



The amount of advance EIC paid to an employee during 2010 cannot exceed \$1,830. For example if during the year you have paid an employee with one child total wages of at least \$35,535 (\$40,545 if married filing jointly), you must also stop making advance EIC payments to that employee for the rest of the year.

**Paying the advance EIC to employees.** An advance EIC payment is not subject to withholding of income, social security, or Medicare taxes. An advance EIC payment does not change the amount of income, social security, or Medicare taxes you withhold from the employee's wages. You add the EIC payment to the employee's net pay for the pay period. At the end of the year, you show the total advance EIC payments in box 9 on Form W-2. Do not include this amount as wages in box 1.

**Employer's returns.** Show the total payments you made to employees on the advance EIC payments line (line 9) of your Form 941 (line 8 of Form 944). Subtract this amount from your total taxes on line 8 (line 7 of Form 944). See the separate Instructions for Form 941 (or the separate Instructions for Form 944). Reduce the amounts reported on line 17 of 2009 Form 941 (line 15 of Form 944) or on appropriate lines of Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, by any advance EIC paid to your employees.

Generally, employers will make the advance EIC payment from withheld income tax and employee and employer social security and Medicare taxes. These taxes are normally required to be paid over to the IRS either through federal tax deposits or with employment tax returns. For purposes of deposit due dates, advance EIC payments are treated as deposits of these taxes on the day you pay wages (including the advance EIC payment) to your employees. The payments are treated as deposits of these taxes in the following order: (1) income tax withholding, (2) withheld employee social security and Medicare taxes, and (3) the employer's share of social security and Medicare taxes.

**Example.** You have 10 employees, each entitled to an advance EIC payment of \$10. The total amount of advance EIC payments you make for the payroll period is \$100. The total amount of income tax withholding for the payroll period is \$90. The total employee and employer social security and Medicare taxes for the payroll period is \$122.60 (\$61.30 each).

You are considered to have made a deposit of \$100 advance EIC payment on the day you paid wages. The \$100 is treated as if you deposited the \$90 total income tax withholding and \$10 of the employee social security and Medicare taxes. You remain liable for depositing the remaining \$112.60 of the social security and Medicare taxes (\$51.30 + \$61.30 = \$112.60).

**Advance EIC payments more than taxes due.** For any payroll period, if the total advance EIC payments are more than the total employment taxes (withheld income tax and both employee and employer shares of social security and Medicare taxes), you may choose either to:

1. Reduce each employee's advance payment proportionally so that the total advance EIC payments equal the amount of taxes due or
2. Make full payment of the advance EIC and treat the excess as an advance payment of employment taxes.

**Example.** You have 10 employees who are each entitled to an advance EIC payment of \$10. The total amount of advance EIC payable for the payroll period is \$100. The total employment tax for the payroll period is \$90 (including

income tax withholding and social security and Medicare taxes). The advance EIC payable is \$10 more than the total employment tax. The \$10 excess is 10% of the advance EIC payable (\$100). You may—

- Reduce each employee's payment by 10% (to \$9 each) so the advance EIC payments equal your total employment tax (\$90) or
- Pay each employee \$10, and treat the excess \$10 as an advance payment of employment taxes. See the Instructions for Form 941 (or the Instructions for Form 944) for reporting details.

**U.S. possessions.** If you are in American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the U.S. Virgin Islands, consult your local tax office for information on the EIC. You cannot take advance EIC payments into account on Form 941-SS or Form 944-SS.

## Required Notice to Employees

You must notify employees who have no federal income tax withheld they may be able to claim a tax refund because of the EIC. Although you do not have to notify employees who claim exemption from withholding on Form W-4 about the EIC, you are encouraged to notify any employees whose wages for 2009 were less than \$43,352 (\$48,362 if married filing jointly) they may be eligible to claim the credit for 2010. This is because eligible employees may get a refund of the amount of EIC that is more than the tax they owe.

You will meet this notification requirement if you issue the employee Form W-2 with the EIC notice on the back of Copy B, or a substitute Form W-2 with the same statement. You will also meet the requirement by providing Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC), or your own statement that contains the same wording.

If a substitute for Form W-2 is given to the employee on time but does not have the required statement, you must notify the employee within 1 week of the date the substitute for Form W-2 is given. If Form W-2 is required but is not given on time, you must give the employee Notice 797 or your written statement by the date Form W-2 is required to be given. If Form W-2 is not required, you must notify the employee by February 8, 2010.

