are a **semiweekly schedule depositor**. Check the appropriate box on line 17 and, if your tax liability for the quarter was \$2,500 or more, fill out Schedule B (Form 941) and attach it to Form 941 when you submit it.

**TIP** See section 11 of Pub. 15 (Circular E) for the Next Day Deposit Rule on taxes of \$100,000 or more accumulated on any day during the deposit period.

## How Must You Deposit Your Taxes?

You may have to deposit the federal income taxes you withheld and both the employer and employee social security taxes and Medicare taxes. If your total taxes after adjustment for advance EIC (line 10) are:

- **Less than \$2,500 for the quarter.** You do not have to make a deposit. To avoid a penalty, you must pay the amount in full with a timely filed return or you must deposit the amount timely. However, if you are unsure that your taxes will be less than \$2,500 for the quarter, deposit your taxes using the appropriate rules (above) to avoid failure to deposit penalties.
- **\$2,500 or more for the quarter.** You must deposit your taxes by using EFTPS or by depositing them at a financial institution that is authorized to accept federal tax deposits

(that is, authorized depository) with Form 8109, Federal Tax Deposit Coupon. See section 11 of Pub. 15 (Circular E).

**TIP** *EFTPS is an easy, safe, and convenient way for all employers to make their tax deposits. Using EFTPS helps eliminate errors commonly made on federal tax deposit (FTD) coupons. **Some taxpayers are required to use EFTPS to deposit their taxes.** See section 11 of Pub. 15 (Circular E) for details.*

## What About Penalties and Interest?

### Avoiding penalties and interest

You can avoid paying penalties and interest if you do all of the following:

- Deposit or pay your taxes when they are due, using EFTPS if required.
- File your fully completed Form 941 on time.
- Report your tax liability accurately.
- Submit valid checks for tax payments.
- Furnish accurate Forms W-2 to employees.
- File Form W-3 and Copies A of Form W-2 with the Social Security Administration (SSA) on time and accurately.

Penalties and interest are charged on taxes paid late and returns filed late at a rate set by law. See sections 11 and 12 of Pub. 15 (Circular E) for details.

Use Form 843, Claim for Refund and Request for Abatement, to request abatement of assessed penalties or interest. **Do not** request abatement of assessed penalties or interest on Form 941 or Form 941c.

**CAUTION** *A trust fund recovery penalty may apply if federal income, social security, and Medicare taxes that must be withheld are not withheld or paid. The penalty is the full amount of the unpaid trust fund tax. This penalty may apply when these unpaid taxes cannot be collected from the employer. The trust fund recovery penalty may be imposed on all people the IRS determines to be responsible for collecting, accounting for, and paying these taxes, and who acted willfully in not doing so. For details, see section 11 of Pub. 15 (Circular E).*

## Where Should You File?

Where you file depends on whether you include a payment with Form 941.

If you are in . . .	Without a payment . . .	With a payment . . .
<b>Special filing addresses</b> for exempt organizations; federal, state, and local governmental entities; and Indian tribal governmental entities; regardless of location	Department of the Treasury Internal Revenue Service Ogden, UT 84201-0005	Internal Revenue Service P.O. Box 105083 Atlanta, GA 30348-5083
Connecticut	New Jersey	Department of the Treasury
Delaware	New York	Internal Revenue Service
District of Columbia	North Carolina	P.O. Box 804522
Georgia	Ohio	Cincinnati, OH 45280-4522
Illinois	Pennsylvania	Cincinnati, OH 45999-0005
Indiana	Rhode Island	
Kentucky	South Carolina	
Maine	Tennessee	
Maryland	Vermont	
Massachusetts	Virginia	
Michigan	West Virginia	
New Hampshire	Wisconsin	

