



2015 omnibus tax bill includes numerous provisions of significance to employers

On December 18, 2015, the President [signed into law](#) the Consolidated Appropriations Act of 2016 ([H.R. 2029](#)) that extends several expiring provisions, implements much-anticipated measures for combatting tax refund fraud (e.g., earlier Form W-2 due date) and makes other noteworthy payroll tax changes.

Parity in parking and transit benefits

Of immediate concern, effective January 1, 2015, the parity in parking and transit/van pool benefits is made permanent. Consequently, for 2015, the monthly tax-free limit on transit/van pool benefits is increased from \$130 to \$250. (See [Rev. Proc. 2014-61](#) for the 2015 inflation adjustments on parking benefits.)

Effective January 1, 2016, this tax-free limit on transit/van pool benefits increases to \$255. (See [Rev. Proc. 2015-53](#) for the 2016 inflation adjustments on parking benefits.)

- **Observations.** It is anticipated that similar to 2013 and 2014, the IRS will soon issue guidance waiving the requirement to file Forms 941-X for adjustments to Social Security/Medicare wages and taxes incurred in the first three quarters of 2015 that are the result of the increase in the monthly transit/van pool benefit limit.

In prior years, the IRS has allowed employers to report retroactive adjustments to transit/van pool benefits for the entire tax year on the fourth quarter Form 941. Should the IRS apply this same guidance to 2015, employers will have until February 1, 2016 to include these adjustments on the fourth quarter Form 941 and avoid filing Forms 941-X.

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Change in Form W-2 due date and other tax refund fraud measures

Despite commentary from business groups that accelerating the Form W-2 filing due date would result in a significant burden to employers and an increase in reporting errors, H.R. 2029 requires that effective for tax year 2016 (filed in 2017) the due date for filing Forms W-2/W-3 with the Social Security Administration is accelerated to January 31 whether filed electronically or on paper. (Currently the date for filing paper Forms W-2/W-3 is the last day of February and the due date for electronically filed forms is March 31.)

In addition, the earlier filing due date of January 31 applies to returns filed with the Internal Revenue to report nonemployee compensation (e.g., Form 1099-MISC). ([IRC §6071](#), new subsection (c).)

To allow time for the processing and use of employer-provided Form W-2 data by the IRS in issuing income tax refunds to taxpayers, H.R. 2029 also stipulates that no credit or refund of a tax overpayment will be made to taxpayers for the tax year before the 15th day of the second month following the close of such taxable year. ([IRC §6402](#), new subsection (m).)

- **Forms W-2c not required for de minimis errors.**

Realizing that the volume of Forms W-2c are likely to increase as a result of the earlier filing due date, H.R. 2029 adopts the industry recommendation that a correction of small errors on Forms W-2c not be required.

Specifically, and effective with Forms W-2 required to be filed after December 31, 2016, the law provides that a corrected return is not required and no penalty is imposed if the error is \$100 or less (\$25 or less in the case of errors involving tax withholding). An employee can elect to have a corrected return issued to them and filed with the IRS. (modifying [IRC §6721\(c\)\(3\)](#); [IRC §6722\(c\)](#).)

- **Truncation of the Social Security Number of Form W-2.**

Effective immediately, the law gives IRS the authority to allow for the truncation of the Social Security Number (SSN) on the Form W-2 by amending [IRC §6051\(a\)\(2\)](#) to allow for an identifying number of the employee rather than an SSN.

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Reinstatement of other expiring provisions

The law reinstates these employment tax credits:

- **Employer wage credit for active duty members of the uniformed services.** Effective January 1, 2015, the law permanently extends the 20% employer wage credit for employees called to active military duty. Effective January 1, 2016, the credit applies to employers of any size, rather than only employers with 50 or fewer employees.
- **Indian employment tax credit.** Retroactive to January 1, 2015 and through December 31, 2016, the law extends the Indian tax credit on the first \$20,000 of qualified wages paid to each qualified employee who works on an Indian reservation.

Motion picture payroll service companies are employers for employment tax purposes

Effective for wages paid on and after January 1, 2016, H.R. 2029 allows motion picture payroll service companies to be treated as the employer pursuant to their film and television production workers for Social Security, Medicare (FICA) and federal unemployment insurance (FUTA) purposes.