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## 11. Depositing Taxes

In general, you must deposit federal income tax withheld and both the employer and employee social security and Medicare taxes (minus any advance EIC payments). You must deposit by using the Electronic Federal Tax Payment System (EFTPS) or by mailing or delivering a check, money order, or cash with Form 8109, Federal Tax Deposit Coupon, to a financial institution that is an authorized depository for federal taxes. Some taxpayers are required to deposit using EFTPS. See [How To Deposit](#) on page 23 for information on electronic deposit requirements for 2010.



The credit against employment taxes for COBRA assistance payments you take on line 12a of Form 941 or line 11a of Form 944 is treated as a deposit of taxes on the first day of your return period. See [COBRA premium assistance credit](#) on page 7 for more information.

**Payment with return.** You may make a payment with Form 941 or Form 944 instead of depositing, without incurring a penalty, if one of the following applies.

- Your Form 941 total tax liability for either the current quarter or the preceding quarter is less than \$2,500, and you did not incur a \$100,000 next-day deposit obligation during the current quarter. If you are not sure your total tax liability for the current quarter will be less than \$2,500, (and your liability for the preceding quarter was not less than \$2,500), make deposits using the semi-weekly or monthly rules so you won't be subject to failure to deposit penalties.
- You are a monthly schedule depositor (defined below) and make a payment in accordance with the [Accuracy of Deposits Rule](#) discussed on page 23. This payment may be \$2,500 or more.

Employers who have been notified to file Form 944 can pay their fourth quarter tax liability with Form 944 if the fourth quarter tax liability is less than \$2,500. Employers must have deposited any tax liability due for the first, second, and third quarters according to the deposit rules to avoid failure-to-deposit penalties for deposits during those quarters.

**Separate deposit requirements for nonpayroll (Form 945) tax liabilities.** Separate deposits are required for nonpayroll and payroll income tax withholding. Do not combine deposits for Forms 941 (or Form 944) and 945 tax liabilities. Generally, the deposit rules for nonpayroll liabilities are the same as discussed below, except the rules apply to an annual rather than a quarterly return period. Thus, the \$2,500 threshold for the deposit requirement discussed above applies to Form 945 on an annual basis. See the separate Instructions for Form 945 for more information.

## When To Deposit

There are two deposit schedules—monthly and semi-weekly—for determining when you deposit social security, Medicare, and withheld income taxes. These schedules tell you when a deposit is due after a tax liability arises (for example, when you have a payday). Before the beginning of each calendar year, you must determine which of the two deposit schedules you are required to use. The deposit schedule you must use is based on the total tax liability you reported on Form 941 during a lookback period discussed below. Your deposit schedule is not determined by how often you pay your employees or make deposits. See special rules for Forms 944 and 945 below. See [Application of Monthly and Semiweekly Schedules](#) on page 22.



*These rules do not apply to federal unemployment (FUTA) tax. See [section 14](#) for information on depositing FUTA tax.*

**Lookback period.** If you are a Form 941 filer, your deposit schedule for a calendar year is determined from the total taxes reported on line 8 of your Forms 941 in a 4-quarter lookback period. The lookback period begins July 1 and ends June 30 as shown in Table 1 below. If you reported \$50,000 or less of taxes for the lookback period, you are a monthly schedule depositor; if you reported more than \$50,000, you are a semiweekly schedule depositor.

**Table 1. Lookback Period for Calendar Year 2010**

Lookback Period				2010 Calendar Year Jan.–Dec.
2008		2009		
July 1	Oct. 1	Jan. 1	Apr. 1	←
↓	↓	↓	↓	
Sep. 30	Dec. 31	Mar. 31	June 30	



*The lookback period for a 2010 Form 941 filer who filed Form 944 in either 2008 or 2009 is calendar year 2008.*

If you are a Form 944 filer for the current year or either of the preceding 2 years, your deposit schedule for a calendar year is determined from the total taxes reported during the second preceding calendar year (either on line 8 of your Form 941 for all 4 quarters of that year or line 7 of your Form 944 for that year). The lookback period for 2010 for a Form 944 filer is calendar year 2008. If you reported \$50,000 or less of taxes for the lookback period, you are a monthly schedule depositor; if you reported more than \$50,000, you are a semiweekly schedule depositor.

If you are a Form 945 filer, your deposit schedule for a calendar year is determined from the total taxes reported on line 4 of your Form 945 for the second preceding calendar year. The lookback period for 2010 for a Form 945 filer is calendar year 2008.

**Adjustments and the lookback rule.** Determine your tax liability for the 4 quarters in the lookback period based on the tax liability as reported on your Forms 941. If you made adjustments on lines 7d, 7e, 7f, or 7g on Forms 941, or lines 6b, 6c, 6d, or 6e on Form 944, filed for periods in 2008 and earlier to correct errors on previously filed Forms 941 and Form 944, these adjustments do affect the amount of tax liability for purposes of the lookback rule. Adjustments made on Forms 941-X and Form 944-X do not affect the amount of tax liability for previous periods for purposes of the lookback rule.