If you are in . . .	Without a payment . . .	With a payment . . .
Alabama	Missouri	Department of the Treasury
Alaska	Montana	Internal Revenue Service
Arizona	Nebraska	Ogden, UT 84201-0005
Arkansas	Nevada	
California	New Mexico	
Colorado	North Dakota	
Florida	Oklahoma	
Hawaii	Oregon	
Idaho	South Dakota	
Iowa	Texas	
Kansas	Utah	
Louisiana	Washington	
Minnesota	Wyoming	
Mississippi		
No legal residence or principal place of business in any state	Internal Revenue Service P.O. Box 409101 Ogden, UT 84409	Internal Revenue Service P.O. Box 105273 Atlanta, GA 30348-5273

**CAUTION** *Your filing or payment address may have changed from prior years. If you are using an IRS-provided envelope, use only the labels and envelope provided with the tax package. Do not send Form 941 or any payments to the SSA.*

## Specific Instructions:

### Part 1: Answer these questions for this quarter.

#### 1. Number of employees who received wages, tips, or other compensation this quarter

Enter the number of employees on your payroll for the pay period including March 12, June 12, September 12, or December 12, **for the quarter indicated** at the top of Form 941. Do not include:

- Household employees,
- Employees in nonpay status for the pay period,
- Farm employees,
- Pensioners, or
- Active members of the Armed Forces.

**TIP** *If you enter "250" or more on line 1, you must file Forms W-2 electronically. For details, call the SSA at 1-800-772-6270 or visit SSA's Employer W-2 Filing Instructions and Information website at [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer).*

#### 2. Wages, tips, and other compensation

Enter amounts on line 2 that would also be included in box 1 of your employees' Forms W-2. Include sick pay paid by a third party if you were given timely notice of the payments and transferred liability for the employees' taxes. See the Instructions for Forms W-2 and W-3 for details.

If you are a third-party payer of sick pay, do not include sick pay that you paid to policyholders' employees here if you gave the policyholders timely notice of the payments.

#### 3. Income tax withheld from wages, tips, and other compensation

Enter the federal income tax you withheld (or were required to withhold) from your employees on this quarter's wages, tips, taxable fringe benefits, and supplemental unemployment compensation benefits. Do not include any income tax withheld by a third-party payer of sick pay even if you reported it on Form W-2. You will reconcile this difference on Form W-3. Also include here any excise taxes you were required to withhold on golden parachute payments (section 4999).

If you are a third-party payer of sick pay, enter the federal income tax you withheld (or were required to withhold) on third-party sick pay here.

#### 4. If no wages, tips, and other compensation are subject to social security or Medicare tax . . .

If no wages, tips, and other compensation on line 2 are subject to social security or Medicare tax, check the box on line 4. If this question does not apply to you, leave the box blank. For more information about exempt wages, see section 15 of Pub. 15 (Circular E) and section 4 of Pub. 15-A.



*If you are a government employer, wages you pay are not automatically exempt from social security and Medicare taxes. Your employees may be covered by law or by a voluntary Section 218 Agreement with the SSA. For more information, see Pub. 963, Federal-State Reference Guide.*

#### 5. Taxable social security and Medicare wages and tips

**5a. Taxable social security wages.** Report the total wages, sick pay, and fringe benefits subject to social security taxes you paid to your employees during the quarter. For this purpose, sick pay includes payments made by an insurance company to your employees for which you received timely notice from the insurance company. See Section 6 in Pub. 15-A for more information about sick pay reporting.

Enter the amount before deductions. **Do not** include tips on this line. For information on types of wages subject to social security taxes, see section 5 of Pub. 15 (Circular E).

The rate of social security tax on taxable wages is 6.2 percent (.062) each for the employer and employee or 12.4 percent (.124) for both. Stop paying social security tax on and reporting an employee's wages on line 5a when the employee's taxable wages (including tips) reach \$106,800 during 2009. However, continue to withhold income and Medicare taxes for the whole year on wages and tips even when the social security wage base of \$106,800 has been reached.

$$\begin{array}{r} \text{line 5a (column 1)} \\ \times \quad .124 \\ \hline \text{line 5a (column 2)} \end{array}$$

**5b. Taxable social security tips.** Enter all tips your employees reported to you during the quarter until the total of the tips and wages for an employee reach \$106,800 in 2009. Do this even if you were unable to withhold the employee tax of 6.2%.

