

# PUBLICATION

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## Employer's Withholding Obligations for Additional Medicare Tax

November 19, 2012

Effective for the 2013 tax year, and as part of the Patient Protection and Affordable Care Act (ACA) signed into law by President Obama in 2010, higher income employees are subject to an additional 0.9 percent Medicare tax on their wages with respect to employment in excess of a \$250,000 threshold for married couple filing jointly (\$125,000 for married filing separately) and \$200,000 for single individual and other classifications. This additional tax also applies to self-employment income.

As part of this new Medicare tax obligation, each employer is statutorily required to withhold the additional tax to the extent the employee receives wages from the employer in excess of \$200,000. The Internal Revenue Service (IRS) has published and recently updated a question and answer series on their website (Q&A Release) that provides some (though perhaps not complete) clarity for the employers' withholding obligations. The purpose of this Alert is not to address the employee's or self employed's responsibility for the additional Medicare tax, but rather to summarize parts of that Q&A Release as it relates to the employer's withholding obligations.

### Additional Medicare Tax

The ACA increases an employee's 1.45 percent Medicare tax levied on all wages earned by the employee to 2.35 percent with respect to wages in excess of the above-referenced thresholds. As stated in the Q&A Release, this additional Medicare tax is effective for taxable years beginning after December 31, 2012.

### Q&A Release

Summarized below are just some of the many issues addressed in the Q&A Release as to the employer's tax withholding responsibilities for the additional Medicare tax:

1. Who is responsible for the additional tax? The additional 0.9 percent Medicare tax is to be paid entirely by the employee, i.e., there is no employer match as is the case with other employment taxes.
2. At what point must an employer begin withholding the tax? This question has been raised by employers who know they will have employees who must pay the additional tax (i.e., an employee's annual salary will be in excess of the applicable threshold), but are unaware of when during the year they must begin withholding the additional tax. The Q&A Release clarifies that the additional tax should only be withheld beginning with the first pay period in which the employee's wages for the year exceed \$200,000, and then only on the wages which are in excess of \$200,000.
3. What if an employer is aware that a single employee will earn wages in excess of the applicable threshold, but the employee's salary from that particular employer is less than \$200,000? As discussed above, an employer's withholding responsibility for the additional tax only begins in the pay period in which that employer will pay the employee in excess of \$200,000. There appears to be no additional responsibility to investigate what that employee's wages from all other sources may be.

4. What if the employer is aware that an employee is married filing jointly (i.e., he or she has a \$250,000 threshold), but that employer is not paying that employee in excess of \$250,000? In this regard, the Q&A Release warns that the withholding threshold is relatively strict in that employers must begin withholding the additional tax during the period in which that particular employee will receive in excess of \$200,000. The IRS has indicated that if the employee, who will have over \$200,000 in wages, is in fact married and, together with the spouse, will not have in excess of \$250,000 in wages, the employee may claim the additional Medicare tax as a credit against the tax liability otherwise due on his or her Form 1040.
  
5. What if an employee earns in excess of the threshold amount in combined salary from two commonly controlled companies, but less than \$200,000 from each such company? In the event that two subsidiaries of a common parent employ the same individual, and those companies separately do not otherwise have an obligation to withhold the tax (i.e., neither company individually pays the employee wages in excess of \$200,000), under the Q&A Release there may be no affirmative requirement for each such employer to withhold the additional Medicare tax. It is important to note, however, that in the event the two subsidiaries have a common paymaster (the parent corporation, for instance) there would be a duty to withhold the additional tax on any wages in excess of \$200,000.

### **Future of this Additional Tax**

Although the President and Congress appear to be working toward a solution to the looming "fiscal cliff," little mention has been made of the possibility of repealing the 0.9 percent Medicare tax increase by either political party. Many commentators have taken this as a sign that the additional Medicare tax will actually go into effect in 2013 as required by ACA. Assuming that the Medicare tax increase does become effective in its present form in 2013, employers should specifically note that the ACA statute states in part as follows:

*If an employer, in violation of this chapter, fails to deduct and withhold the... (increased Medicare tax) and thereafter the tax is paid by the employee, the tax so required to be deducted and withheld shall not be collected from the employer, but this paragraph shall in no case relieve the employer from liability for any penalties or additions to tax otherwise applicable in respect of such failure to deduct and withhold. (parens and underlining supplied)*

To discuss the withholding requirements for this additional tax in your specific business situation in further detail, please do not hesitate to contact any attorney in the Firm's Tax Department.