**Example.** An employer originally reported a tax liability of \$45,000 for the lookback period. The employer discovered during January 2010, the tax during one of the lookback period quarters was understated by \$10,000 and corrected this error by filing Form 941-X for the quarter in which the error was discovered. This employer is a monthly schedule depositor for 2010 because the lookback period tax liabilities are based on the amounts originally reported, and they were \$50,000 or less.

**Deposit period.** The term deposit period refers to the period during which tax liabilities are accumulated for each required deposit due date. For monthly schedule depositors, the deposit period is a calendar month. The deposit periods for semiweekly schedule depositors are Wednesday through Friday and Saturday through Tuesday.

## Monthly Deposit Schedule

You are a monthly schedule depositor for a calendar year if the total taxes on line 8 of Form 941 for the 4 quarters in your lookback period were \$50,000 or less. **Under the monthly deposit schedule, deposit employment taxes on payments made during a month by the 15th day of the following month.** See also [Deposits on Banking Days Only](#) on page 22.

Monthly schedule depositors should not file Form 941 or Form 944 on a monthly basis. Also, do not file Form 941-M,

Employer's Monthly Federal Tax Return, unless you are instructed to do so by an IRS representative.

**New employers.** Your tax liability for any quarter in the lookback period before you started or acquired your business is considered to be zero. Therefore, you are a monthly schedule depositor for the first calendar year of your business. However, see the [\\$100,000 Next-Day Deposit Rule](#) on page 23.

## Semiweekly Deposit Schedule

You are a semiweekly schedule depositor for a calendar year if the total taxes on line 8 of Form 941 during your lookback period were more than \$50,000. Under the semiweekly deposit schedule, deposit employment taxes for payments made on Wednesday, Thursday, and/or Friday by the following Wednesday. Deposit taxes for payments made on Saturday, Sunday, Monday, and/or Tuesday by the following Friday. See also [Deposits on Banking Days Only](#) later.

**Note.** Semiweekly schedule depositors must complete Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, and submit it with Form 941. If you file Form 944 and are a semiweekly schedule depositor, complete Form 945-A, Annual Record of Federal Tax Liability, and submit it with your return (instead of Schedule B).

Table 2. Semiweekly Deposit Schedule

IF the payday falls on a . . .	THEN deposit taxes by the following . . .
Wednesday, Thursday, and/or Friday	Wednesday
Saturday, Sunday, Monday, and/or Tuesday	Friday

**Semiweekly deposit period spanning 2 quarters.** If you have more than one pay date during a semiweekly period and the pay dates fall in different calendar quarters, you will need to make **separate deposits** for the separate liabilities.

**Example 1.** If you have a pay date on Wednesday, September 29, 2010 (third quarter), and another pay date on Friday, October 1, 2010 (fourth quarter), two separate deposits would be required even though the pay dates fall within the same semiweekly period. Both deposits would be due Wednesday, October 6, 2010 (3 banking days from the end of the semiweekly deposit period).

**Example 2.** If you made a payment on both Wednesday and Friday and incurred taxes of \$10,000 for each pay date, deposit the \$20,000 on the following Wednesday. If you made no additional payments on Saturday through Tuesday, no deposit is due on the following Friday.

## Summary of Steps to Determine Your Deposit Schedule

1. Identify your lookback period (see *Lookback period earlier*).
2. Add the total taxes from line 8, Form 941 you reported during the lookback period.
3. Determine if you are a monthly or semiweekly schedule depositor:

If the total taxes you reported in the lookback period were	Then you are a . . . . .
\$50,000 or less	Monthly Schedule Depositor
More than \$50,000	Semiweekly Schedule Depositor

## Example of Monthly and Semiweekly Schedules

Rose Co. reported Form 941 taxes as follows:

2009 Lookback Period		2010 Lookback Period	
3rd Quarter 2007	\$12,000	3rd Quarter 2008	\$12,000
4th Quarter 2007	\$12,000	4th Quarter 2008	\$12,000
1st Quarter 2008	\$12,000	1st Quarter 2009	\$12,000
2nd Quarter 2008	\$12,000	2nd Quarter 2009	\$15,000
	\$48,000		\$51,000

Rose Co. is a monthly schedule depositor for 2009 because its tax liability for the 4 quarters in its lookback period (third quarter 2007 through second quarter 2008) was not more than \$50,000. However, for 2010, Rose Co. is a semiweekly schedule depositor because the total taxes exceeded \$50,000 for the 4 quarters in its lookback period (third quarter 2008 through second quarter 2009).