An employee must report cash tips to you, including tips you paid the employee for charge customers, totaling \$20 or more in a month by the 10th of the next month. Employees may use Form 4070, Employee's Report of Tips to Employer (available only in Pub. 1244, Employee's Daily Record of Tips and Report to Employer), or submit a written statement or electronic tip record.

Do not include allocated tips on this line. Instead, report them on Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips. Allocated tips are not reportable on Form 941 and are not subject to withholding of federal income, social security, or Medicare taxes.

$$\begin{array}{r} \text{line 5b (column 1)} \\ \times \quad .124 \\ \hline \text{line 5b (column 2)} \end{array}$$

**5c. Taxable Medicare wages & tips.** Report all wages, tips, sick pay, and taxable fringe benefits that are subject to Medicare tax. Unlike social security wages, there is no limit on the amount of wages subject to Medicare tax.

Include all tips your employees reported during the quarter, even if you were unable to withhold the employee tax of 1.45%.

$$\begin{array}{r} \text{line 5c (column 1)} \\ \times \quad .029 \\ \hline \text{line 5c (column 2)} \end{array}$$

For more information on tips, see section 6 of Pub. 15 (Circular E).

**5d. Total social security and Medicare taxes.** Add the social security tax (line 5a), social security tips tax (line 5b), and Medicare tax (line 5c) and enter the result on line 5d.

#### 6. Total taxes before adjustments

Add the total federal income tax withheld from wages, tips, and other compensation (line 3) and the total social security and Medicare taxes before adjustments (line 5d).

#### 7. TAX ADJUSTMENTS

Enter **tax amounts** on lines 7a through 7c that result from current quarter adjustments. Use a minus sign (if possible) to show an adjustment that decreases the total taxes shown on line 6 instead of parentheses. Doing so enhances the accuracy of our scanning software. For example, report "-10.59" instead of "(10.59)." However, if your software only allows for parentheses in reporting negative amounts, you may use them.

**Current quarter's adjustments.** In certain cases, you must adjust the amounts you reported as social security and Medicare taxes in column 2 of lines 5a, 5b, and 5c to figure your correct tax liability for this quarter's Form 941. See section 13 of Pub. 15 (Circular E).

**Prior quarter's adjustments.** If you need to adjust any amount reported on lines 7a, 7b, or 7c from a previously filed Form 941, complete and file Form 941-X. Form 941-X is an adjusted return and is filed separately from Form 941. See section 13 of Pub. 15 (Circular E).

**7a. Current quarter's fractions of cents.** Enter adjustments for fractions of cents (due to rounding) relating to the employee share of social security and Medicare taxes withheld. The employee share (one-half) of amounts shown in column 2 of lines 5a, 5b, and 5c may differ slightly from amounts actually withheld from employees' paychecks due to the rounding of social security and Medicare taxes based on statutory rates.

**7b. Current quarter's sick pay.** Enter the adjustment for the employee share of social security and Medicare taxes that were withheld by your third-party sick pay payer.

**7c. Current quarter's adjustments for tips and group-term life insurance.** Enter adjustments for:

- Any uncollected employee share of social security and Medicare taxes on tips and
- The uncollected employee share of social security and Medicare taxes on group-term life insurance premiums paid for former employees.

**7d. TOTAL ADJUSTMENTS.** Combine all adjustments shown on lines 7a through 7c and enter the result here.

#### 8. Total taxes after adjustments

Combine the amounts shown on lines 6 and 7d and enter the result here.

#### 9. Advance earned income credit (EIC) payments made to employees

Enter the amount of the advance earned income credit (EIC) payments that you made to your employees. Eligible employees may choose to receive part of the EIC as an advance payment. Those who expect to have a qualifying child must give you a completed Form W-5 stating they expect to qualify for the EIC. Once the employee gives you a signed and completed Form W-5 you must make the advance EIC payments starting with the employee's next

wage payment. Advance EIC payments are generally made from withheld federal income tax and employee and employer social security and Medicare taxes.

