



Things are Changing! What's New for Nonprofits?

Health Care Reform, Stimulus Job Creations, Interns, and
Independent Contractors



Independent Contractors - Misclassification Deb Jung

Who are Your Workers?

- * **Independent Contractors** Not entitled to overtime, paid per job, completes W-9 Form, org. sends 1099, no benefits, flexibility, efficiency, reduced legal exposure, lack of control, coming and going, termination limited, Intellectual Property rights
- * **Employees** Employer pays all employment taxes, benefits, unemployment, workers comp, receives W-2, pays overtime if nonexempt, can control work, termination at will, injury recovery limited to workers comp, more expensive, more exposure to lawsuits
- * **Contract Employees** Same rights as employees except benefits, hours, and other terms of employment can be spelled out in contract

Purpose

- ▶ Ensure that workers classified as Independent Contractors are not really employees
- ▶ Increase tax compliance by identifying misclassified Independent Contractors (est. \$7 billion in lost revenue over next 10 years)

Congressional Action

- ▶ **Employee Misclassification Prevention Act**
 - Strict record keeping requirements
 - Higher fines for misclassification
- ▶ **Taxpayer Responsibility, Accountability, and Consistency (TRAC) Act**
 - Workers could petition IRS for appropriate status
 - Penalties for incorrect filing of 1099s
 - Reasonable basis test

Avoiding Misclassification

* Evaluate all of your IC relationships using the various tests:

❖ **Maryland Test**

❖ **Common Law Test**

❖ **Federal Labor Standards Act Test**

❖ **IRS Test**

❖ **20 Factor Test (Former)**

❖ **ABC Test**



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Maryland Test

▶ **Economic Reality of Work Relationship**

- Right to control
 - Manner, result, means and details–direct how it will be accomplished
- Right to discharge
- In business for themselves
 - Offer services to the public, can suffer financial loss

❑ **Beware: Even if properly classified as IC, may still have to pay unemployment under Maryland law**



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Common Law Test

- Right to control means and manner
- Method of payment
- Furnishing of material or tools
- Control work premises
- Right to discharge

Federal Labor Standards Act Test

- ❑ Services rendered integral part of business
- ❑ Permanency of relationship
- ❑ IC investment in equipment
- ❑ Amount of control by principal
- ❑ Opportunity for profit and loss
- ❑ Amount of initiative in competition with others
- ❑ Degree of independence in organization and operation

IRS Test

- ▶ **Behavioral control**

- Right to direct how work is done

- ▶ **Financial control**

- Unreimbursed business expenses, worker's investment, services available to market, how worker is paid, profit and loss

- ▶ **Relationship of the parties**

- Written contract, performs services for others, worker receives employee-type benefits, permanency of relationship, services key aspect of regular business of organization

20 Factor Test (Former)

- ▶ The original IRS test listed 20 separate factors
- ▶ The 3 factor test focuses on behavioral and financial control, and the relationship of the parties.

ABC Test

- ▶ Worker free from control and direction
- ▶ Service performed outside usual course of business
- ▶ Worker engaged in an independent trade; offers similar services to others

Consequences of Misclassification

- ▶ Back wages
- ▶ Retroactive benefits
- ▶ Penalties and interest
- ▶ Reimbursement for legal expenses
- ▶ Payment of back taxes and insurance premiums
- ▶ Payment for back social security and Medicare
- ▶ Unpaid unemployment insurance
- ▶ Workers compensation premiums



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Small Employer Health Credit

Nancy Hall



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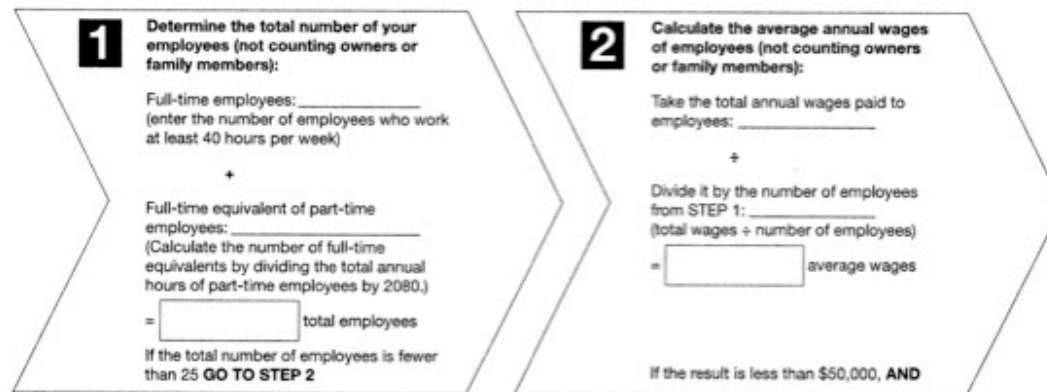
Overview

- Signed 3/23/10, effective 1/1/10
- Nonprofit employers included
- 25 employees or less
- Average wage \$50,000 or less
- Pay at least half of the insurance premiums at single coverage rate
- Credit max up to 25% of health premium paid

IRS Calls it Simple!