## Deposits on Banking Days Only

If a deposit is required to be made on a day that is not a banking day, the deposit is considered timely if it is made by the close of the next banking day. In addition to federal and state bank holidays, Saturdays and Sundays are treated as nonbanking days. For example, if a deposit is required to be made on a Friday and Friday is not a banking day, the deposit will be considered timely if it is made by the following Monday (if that Monday is a banking day).

**Semiweekly schedule depositors** have at least 3 banking days to make a deposit. If any of the 3 weekdays after the end of a semiweekly period is a banking holiday, you will have 1 additional banking day to deposit. For example, if a semiweekly schedule depositor accumulated taxes for payments made on Friday and the following Monday is not a banking day, the deposit normally due on Wednesday may be made on Thursday (allowing 3 banking days to make the deposit).

## Application of Monthly and Semiweekly Schedules

The terms "monthly schedule depositor" and "semiweekly schedule depositor" do not refer to how often your business pays its employees or even how often you are required to make deposits. The terms identify which set of deposit rules you must follow when an employment tax liability arises. The deposit rules are based on the dates

when wages are paid (for example, cash basis); not on when tax liabilities are accrued for accounting purposes.

**Monthly schedule example.** Spruce Co. is a monthly schedule depositor with seasonal employees. It paid wages each Friday. During March it paid wages but did not pay any wages during April. Under the monthly deposit schedule, Spruce Co. must deposit the combined tax liabilities for the four March paydays by April 15. Spruce Co. does not have a deposit requirement for April (due by May 15) because no wages were paid and, therefore, it did not have a tax liability for April.

**Semiweekly schedule example.** Green, Inc., which has a semiweekly deposit schedule, pays wages once each month on the last day of the month. Although Green, Inc., has a semiweekly deposit schedule, it will deposit just once a month because it pays wages only once a month. The deposit, however, will be made under the semiweekly deposit schedule as follows: Green, Inc.'s tax liability for the April 23, 2010 (Friday), payday must be deposited by April 28, 2010 (Wednesday). Under the semiweekly deposit schedule, liabilities for wages paid on Wednesday through Friday must be deposited by the following Wednesday.

## \$100,000 Next-Day Deposit Rule

If you accumulate \$100,000 or more of taxes (line 10 of Form 941 or line 9 of Form 944) on any day during a deposit period, you must deposit the tax by the next banking day, whether you are a monthly or semiweekly schedule depositor.

For purposes of the \$100,000 rule, do not continue accumulating a tax liability after the end of a deposit period. For example, if a semiweekly schedule depositor has accumulated a liability of \$95,000 on a Tuesday (of a Saturday-through-Tuesday deposit period) and accumulated a \$10,000 liability on Wednesday, the \$100,000 next-day deposit rule does not apply. Thus, \$95,000 must be deposited by Friday and \$10,000 must be deposited by the following Wednesday.

However, once you accumulate at least \$100,000 in a deposit period, stop accumulating at the end of that day and begin to accumulate anew on the next day. For example, Fir Co. is a semiweekly schedule depositor. On Monday, Fir Co. accumulates taxes of \$110,000 and must deposit this amount on Tuesday, the next banking day. On Tuesday, Fir Co. accumulates additional taxes of \$30,000. Because the \$30,000 is not added to the previous \$110,000 and is less than \$100,000, Fir Co. must deposit the \$30,000 by Friday (following the semiweekly deposit schedule).



*If you are a monthly schedule depositor and accumulate a \$100,000 tax liability on any day, you become a semiweekly schedule depositor on the next day and remain so for at least the rest of the calendar year and for the following calendar year.*

**Example.** Elm, Inc., started its business on April 1, 2010. On April 9, it paid wages for the first time and accumulated a tax liability of \$40,000. On Friday, April 16, 2010, Elm, Inc., paid wages and accumulated a liability of \$60,000, bringing its accumulated tax liability to \$100,000. Because this was the first year of its business, the tax liability for its lookback period is considered to be zero, and it would be a monthly schedule depositor based on the lookback rules. However, since Elm, Inc., accumulated a \$100,000 liability on April 16, it became a semiweekly schedule depositor on April 17. It will be a semiweekly schedule depositor for the remainder of 2010 and for 2011.

Elm, Inc., is required to deposit the \$100,000 by Monday, April 19, the next banking day.

## Accuracy of Deposits Rule

You are required to deposit 100% of your tax liability on or before the deposit due date. However, penalties will not be applied for depositing less than 100% if both of the following conditions are met.

- Any deposit shortfall does not exceed the greater of \$100 or 2% of the amount of taxes otherwise required to be deposited and
- The deposit shortfall is paid or deposited by the shortfall makeup date as described below.