If the amount of your advance EIC payments is more than your total taxes after adjustments (line 8) for the quarter, you may claim a refund of the overpayment or elect to have the credit applied to your return for the next quarter. Attach a statement to Form 941 identifying the amount of excess payments and the pay periods in which you paid it.

For more information on advance EIC, see section 10 of Pub. 15 (Circular E) and Pub. 596, Earned Income Credit.

## 10. Total taxes after adjustment for advance EIC

Subtract line 9 from line 8.

- **Line 10 is less than \$2,500.** You may pay the amount with Form 941 or you may deposit the amount. To avoid a penalty, you must pay the amount in full with a timely filed return or you must deposit the amount timely.
- **If line 10 is \$2,500 or more, you must deposit** the amount by using EFTPS or at an authorized financial institution with Form 8109. The amount shown on line 10 **must** equal the "Total liability for quarter" shown on Form 941, line 17 or the "Total liability for the quarter" shown on Schedule B (Form 941).

For more information on federal tax deposits, see *Depositing Your Taxes* on page 3 and section 11 of Pub. 15 (Circular E).



*If you are a **semiweekly depositor**, you **must** complete Schedule B (Form 941). If you fail to complete and submit Schedule B (Form 941), the IRS will assert deposit penalties based on available information.*

## 11. Total deposits for this quarter...

Enter your deposits for this quarter, including any overpayment that you applied from filing Form 941-X or Form 944-X in the current quarter. Also include in the amount shown any overpayment from a previous period that you applied to this return.

### 12a. COBRA premium assistance payments

Report on this line the COBRA premium assistance payments you made. Only report the premium assistance payments you made for the assistance eligible individuals who have paid their reduced premiums. This amount should be 65% of the total COBRA premiums for assistance eligible individuals without regard to the reduction. Do not include any amounts paid to you by the COBRA assistance eligible individuals. For COBRA coverage provided under a self-funded plan, COBRA premium assistance payments are treated as having been made for each assistance eligible individual who pays 35% of the COBRA premium.

### 12b. Number of individuals provided COBRA premium assistance on line 12a

Enter the total number of individuals provided COBRA premium assistance payments reported on line 12a.

## 13. Total deposits and COBRA credit

Add lines 11 and 12a.

## 14. Balance due

If line 10 is more than line 13, write the difference in line 14. Otherwise, see *Overpayment* below. **You do not have to pay if line 14 is under \$1.** Generally, you should have a balance due only if your total taxes after adjustment for advance EIC for the quarter (line 10) are less than \$2,500. However, see section 11 of Pub. 15 (Circular E) for information about payments made under the **accuracy of deposits rule**.

You may pay the amount shown on line 14 using EFTPS, a credit card, a check or money order, or electronic funds

withdrawal (EFW). **Do not** use a credit card or EFW to pay taxes that were required to be deposited. For more information on paying your taxes with a credit card or EFW, visit the IRS website at [www.irs.gov](http://www.irs.gov) and click on the *Online Services* link.

If you pay by EFTPS, credit card, or EFW, file your return using the *Without a payment* address on page 4 under *Where Should You File?* and **do not** file Form 941-V, Payment Voucher.

If you pay by check or money order, make it payable to the *United States Treasury*. Enter your EIN, Form 941, and the tax period on your check or money order. Complete Form 941-V and enclose with Form 941.

If line 10 is \$2,500 or more and you have deposited all taxes when due, the balance due on line 14 should be zero.



*If you do not deposit as required and, instead, pay the taxes with Form 941, you may be subject to a penalty.*

## 15. Overpayment

If line 13 is more than line 10, write the difference in line 15. **Never make an entry in both lines 14 and 15.**

If you deposited more than the correct amount for the quarter, you can choose to have the IRS either refund the overpayment or apply it to your next return. Check the appropriate box in line 15. If you do not check either box, we will automatically refund the overpayment. We may apply your overpayment to any past due tax account that is shown in our records under your EIN.

If line 15 is under \$1, we will send a refund or apply it to your next return only if you ask us in writing to do so.

## Complete both pages.

You must complete both pages of Form 941 and sign on page 2. An incomplete return may delay processing.