3 SIMPLE STEPS

If you are a small employer (business or tax-exempt) that provides health insurance coverage to your employees, determine if you may qualify for the **Small Business Health Care Tax Credit** by following these three simple steps:



3 You pay at least half of the insurance premiums for your employees at the single (employee-only) coverage rate, then

» you may be able to claim the **Small Business Health Care Tax Credit**.
Find out more information at **IRS.gov**



IRS Scenario

- Example 3: Foster Care Nonprofit

First Street Family Services:

Employees: 9

Wages: \$198,000 total, or \$22,000 per worker

Employee Health Care Costs: \$72,000

2010 Tax Credit: \$18,000 (25% credit)

2014 Tax Credit: \$25,200 (35% credit)



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SIMPLE Right?

--Wrong!

Step 1

* Take 25% of your annual premium

Premiums from Monthly Invoices

- 1) The amount of nonelective contributions paid on behalf of employees or
- 2) The amount of nonelective contributions equal to the average premium for small group market in state.

What counts – health, dental, vision

Maryland Rates

- * Single: annual \$4,837; monthly \$403
- * Family: (includes Parent/Child, Husband/Wife) annual \$11,939; monthly \$995

What to do with Employee's Share

- You must be contributing at least 50% of the cost of an individual's coverage.
- If you pay 80% of coverage, you must determine if that is more or less than 80% of the standard Maryland Rates.

Challenges

- Health care bills are monthly, salaries are bi-weekly, and IRS examples are annual.
- Most of our organizations will have a rate change for health insurance mid-way through 2010.
- Maryland Small Group Rates are age rated and nonprofits have old staff. Many organizations' rates will exceed the Maryland Standard Rates.
- State Standard only has two categories (single and family), Maryland Small Groups has additional categories.

Suggested Process

- Calculate everything on a monthly basis.
- If you don't contribute at least 50% of individual coverage, stop now.
- Determine if you need to use state standard rates or your actual rates.
- Figure out 25% of the lower of your net premiums (what you pay less what your employees pay).

Step 2



Determine the number of FTE's

IRS Tell's All!

- The number of employer's FTEs is determined by dividing the total hours for which the employer pays wages to employees during the year (by not more than 2,080 hours for any employee) by 2,080. The result, if not a whole number, is then rounded to the next lowest whole number.

Real World?

- * Some organizations have 35 hour work weeks.
- * We don't know how many hours folks are going to work during the year.

Let's Do it This Way

Calculate the number of hours employees work during the month. Full time 40 hours a week person will work 173.3 hours.

Don't count seasonal works who will work less than 120 days in the year.

Divide by 173.3 hours.

Result is the number of FTE's for the month.

Step 3



Determine the Average Wage

Calculating...

- Take total gross pay.

If you pay monthly or bi-monthly, just take what was paid for the month...you are lucky.

If you pay every two weeks, you will have to:

Calculate extra days of pay (or back out if three payroll month.

Prorate the extra days.

...Calculating...

- Divide the total pay by the total FTE's. Should be less than \$4,166.67 for the month.

Step 1 - Spreadsheet View

| | | | | | | | | |
|------------------|---|-----------|---------------------------------------|-------------------------------|------------------|----------------------|--------------|----------------------------|
| Step 1 | Which premium do you use? | | | | | | | |
| What do you pay? | 80% of single premium | | | | | | | |
| | | | | | | | | |
| | Monthly Premium Total from invoice | Employees | Average Premium per Employee | Amount paid by Employer | State Maximum | 80% State Maximum | Use Lower | Monthly Base Premium |
| Individual | \$ 3,800 | 8 | \$ 475 | \$ 380 | \$ 403 | \$ 322 | \$ 322 | \$ 2,579 |
| Family | \$ 3,786 | 3 | \$ 1,262 | \$ 380 | \$ 995 | \$ 796 | \$ 322 | \$ 967 |
| | | | | | | | | |
| | | | | | Total | | | \$ 3,546 |