### Makeup Date for Deposit Shortfall:

1. **Monthly schedule depositor.** Deposit the shortfall or pay it with your return by the due date of your return for the return period in which the shortfall occurred. You may pay the shortfall with your return even if the amount is \$2,500 or more.
2. **Semiweekly schedule depositor.** Deposit by the earlier of:
  - a. The first Wednesday or Friday (whichever comes first) that falls on or after the 15th of the month following the month in which the shortfall occurred or
  - b. The due date of your return (for the return period of the tax liability).

For example, if a semiweekly schedule depositor has a deposit shortfall during July 2010, the shortfall makeup date is August 18, 2010 (Wednesday). However, if the shortfall occurred on the required April 2 (Friday) deposit due date for a March 29 (Monday) pay date, the return due date for the March 29 pay date (April 30) would come before the May 19 (Wednesday) shortfall makeup date. In this case, the shortfall must be deposited by April 30.

## How To Deposit

The two methods of depositing employment taxes, including Form 945 taxes, are discussed below. See [Payment with return](#) on page 20 for exceptions explaining when taxes may be paid with the tax return instead of being deposited.

**Electronic deposit requirement.** You must make electronic deposits of all depository taxes (such as employment tax, excise tax, and corporate income tax) using the Electronic Federal Tax Payment System (EFTPS) in 2010 if:

- Your total deposits of depository taxes in 2008 were more than \$200,000 or
- You were required to use EFTPS in 2009 or any prior year.

If you are required to use EFTPS and fail to do so, you may be subject to a 10% failure-to-deposit penalty. EFTPS is a free service provided by the Department of Treasury. If you are not required to use EFTPS, you may participate voluntarily. To get more information or to enroll in EFTPS, call 1-800-555-4477. You can also visit the EFTPS website at [www.eftps.gov](http://www.eftps.gov).

**When you receive your EIN.** If you are a new employer that indicated a federal tax obligation when requesting an

EIN, you will be pre-enrolled in EFTPS. You will receive information in your Employer Identification Number (EIN) Package about Express Enrollment and an additional mailing containing your EFTPS personal identification number (PIN) and instructions for activating your PIN. Call the toll-free number located in your "How to Activate Your Enrollment" brochure to activate your enrollment and begin making your payroll tax deposits. Be sure to tell your payroll provider about your EFTPS enrollment. Consider using EFTPS to make your other federal tax payments electronically as well. You should activate your EFTPS enrollment now even if you plan to deposit using FTD coupons (Form 8109) because it may take 5 to 6 weeks to receive the coupons and you may be required to make a deposit while waiting for them.

**Depositing on time.** For deposits made by EFTPS to be on time, you must initiate the transaction at least 1 business day before the date the deposit is due.

**Deposit record.** For your records, an Electronic Funds Transfer (EFT) Trace Number will be provided with each successful payment. The number can be used as a receipt or to trace the payment.

**Same day payment option.** If you fail to initiate a deposit transaction on EFTPS at least 1 business day before the date a deposit is due, you can still make your deposit on time by using the Federal Reserve-Electronic Tax Application (FR-ETA). If you ever need the same-day payment method, you will need to make arrangements with your financial institution ahead of time. FR-ETA allows you to initiate the transaction and have the funds transferred from your financial institution on the same day. Enrollment in EFTPS automatically enrolls you in FR-ETA. Instructions for using FR-ETA are included in your EFTPS enrollment package. Business taxpayers can use FR-ETA even if not enrolled, but may need help to have their financial institution use the proper format for making the payment. The guidelines for financial institutions for making payments using FR-ETA can be found at [www.frb services.org/files/serviceofferings/pdf/Sameday.pdf](http://www.frb services.org/files/serviceofferings/pdf/Sameday.pdf).

**Making deposits with FTD coupons.** If you are not making deposits by EFTPS, use Form 8109 to make the deposits at an authorized financial institution.

For **new employers**, if you would like to receive a Federal Tax Deposit (FTD) coupon booklet, call 1-800-829-4933. Allow 5 to 6 weeks for delivery. Consider activating your enrollment in EFTPS now so you can make timely deposits of employment taxes while waiting for requested FTD coupons.

The IRS will keep track of the number of FTD coupons you use and automatically will send you additional coupons when you need them. If you do not receive your resupply of FTD coupons, call 1-800-829-4933. You can have the FTD coupon books sent to a branch office, tax preparer, or service bureau that is making your deposits by showing that address on Form 8109-C, FTD Address Change, which is in the FTD coupon book. Filing Form 8109-C will not change your address of record; it will change only the address where the FTD coupons are mailed. The FTD coupons will be preprinted with your name, address, and EIN. They have entry boxes for indicating the type of tax and the tax period for which the deposit is made.