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## Part 2: Tell us about your deposit schedule and tax liability for this quarter.

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## 16. State abbreviation

In the spaces provided, write the two-letter U.S. Postal Service abbreviation for the bank branch in the state where you deposit your taxes using Form 8109 or initiate EFTPS transfers. The IRS uses the state shown to determine banking days for purposes of deposit due dates. Official state holidays for the state shown are not counted as banking days. If you deposit in multiple states, enter "MU" in the spaces provided.

When you deposit in multiple states, the IRS cannot determine what portion of your liability was affected by a state holiday and may propose a deposit penalty for one or more of the states where you made deposits. If you receive a notice and your deposit due date was extended because of a state bank holiday, respond to the notice citing the state holiday and applicable deposit amount.

## 17. Check one

- If line 10 is less than \$2,500, check the appropriate box in line 17 and go to Part 3.
- If you reported \$50,000 or less in taxes during the lookback period (see below), you are a **monthly schedule depositor** unless the *\$100,000 Next-Day Deposit Rule* discussed in section 11 of Pub. 15 (Circular E) applies. Check the appropriate box on line 17 and enter your tax liability for each month in the quarter. Add the amounts for each month. Enter the result in the *Total liability for quarter* box.

Note that your total tax liability for the quarter must equal your total taxes shown on line 10. If it does not, your tax deposits and payments may not be counted as timely. **Do not** change your tax liability on line 17 by adjustments reported on any Forms 941-X.

You are a **monthly schedule depositor** for the calendar year if the amount of your Form 941 taxes reported for the lookback period is \$50,000 or less. The **lookback period** is the four consecutive quarters ending on June 30 of the prior year. For 2009, the lookback period begins July 1, 2007, and ends June 30, 2008. For details on the deposit rules, see section 11 of Pub. 15 (Circular E). If you filed Form 944 in either 2007 or 2008, your lookback period is the 2007 calendar year.



*This is a summary of your monthly **tax liability**, not a summary of deposits you made. If you do not properly report your liabilities when required or if you are a semiweekly schedule depositor and report your liabilities on line 17 instead of on Schedule B (Form 941), you may be assessed an "averaged" failure-to-deposit (FTD) penalty. See Deposit Penalties in section 11 of Pub. 15 (Circular E) for more information.*

• If you reported more than \$50,000 of taxes for the lookback period (see above), you are a **semiweekly schedule depositor**. Check the appropriate box on line 17.

You **must** complete Schedule B (Form 941) and submit it with your Form 941. **Do not** use Schedule B (Form 941) if you are a monthly schedule depositor.

**Do not** change your tax liability on Schedule B (Form 941) by adjustments reported on any Forms 941-X.

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## Part 3: Tell us about your business.

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In Part 3, answer only those questions that apply to your business. If the questions do not apply, leave them blank and go to Part 4.

### 18. If your business has closed . . .

If you go out of business or stop paying wages, you must file a **final return**. To tell the IRS that a particular Form 941 is your final return, check the box on line 18 and enter the date you last paid wages in the space provided. For additional filing requirements, see *If your business has closed...* on page 2.

### 19. If you are a seasonal employer . . .

If you hire employees seasonally—such as for summer or winter only—check the box on line 19. Checking the box tells the IRS not to expect four Forms 941 from you throughout the year because you have not paid wages regularly.

Generally, we will not ask about unfiled returns if you file at least one return showing tax due each year. However, you must check the box **every time** you file a Form 941.

Also, when you fill out Form 941, be sure to check the box on the top of the form that corresponds to the quarter reported.

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## Part 4: May we speak with your third-party designee?

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If you want to allow an employee, a paid tax preparer, or another person to discuss your Form 941 with the IRS, check the "Yes" box in Part 4. Then tell us the name, phone number, and the five-digit personal identification number (PIN) of the specific person to speak with—not the name of the firm who prepared your tax return. The designee may choose any five numbers as his or her PIN.