Step 2 - Spreadsheet View

| Step 2, FTE Calculation | | | | | |
|-------------------------|----------------|--------------|--------------------------------------|--|--|
| | | | | | |
| | | | | | |
| Staff | Hours per week | Hours/ Month | | | |
| Amy | 40.00 | 173.33 | | | |
| Bill | 32.00 | 138.67 | | | |
| Catherine | 40.00 | 173.33 | | | |
| Donald | 20.00 | 86.67 | | | |
| Esther | 20.00 | 86.67 | | | |
| Faison | 40.00 | 173.33 | | | |
| Gordon | 24.00 | 104.00 | | | |
| Harry | 45.00 | 173.33 | Can only count up to 40 hrs per week | | |
| Kaila | 40.00 | 173.33 | | | |
| Leila | 40.00 | 173.33 | | | |
| Montel | 40.00 | 173.33 | | | |
| Noel | 40.00 | 173.33 | | | |
| Opal | 40.00 | 173.33 | | | |
| | | | | | |
| Total | 461.00 | 1,975.98 | | | |
| | | | | | |
| Divided by 173.3 | | 11.40 | FTEs | | |
| | | | | | |
| Round to | | 11 FTEs | If more than 25, not eligible | | |

Step 3 - Spreadsheet View

| STEP 3 - Average Salary | | | | | | | | |
|--------------------------|--|--------------------|--|--|--|--|--|--|
| | | Payroll Frequency: | Bi-weekly | | | | | |
| Pay Period 1 | | 14,000 | | | | | | |
| Pay Period 2 | | 15,600 | | | | | | |
| Total | | 29,600 | | | | | | |
| Pro-rated for full month | | 32,042 | | | | | | |
| FTEs | | 11 | | | | | | |
| Average Salary | | 2,913 | Note, if exceeds \$4,166 the organization is not eligible. | | | | | |

Monthly Report...And Repeat

| Health Care Tax Credit | | | |
|------------------------|-------------------------------------|----------|---------|
| Month: | January | | |
| Year: | 2010 | | |
| | | | |
| | | | |
| Step 1 | Monthly Base Premium | \$ 3,546 | |
| | 25% | | \$ 887 |
| Step 2 | Number of Employees | | |
| | Full Time Equivalents | 11 | |
| | Subtract 10 Employees | 1 | |
| | Divide by 15 | 7% | \$ (59) |
| Step 3 | Average Salary | | |
| | Average Actual Salary | \$ 2,913 | |
| | Subtract \$2,083 (\$25K annualized) | \$ 830 | |
| | Divide by \$2,083 | 40% | (353) |
| | | | |
| Monthly Credit | | | \$ 474 |



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Now What?

- IRS has yet to figure out how nonprofits will collect the credit.
 - Options: 941, 941 X
990 T
Other Form

941

941 for 2010: Employer's QUARTERLY Federal Tax Return 950110
OMB No. 1545-0028

Form 941 (Rev. February 2010) Department of the Treasury — Internal Revenue Service

Report for this Quarter of 2010 (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 |
|---|----------|
| 5a Taxable social security wages <input type="text"/> × .124 = <input type="text"/> | |
| 5b Taxable social security tips <input type="text"/> × .124 = <input type="text"/> | |
| 5c Taxable Medicare wages & tips <input type="text"/> × .029 = <input type="text"/> | |
| 5d Total social security and Medicare taxes (Column 2, lines 5a + 5b + 5c = line 5d) 5d <input type="text"/> | |

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

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

7a Current quarter's fractions of cents 7a

7b Current quarter's sick pay 7b

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

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 11

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

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

13 Add lines 11 and 12a 13

14 Balance due. If line 10 is more than line 13, write the difference here. For information on how to pay, see the instructions 14

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

☐ Apply to next return.
☐ Send a refund.

Next

You MUST complete both pages of Form 941 and SGIN R.

For Privacy Act and Paperwork Reduction Act Notice, see the back of the Payment Voucher. Cat. No. 175012 Form **941** (Rev. 2-2010)

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941-X

Name _____

Form 941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund
(Rev. June 2008) Department of the Treasury — Internal Revenue Service OMB No. _____

6. **6040** Employer identification number _____

7. Name (not your trade name) _____

Trade name (if any) _____

7. Address _____

Number _____ Street _____ Suite or room number _____

City _____ State _____ ZIP code _____

8. Use this form to correct errors you made on Form 941 or 941-SS for one quarter only. Type or print within the boxes. You MUST complete all three pages. Read the instructions before completing this form. Do not attach this form to Form 941 or 941-SS.