It is very important to clearly mark the correct type of tax and tax period on each FTD coupon. This information is used by the IRS to credit your account.

If you have branch offices depositing taxes, give them FTD coupons and complete instructions so they can deposit the taxes when due.

Please use only **your** FTD coupons. If you use anyone else's FTD coupon, you may be subject to a failure-to-deposit penalty. This is because your account will

be underpaid by the amount of the deposit credited to the other person's account. See [Deposit Penalties](#) on page 25 for penalty amounts.

**How to deposit with a FTD coupon.** Mail or deliver each FTD coupon and a single payment covering the taxes to be deposited to an authorized depository. An authorized depository is a financial institution (for example, a commercial bank) authorized to accept federal tax deposits. Follow the instructions in the FTD coupon book. Make your check or money order payable to the depository. To help ensure proper crediting of your account, include your EIN, the type of tax (for example, Form 941), and the tax period to which the payment applies on your check or money order.

Authorized depositories must accept cash, a postal money order drawn to the order of the depository, or a check or draft drawn on and to the order of the depository. You may deposit taxes with a check drawn on another financial institution only if the depository is willing to accept that form of payment. Be sure the financial institution where you make deposits is an authorized depository. Deposits made at an unauthorized institution may be subject to the failure-to-deposit penalty.

If you prefer, you may mail your coupon and payment to: Financial Agent, Federal Tax Deposit Processing, P.O. Box 970030, St. Louis, MO 63197. Make your check or money order payable to "Financial Agent."

The Financial Agent cannot process foreign checks. If you send a check written on a foreign bank to pay a federal tax deposit, you generally will be charged a deposit penalty and will receive a bill in the mail. A foreign bank is a financial institution that is not incorporated under the laws of the United States, any U.S. state, any U.S. possession, or the District of Columbia.

You may enroll in the Electronic Federal Tax Payment System (EFTPS), which will allow you to make electronic payments at no charge to you. Instructions for enrollment are available at [www.eftps.gov](http://www.eftps.gov).

You may also make the payments by wire transfer, through EFTPS, without being enrolled. A same day payment is initiated by your financial institution and can be used by businesses for making EFTPS tax payments. Please check with your financial institution regarding availability, deadlines, and costs. Generally, your bank will charge you a fee for payments made this way.

**Depositing on time.** The IRS determines whether deposits are on time by the date they are received by an authorized depository. To be considered timely, the funds must be available to the depository on the deposit due date before the institution's daily cutoff deadline. Contact your local depository for information concerning check clearance and cutoff schedules. However, a deposit received by the authorized depository after the due date will be considered timely if the taxpayer establishes it was mailed in the United States in a properly addressed, postage prepaid envelope at least 2 days before the due date.



*If you must deposit any taxes more than once a month, any deposit of \$20,000 or more must be received by the authorized depository by its due date to be timely. See Internal Revenue Code section 7502(e)(3) for more information.*

**Depositing without an EIN.** If you have applied for an EIN but have not received it and you must make a deposit, make the deposit with the IRS. Do not make the deposit at an authorized depository. Make it payable to the "United States Treasury" and show on it your name (as shown on Form SS-4), address, kind of tax, period covered, and date you applied for an EIN. Send your deposit with an explanation to the IRS office where you will file your return. IRS office addresses are in the instructions for your return and on the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) under

“Where To File.” Use the “Without a payment” address. Do not use Form 8109-B, Federal Tax Deposit Coupon, in this situation.

**Depositing without Form 8109.** If you have an EIN but do not have a preprinted Form 8109, you may use Form 8109-B to make deposits. Form 8109-B is an over-the-counter FTD coupon that is not preprinted with your identifying information. You may get this form by visiting an IRS taxpayer assistance center. Be sure to have your EIN with you. You will not be able to obtain Form 8109-B by calling 1-800-TAX-FORM.

Use Form 8109-B to make deposits only if:

- You are a new employer and you have been assigned an EIN, but you have not received your initial supply of Forms 8109 or
- You have not received your resupply of preprinted Forms 8109.

**Deposit record.** For your records, a stub is provided with each FTD coupon in the coupon book. The FTD coupon itself will not be returned. It is used to credit your account. Your cancelled check, bank receipt, or money order receipt is your deposit record.

**How to claim credit for overpayments.** If you deposited more than the right amount of taxes for a quarter, you can choose on Form 941 for that quarter (or on Form 944 for that year) to have the overpayment refunded or applied as a credit to your next return. Do not ask the depository or EFTPS to request a refund from the IRS for you.