By checking "Yes," you authorize the IRS to talk to the person you named (your designee) about any questions we may have while we process your return. You also authorize your designee to:

- give us any information that is missing from your return,
- call us for information about processing your return, and
- respond to certain IRS notices that you have shared with your designee about math errors and return preparation. The IRS will not send notices to your designee.

You are not authorizing your designee to bind you to anything (including additional tax liability) or to otherwise represent you before the IRS. If you want to expand your designee's authorization, see Pub. 947, Practice Before the IRS and Power of Attorney.

The authorization will automatically expire 1 year from the due date (without regard to extensions) for filing your Form 941. If you or your designee want to terminate the authorization, write to the IRS office for your locality using the *Without a payment* address under *Where Should You File?* on page 4.

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## Part 5: Sign Here

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Complete all information in Part 5 and sign Form 941 as follows.

- **Sole proprietorship**— The individual who owns the business.
- **Corporation (including a limited liability company (LLC) treated as a corporation)**— The president, vice president, or other principal officer duly authorized to act.
- **Partnership (including an LLC treated as a partnership) or unincorporated organization**— A responsible and duly authorized member or officer having knowledge of its affairs.
- **Single member LLC treated as a disregarded entity**— The owner of the LLC.
- **Trust or estate**— The fiduciary.

Form 941 may also be signed by a duly authorized agent of the taxpayer if a valid power of attorney has been filed.

**Alternative signature method.** Corporate officers or duly authorized agents may sign Form 941 by rubber stamp, mechanical device, or computer software program. For details and required documentation, see Rev. Proc. 2005-39. You can find Rev. Proc. 2005-39 on page 82 of Internal Revenue Bulletin 2005-28 at [www.irs.gov/pub/irs-irbs/irb05-28.pdf](http://www.irs.gov/pub/irs-irbs/irb05-28.pdf).

**Paid preparers.** A paid preparer must sign Form 941 and provide the information in the *Paid preparer's use only* section of Part 5 if the preparer was paid to prepare Form 941 and is not an employee of the filing entity. Paid preparers must sign paper returns with a manual signature. The preparer must give you a copy of the return in addition to the copy to be filed with the IRS.

If you are a paid preparer, write your SSN or your Preparer Tax Identification Number (PTIN) in the space provided. Include your complete address. If you work for a firm, write the firm's name and the EIN of the firm. You can apply for a PTIN using Form W-7P, Application for Preparer Tax Identification Number. You cannot use your PTIN in place of the EIN of the tax preparation firm.

Generally, do not complete this section if you are filing the return as a reporting agent and have a valid Form 8655, Reporting Agent Authorization, on file with the IRS. However, a reporting agent must complete this section if the reporting agent offered legal advice, for example, advising the client on determining whether its workers are employees or independent contractors for Federal tax purposes.

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## How to Order Forms and Publications from the IRS

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Call 1-800-829-3676.



Visit the IRS website at [www.irs.gov](http://www.irs.gov).

## Other IRS Products You May Need

- Form SS-4, Application for Employer Identification Number
- Form W-2, Wage and Tax Statement
- Form W-2c, Corrected Wage and Tax Statement
- Form W-3, Transmittal of Wage and Tax Statements
- Form W-3c, Transmittal of Corrected Wage and Tax Statements
- Form W-4, Employee's Withholding Allowance Certificate
- Form W-5, Earned Income Credit Advance Payment Certificate
- Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return
- Form 943, Employer's Annual Federal Tax Return for Agricultural Employees
- Form 944, Employer's ANNUAL Federal Tax Return
- Form 4070, Employee's Report of Tips to Employer
- Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips
- Form 8655, Reporting Agent Authorization
- Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC)
- Pub. 15 (Circular E), Employer's Tax Guide
- Pub. 15-A, Employer's Supplemental Tax Guide
- Pub. 15-B, Employer's Tax Guide to Fringe Benefits
- Pub. 596, Earned Income Credit
- Pub. 926, Household Employer's Tax Guide
- Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors
- Schedule D (Form 941), Report of Discrepancies Caused by Acquisitions, Statutory Mergers, or Consolidations
- Schedule H (Form 1040), Household Employment Taxes