9. **Part 1: Select ONLY one process.**

☐ **1. Adjusted employment tax return.** Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 18, if less than 0, may only be applied as a credit to your Form 941, Form 941-SS, Form 944, or Form 944-SS for the tax period in which you are filing this form.

☐ **2. Claims.** Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 18. Do not check this box if you are correcting ANY underreported amounts on this form.

10. **Part 2: Complete the certifications.**

☐ **3.** I certify that I have filed or will file the Forms W-9, W-9-Misc, and Tax Statement on Forms 941-X, 941-SS, 944, and 944-SS for the

14. Special addition to wages for Medicare taxes _____ = _____ = _____ See instructions _____

15. Combine the amounts on lines 7-14 of Column 4 _____

16. Advance earned income credit (EIC) payments made to employees (from Form 941, line 9) _____ = _____ = _____ See instructions _____

17a. COBRA premium assistance payments (from line 12a of Form 941 or 941-SS) _____ = _____ = _____ See instructions _____

17b. Number of individuals provided COBRA premium assistance (from line 12b of Form 941 or 941-SS) _____ = _____ = _____

18. Total. Combine the amounts in lines 15, 16, and 17a of Column 4 _____

If line 18 is less than 0:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or Form 941-SS for the tax period in which you are filing this form. (If you are currently filing a Form 944 or Form 944-SS, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 18 is more than 0, this is the amount you owe. Pay this amount when you file this return. For information on how to pay, see Amount You Owe in the instructions.

Page 2 Form 941-X (Rev. 6-2008)

990-T



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Interns Deb Jung



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Unpaid Staff and DOL

► **Interns or Trainee**

- Exempt from the FLSA if legally categorized as an intern
- No minimum wage or overtime
- Must meet all factors of the six factors

► **Employee**

- Must be paid minimum wage, overtime, etc.

► **Volunteer**

- Not paid any wage or stipend
- Cannot receive any employee benefit
- Can be reimbursed for expenses



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Six-Factor Test

1. Training similar to vocational school or educational institution
2. Training for the benefit of the trainee
3. Trainees don't displace employees & are closely supervised
4. Employer gets no immediate advantage from trainee; work may even be impeded
5. Trainees not entitled to a job when training concludes
6. Trainee and employer understand no wages are due

DOL Opinion Letters

- 1983 DOL letter
 - ❖ To be considered student interns should receive college credit
 - ❖ Involve students in real-life situations
 - ❖ Provide students with unique educational experiences
- 1988 DOL Opinion Letter
 - ❖ Internship provides student with professional experience in furtherance of education
 - ❖ Academically oriented for benefit of intern

Special Issues for Interns

- Cannot volunteer for job employee does
- Can volunteer for a nonprofit and not meet the six factor test, but not really an “intern”
- Stipends–can be used to reimburse for expenses
- Can pay volunteers a nominal fee IF they volunteer for state or local gov’t
- Can pay a subminimum wage to certain groups



COBRA Deb Jung



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COBRA Extension

- * **Subsidy extended to employees who are involuntarily terminated through May 31st**
- **What does it mean:** only have to pay 35% of health and dental insurance premium for a period of up to 9 months
- **Who does it affect:** Involuntarily terminated employees and others covered under their policy

COBRA Extension

- ▶ **What does the employer do:** notify the insurer of the employee's eligibility; keep accurate records; determine former employee's eligibility; collect COBRA payments
- ▶ **The Future:** Congress poised to extend the subsidy again; likely to continue through the end of the year



Unemployment Deb Jung



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Unemployment Extension

- ▶ **Emergency unemployment benefits extended until June 2nd**
- ▶ **Legislation pending to extend it again**
- ▶ **Would not apply to those who have previously exhausted all benefits**

Unemployment Extension

- ▶ Continued access to benefits depends on state guidelines
- ▶ Employers will pay out more in benefits (if self-insured) and premiums will rise for those who buy insurance



Job's Bill Update

Nancy Hall

Tax Credit Qualification

- Hiring must occur after 2/3/10 and before 1/1/11.
- Credit given for pay after 3/19/10
- Persons hired must be unemployed for at least 60 days.
- Persons must sign an affidavit to that effect.
- No credit to replace person terminated “unless such other person is separated from employment voluntarily or for cause

What's a W-11

W-11
Form
(April 2010)
Department of the Treasury
Internal Revenue Service

Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit

► Do not send this form to the IRS. Keep this form for your records.

To be completed by new employee. Affidavit is not valid unless employee signs it.