## Deposit Penalties



*Although the deposit penalties information provided below refers specifically to Form 941, these rules also apply to Form 945 and Form 944 (if the employer required to file Form 944 does not qualify for the exception to the deposit requirements discussed on page 20 under [Payment with return](#)).*

Penalties may apply if you do not make required deposits on time, if you make deposits for less than the required amount, or if you do not use EFTPS when required. The penalties do not apply if any failure to make a proper and timely deposit was due to reasonable cause and not to willful neglect. The IRS may also waive penalties if you inadvertently fail to deposit in the first quarter you were required to deposit any employment tax, or in the first quarter during which your frequency of deposits changed, if you timely filed your employment tax return.

For amounts not properly or timely deposited, the penalty rates are as follows.

- 2% - Deposits made 1 to 5 days late.
- 5% - Deposits made 6 to 15 days late.
- 10% - Deposits made 16 or more days late. Also applies to amounts paid within 10 days of the date of the first notice the IRS sent asking for the tax due.
- 10% - Deposits made at an unauthorized financial institution, paid directly to the IRS, or paid with your tax return. But see [Depositing without an EIN](#) on page 24 and [Payment with return](#) on page 20 for exceptions.

10% - Amounts subject to electronic deposit requirements but not deposited using EFTPS.

15% - Amounts still unpaid more than 10 days after the date of the first notice the IRS sent asking for the tax due or the day on which you received notice and demand for immediate payment, whichever is earlier.

Late deposit penalty amounts are determined using calendar days, starting from the due date of the liability.

**Special rule for former Form 944 filers.** If you filed Form 944 for the prior year and file Forms 941 for the current year, the failure-to-deposit penalty will not apply to a late deposit of employment taxes for January of the current year if the taxes are deposited in full by March 15 of the current year.

**Order in which deposits are applied.** Deposits generally are applied to the most recent tax liability within the quarter. If you receive a failure-to-deposit penalty notice, you may designate how your deposits are to be applied in order to minimize the amount of the penalty if you do so within 90 days of the date of the notice. Follow the instructions on the penalty notice you received. For more information on designating deposits, see Revenue Procedure 2001-58. You can find Revenue Procedure 2001-58 on page 579 of Internal Revenue Bulletin 2001-50 at [www.irs.gov/pub/irs-irbs/irb01-50.pdf](http://www.irs.gov/pub/irs-irbs/irb01-50.pdf).

**Example.** Cedar, Inc. is required to make a deposit of \$1,000 on June 15 and \$1,500 on July 15. It does not make the deposit on June 15. On July 15, Cedar, Inc. deposits \$2,000. Under the deposits rule, which applies deposits to the most recent tax liability, \$1,500 of the deposit is applied to the July 15 deposit and the remaining \$500 is applied to the June deposit. Accordingly, \$500 of the June 15 liability remains undeposited. The penalty on this underdeposit will apply as explained on page 25.

**Trust fund recovery penalty.** If federal income, social security, and Medicare taxes that must be withheld are not withheld or are not deposited or paid to the United States Treasury, the trust fund recovery penalty may apply. The penalty is the full amount of the unpaid trust fund tax. This penalty may apply to you if these unpaid taxes cannot be immediately collected from the employer or business.

The trust fund recovery penalty may be imposed on all persons who are determined by the IRS to be responsible for collecting, accounting for, and paying over these taxes, and who acted willfully in not doing so.

A **responsible person** can be an officer or employee of a corporation, a partner or employee of a partnership, an accountant, a volunteer director/trustee, or an employee of a sole proprietorship. A responsible person also may include one who signs checks for the business or otherwise has authority to cause the spending of business funds.

**Willfully** means voluntarily, consciously, and intentionally. A responsible person acts willfully if the person knows the required actions are not taking place.

**Separate accounting when deposits are not made or withheld taxes are not paid.** Separate accounting may be required if you do not pay over withheld employee social security, Medicare, or income taxes; deposit required taxes; make required payments; or file tax returns. In this case, you would receive written notice from the IRS requiring you to deposit taxes into a special trust account for the U.S. Government. You would also have to file monthly tax returns on Form 941-M, Employer’s Monthly Federal Tax Return.



You may be charged with criminal penalties if you do not comply with the special bank deposit requirements for the special trust account for the U.S. Government.

**“Averaged” failure-to-deposit penalty.** IRS may assess an “averaged” failure-to-deposit (FTD) penalty of 2% to 10% if you are a monthly schedule depositor and did not properly complete line 17 of Form 941 when your tax liability (line 10) shown on Form 941 equaled or exceeded \$2,500.