- **Observations.** Much like the relief extended to Professional Employer Organizations (PEOs) enacted in 2014 under *Public Law No: 113-295*, motion picture payroll service companies and their clients will realize tax savings because the FICA and FUTA wage base will not restart when their workers transfer between motion picture projects. (See *EY Payroll Newsflash, Vol. 16, 012 (1-8-2015)*.)

Employers that opt to take advantage of this newly-enacted provision should keep in mind that a number of states do not follow the federal definition of covered employer for unemployment insurance, workers' compensation and other payroll tax and insurance purposes.

Alaska for instance requires that unemployment insurance be paid by the entity benefiting from the worker's services (*Alaska Regulation 8 AAC 85.015*).

Just this year, Nevada enacted legislation requiring that the clients of PEOs remit their own state unemployment insurance and contributions retroactive to January 1, 2015. (See *EY Payroll NewsFlash, Vol. 16, 277 (10-27-2015)*.)

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Individual Taxpayer Identification Numbers

Effective immediately, the law makes the following provisions concerning Individual Taxpayer Identification Numbers (ITINs):

- The IRS may issue an ITIN if the applicant provides the documentation required by the IRS either (a) in person to an IRS employee or to a community-based certified acceptance agent (as authorized by the IRS), or (b) by mail.
- Individuals who were issued ITINs before 2013 are required to renew their ITINs on a staggered schedule between 2017 and 2020.
- An ITIN will expire if an individual fails to file a tax return for three consecutive years.
- The Treasury Department and IRS are required to study the current procedures for issuing ITINs with a goal of adopting a system by 2020 that would require all applications to be filed in person.

Affordable Care Act "Cadillac tax" delayed

The law delays for two years the effective date of the 40% "Cadillac tax" on high-cost health plans. The tax, scheduled to take effect on January 1, 2018, is now delayed to January 1, 2020.

Work Opportunity Tax Credit

The law reinstates retroactively the Work Opportunity Tax Credit (WOTC) for five years, from 2015 through 2019. The law also modifies the WOTC credit beginning in 2016 to apply to employers that hire qualified long-term unemployed individuals (i.e., those who have been unemployed for 27 weeks or more) and increases the credit with respect to such long-term unemployed individuals to 40% of the first \$6,000 of wages.

The US Department of Labor (DOL) recently [announced](#) that WOTC forms with updated expiration dates are available. No other changes were made to the forms. DOL states that state workforce agencies may continue to accept and employers may continue to use, former versions of these forms that show a 2015 expiration date for a 90-day period following the release of the DOL's announcement (ending February 16, 2016).

State workforce agencies, participating employers and their representatives, and participating agencies continue to use the following WOTC processing, administrative, and reporting forms:

- ETA Form 9058 - Report 1, *Certification Workload and Characteristics of Certified Individuals, Work Opportunity Tax Credit,*
- ETA Form 9061, *Individual Characteristics Form, Work Opportunity Tax Credit,*

- ETA Form 9062, *Conditional Certification, Work Opportunity Tax Credit*, and
- ETA Form 9063, *Employer Certification, Work Opportunity Tax Credit*.

These WOTC forms, which had previously been approved by the Office of Management and Budget (OMB) through June 30, 2015, are now approved to be used for an additional three-year period through August 31, 2018. Employers are encouraged to transition to the new forms before the February 16, 2016 cut-off date.

The updated employer forms are available [here](#).

- **Transition relief period.** Until 90 days after the issuance of the DOL announcement (February 16, 2016), employers and their representatives can use either the newly approved ETA Forms 9061 or 9062 (with the August 31, 2018 expiration date) or the expired forms (with the June, July, or August 2015 expiration dates) to request certifications for their new employees. After February 16, state workforce agencies are instructed to not accept the expired forms.
- **IRS Form 8850.** In March 2015, the IRS released an unchanged Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity Credit*, with revised [instructions](#). The IRS has indicated in the past that expired versions of Form 8850 can be used to request certifications for new hires of the target groups listed on that form only. State workforce agencies are instructed to accept any version of the IRS Form 8850, even those with an expiration date before March 2015, if information for the relevant target group is included.

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