I certify that I have been unemployed or have not worked for anyone for more than 40 hours during the 60-day period ending on the date I began employment with this employer.

Your name _____ Social security number ► _____

First date of employment ____ / ____ / ____ Name of employer _____

Under penalties of perjury, I declare that I have examined this affidavit and, to the best of my knowledge and belief, it is true, correct, and complete.

Employee's signature ► _____ Date ► ____ / ____ / ____

Instructions to the Employer

Section references are to the Internal Revenue Code.

Purpose of Form

Use Form W-11 to confirm that an employee is a qualified employee under the HIRE Act. You can use another similar statement if it contains the information above and the employee signs it under penalties of perjury.

Only employees who meet all the requirements of a qualified employee may complete this affidavit or similar statement. You cannot claim the HIRE Act benefits, including the payroll tax exemption or the new hire retention credit, unless the employee completes and signs this affidavit or similar statement under penalties of perjury and is otherwise a qualified employee.

A "qualified employee" is an employee who:

- begins employment with you after February 3, 2010, and before January 1, 2011;
- certifies by signed affidavit, or similar statement under penalties of perjury, that he or she has not been employed for more than 40 hours during the 60-day period ending on the date the employee begins employment with you;
- is not employed by you to replace another employee unless the other employee separated from employment voluntarily or for cause (including downsizing); and
- is not related to you. An employee is related to you if he or she is your child or a descendent of your child,

your sibling or stepsibling, your parent or an ancestor of your parent, your stepparent, your niece or nephew, your aunt or uncle, or your in-law. An employee also is related to you if he or she is related to anyone who owns more than 50% of your outstanding stock or capital and profits interest or is your dependent or a dependent of anyone who owns more than 50% of your outstanding stock or capital and profits interest.

If you are an estate or trust, see section 51(j)(1) and section 152(d)(2) for more details.



Do not send this form to the IRS. Keep it with your other payroll and income tax records.

Cat. No. 10744F

Form **W-11** (4-2010)

941

941 for 2010: Employer's QUARTERLY Federal Tax Return

Form 941 (Rev. April 2010) Department of the Treasury — Internal Revenue Service

OMB No. 1545-0047

Employer Identification number -

Name (not your trade name)

Trade name (if any)

Address

Report for this quarter of 2010
(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), or 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 4

5a Taxable social security wages* × .124 =

5b Taxable social security tips* × .124 =

5c Taxable Medicare wages & tips* × .029 =

5d Add Column 2 line 5a, Column 2 line 5b, and Column 2 line 5c 5d

6a Number of qualified employees first paid exempt wages/tips this quarter

6b Number of qualified employees paid exempt wages/tips this quarter

6c Exempt wages/tips paid to qualified employees this quarter × .062 =

6e Total taxes before adjustments (line 3 + line 5d - line 6d = line 6e) 6e

7a Current quarter's fractions of cents 7a

7b Current quarter's sick pay 7b

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

8 Total taxes after adjustments. Combine lines 6e through 7c 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 including prior quarter overpayments 11

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

12b Number of individuals provided COBRA premium assistance

12c Number of qualified employees paid exempt wages/tips March 19-31

12d Exempt wages/tips paid to qualified employees March 19-31 × .062 =

13 Add lines 11, 12a, and 12e 13

14 Balance due. If line 10 is more than line 13, enter difference and see instructions 14

15 Overpayment, if line 13 is more than line 10, enter difference

☐ **Check and go to line 6e.**

Report wages/tips for this quarter, including those paid to qualified new employees, on lines 5a-5c. Your liability for exempt wages/tips will be reduced on line 6d (see instructions).

See instructions for definitions of "qualified employees" and "exempt wages/tips."

Complete lines 12c, 12d, and 12e only for the 2nd quarter of 2010.

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

For Privacy Act and Paperwork Reduction Act Notice, see the back of the Payment Voucher.

Cat. No. 17001Z Form 941 (Rev. 4-2010)

How to Account

- Reduction of payroll taxes?
- Reduction of health care costs? If so, set up sub-account to isolate.
- Miscellaneous income item? (Recommended)

Think about setting liability up on a monthly basis.

Other Issues

- Coverage extended for young persons under age 27 through parents' insurances.
- Large employers (50 or more) will have to “play or pay” after 2013.
- Grandfathered plans.
- Non-discrimination.
- 10% tax on tanning parlor services.
- Chain restaurants and vending machines must display calorie counts.
- Members of congress must buy “common person” insurance in 2014.



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THANK YOU!



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