The IRS may also assess an “averaged” FTD penalty of 2% to 10% if you are a semiweekly schedule depositor and your tax liability (line 10) shown on Form 941 equaled or exceeded \$2,500 and you:

- Completed line 17 of Form 941 instead of Schedule B (Form 941),
- Failed to attach a properly completed Schedule B (Form 941), or
- Improperly completed Schedule B (Form 941) by, for example, entering tax deposits instead of tax liabilities in the numbered spaces.

The FTD penalty is figured by distributing your total tax liability shown on line 10 of Form 941 equally throughout the tax period. As a result, your deposits and payments may not be counted as timely because the actual dates of your tax liabilities cannot be accurately determined.

You can avoid an “averaged” FTD penalty by reviewing your return before you file it. Follow these steps before submitting your Form 941.

- If you are a monthly schedule depositor, report your tax liabilities (not your deposits) in the monthly entry spaces on line 17 of Form 941.
- If you are a semiweekly schedule depositor, report your tax liabilities (not your deposits) on Schedule B (Form 941) in the lines that represent the dates your employees were paid.
- Verify your total liability shown on line 17 of Form 941 or the bottom of Schedule B (Form 941) equals your tax liability shown on line 10 of Form 941.
- Do not show negative amounts on line 17 of Form 941 or Schedule B (Form 941).
- For prior period errors discovered after December 31, 2008, **do not** adjust your tax liabilities reported on line 17 of Form 941 or on Schedule B (Form 941).

## 12. Filing Form 941 or Form 944

**Form 941.** Each quarter, all employers who pay wages subject to income tax withholding (including withholding on sick pay and supplemental unemployment benefits) or social security and Medicare taxes must file Form 941, Employer’s QUARTERLY Federal Tax Return, unless the employer is required to file Form 944 or the following exceptions apply. Form 941 must be filed by the last day of the month that follows the end of the quarter. See the [Calendar](#) on page 2.

**Form 944.** If you receive written notification you qualify for the Form 944 program, you must file Form 944, Employer’s ANNUAL Federal Tax Return, instead of Form 941. If you received this notification, but prefer to file Form 941, you can request to have your filing requirement changed to

Form 941 if you satisfy certain requirements. See the Instructions for Form 944 for details. Employers who must file Form 944 have until the last day of the month that follows the end of the year to file Form 944.

**Exceptions.** The following exceptions apply to the filing requirements for Forms 941 and 944.

- **Seasonal employers who no longer file for quarters when they regularly have no tax liability because they have paid no wages.** To alert the IRS you will not have to file a return for one or more quarters during the year, check the “Seasonal employer” box on line 19 of Form 941. When you fill out Form 941, be sure to check the box on the top of the form that corresponds to the quarter reported. Generally, the IRS will not inquire about unfiled returns if at least one taxable return is filed each year. However, you must check the “Seasonal employer” box on **every** Form 941 you file. Otherwise, the IRS will expect a return to be filed for each quarter.
- **Household employers reporting social security and Medicare taxes and/or withheld income tax.** If you are a sole proprietor and file Form 941 or Form 944 for business employees, you may include taxes for household employees on your Form 941 or Form 944. Otherwise, report social security and Medicare taxes and income tax withholding for household employees on Schedule H (Form 1040), Household Employment Taxes. See Publication 926, Household Employer’s Tax Guide, for more information.
- **Employers reporting wages for employees in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or Puerto Rico.** If your employees are not subject to U.S. income tax withholding, use Form 941-SS or Form 944-SS. Employers in Puerto Rico use Form 941-PR or Form 944-PR. If you have both employees who are subject to U.S. income tax withholding and employees who are not subject to U.S. income tax withholding, you can file only Form 941 (or Form 944) and include all your employees’ wages on that form. For more information, see Publication 80 (Circular SS) Federal Tax Guide for Employers in US Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.
- **Agricultural employers reporting social security, Medicare, and withheld income taxes.** Report these taxes on Form 943, Employer’s Annual Federal Tax Return for Agricultural Employees.

**Form 941 e-file.** The Form 941 e-file program allows a taxpayer to electronically file Form 941 or Form 944 using a personal computer, modem, and commercial tax preparation software. For more information, visit the IRS website at [www.irs.gov](http://www.irs.gov) and click on the *IRS e-file* link, or call 1-866-255-0654.

**Electronic filing by reporting agents.** Reporting agents filing Forms 941 or Form 944 for groups of taxpayers can file them electronically. See *Reporting Agents* in section 7 of Publication 15-A.

**Penalties.** For each whole or part month a return is not filed when required (disregarding any extensions of the filing deadline), there is a failure-to-file penalty of 5% of the unpaid tax due with that return. The maximum penalty is generally 25% of the tax due. Also, for each whole or part month the tax is paid late (disregarding any extensions of the payment deadline), there is a failure-to-pay penalty of 0.5% per month of the amount of tax. For individual filers