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IRS Revises Form 941 for COBRA Subsidy

by **B. David Joffe**

The Internal Revenue Service ("IRS") has issued a revised 2009 version of Form 941, Employer's Quarterly Tax Return. The new form takes into account the COBRA subsidy provided for under the American Recovery and Reinvestment Act of 2009 (the "Act"). The new Form 941 should be used for the first 2009 quarterly return due on April 30, 2009.

As discussed more extensively in our alert last week (*Stimulus Legislation Provides COBRA Premium Assistance for Employees and More Obligations for Employers*, http://www.boultcummings.com/cobra_premium_assistance_and_obligations/), the Act provides a 65% premium subsidy for up to nine months of COBRA coverage elected by employees whose employment was involuntarily terminated from September 1, 2008, through December 31, 2009. During the period of subsidized coverage, the employee pays 35% of the premium, and, in the case of most group health plans, the employer pays the remaining 65%. The Act provides that the employer may then take a credit for the employer-paid portion of the premium when it pays its payroll taxes, provided the employee has paid his or her share of the premium. According to the IRS, the employer may decide either to offset its payroll tax deposits or claim the subsidy as an overpayment at the end of the quarter.

The Act requires that the person claiming the subsidy attest to the involuntary termination for each covered employee for whom a reimbursement credit is taken, report the amount of the withholding taxes offset for the coverage period, and provide the tax identification numbers for the individuals for whom a reimbursement credit is taken. In revising Form 941, the IRS has provided the method by which the employer will meet the filing requirements under the Act with regard to the subsidy. The changes to the form are as follows:

- Line 12a—On this line, the employer will report the COBRA premium assistance payments that have been made. The form instructions note that, for self-funded plans, the COBRA premium assistance payments are treated as having been made for each assistance eligible individual who pays 35% of the COBRA premium.
- Line 12b—For this line, the employer will list the number of individuals for whom assistance was provided.
- Line 13—The employer lists on this line the total deposits, which will include the COBRA subsidy credit.

As a related matter, Schedule B of Form 941, Report of Tax Liability for Semiweekly Schedule Depositors, has also been revised. However, the Schedule B does not change the manner in which semiweekly depositors record their tax liabilities. Also, the IRS has revised

Form 941-SS, Employer's Quarterly Federal Tax Return, for employers in the American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, to reflect the changes for the Act. The IRS has indicated that other related forms will be revised.

The revised Form 941 requires the employer to report the amount of the premium assistance claimed and number of employees for whom the assistance was provided. However, it does not expressly contain an attestation as to the involuntary termination for each covered employee or specifically provide the tax identification numbers for such individuals as required under the Act. According to the IRS, no additional information needs to be submitted with the Form 941. However, documentation must be maintained to support the credit. Such documentation includes, but is not limited to: information on the receipt, including dates and amounts, of the assistance eligible individuals' 35% share of the premium; in the case of an insured plan, a copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier required under COBRA; in the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the assistance eligible individuals; an attestation of involuntary termination, including the date of the involuntary termination (which must be during the period from September 1, 2008, to December 31, 2009), for each covered employee whose involuntary termination is the basis for eligibility for the subsidy; proof of each assistance eligible individual's eligibility for COBRA coverage at any time during the period from September 1, 2008, to December 31, 2009, and election of COBRA coverage; a record of the social security numbers of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for one individual or two or more individuals; and other documents necessary to verify the correct amount of reimbursement.

If you have any questions about the Act or these changes to the Form 941, please contact [B. David Joffe](#) or one of the other Employee Benefits & Executive Compensation attorneys at [Bradley Arant Boulton Cummings LLP](#).

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subject to change. If you need specific information on legal issues or want to address specific factual situations please seek the opinion of legal counsel.

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. Contact: John B. Grenier, Esq., 1819 Fifth Avenue North, Birmingham, Alabama 35203.

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