Handling Overpayments Correctly

Presented on Monday, November 6, 2017
Housekeeping

Credit

Questions

Today’s topic

Speaker

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Our Focus For Today

- Wage and Hour Compliance
  - FLSA requirements
  - Review of state requirements
- IRS and State Tax Codes
  - 1990 Private letter ruling governs IRS requirements
  - Current year vs. prior year
  - How to handle FICA corrections
  - FUTA and SUI corrections
  - Form W-2 or Form W-2c
Vicki M. Lambert, CPP is President and Academic Director of The Payroll Advisor, a firm specializing in the training of payroll professionals. With four decades of hands-on experience in all facets of payroll functions as well as over 25 years as a national trainer and published author, Ms. Lambert produces and presents payroll related webinars and webcasts for clients, APA chapters and business groups throughout the country. In addition, Ms. Lambert is an adjunct faculty member at Brandman University. She is the creator of and the instructor for their Practical Payroll Online program as well as the instructor for the APA’s PayTrain CPP/FPC study programs.

Ms. Lambert’s website, www.thepayrolladvisor.com offers a subscription payroll news update service which keeps payroll professionals abreast of the changes on both federal and state levels.
Wage and Hour Compliance

The FLSA Requires
The State Requirements
FLSA Requirements

- DOL accepts inadvertent overpayments will occur
- If the employer and the employee do not agree that the wages were overpaid or if employee refuses to repay the amount legal options must be considered
- If both agree the wages were overpaid there are methods to recoup
FLSA Requirements

- When the employer makes a loan or advance of wages it may deduct the principle from the employee’s wages.

- The principal may be deducted even where such deduction cuts into minimum wage or overtime due under FLSA.
Interest, administrative costs or attorney fees may not be deducted if it cuts into minimum wage or overtime.

The existence of the loan or advance must be verified to every extent possible.

Wage and Hour Division addressed this issue in Opinion Letter No. 1916 in 1998.
Facts of the Case

- Employee was overpaid a substantial sum over 27 pay periods.
- Claimed did not notice because check was direct deposited.
- W/H opined that employer was free to recoup overpayment if standards are followed.
FLSA

- Employer has discretion to decide on the percentage
- No requirement that repayment agreement be in writing if undisputed
- Of course ask your lawyer about that one
- Reflects that W/H views overpayments as wage advances
- Policies in WRITING!
Used by DOL to determine audit requirements
You can use it too

https://www.dol.gov/whd/FOH/
Section 30c10  Voluntary assignment of wages, loans, and advances:

(b) While loans and cash advances are not facilities the principal may be deducted from the employee’s wages even where such a deduction cuts into MW or OT due under FLSA.
Recouping loan or advances on wages does not affect status as an exempt employee and does not violate salary basis requirement.
Vacation Pay In FOH

(Excerpt) In the situation where an employee is granted vacation pay prior to that individual’s established date of entitlement, with the understanding that the pay constitutes an advance on pay and the employee quits or is terminated before that date, employer may recoup the advanced vacation pay, even where such recoupment cuts into MW or OT pay as required
State Requirements

- Every state will vary
- Must research wage and hour law as well as court cases
- Most require prior notification as does the FLSA
- Most require permission in writing
- California
- New York
Under most circumstances CA law prohibits an employer from deducting from an employee’s wages any debt the employee may owe the employer.

- Barnhill v. Saunders began with withholding for a loan upon termination
- California State Employees’ Association v. State of California extended to cover overpayment of wages
California Cont…

- DLSE Opinion Letter 1999-09-22.1
- California Labor Code Section 221
- DLSE views deducting from an employee’s paycheck because of previous overpayment as an illegal deduction
- However…
California…

Not illegal if:

- Employer/employee had previous written agreement based on voluntary consent of employee—again policy in place is required as is written authorization at time of deduction
- Not exceed amount agreed upon even at termination
- Does not reduce below minimum wage (state)

§ 193. Deductions from wages.

* 1. No employer shall make any deduction from the wages of an employee, except deductions which:

c) are related to recovery of an overpayment of wages where such overpayment is due to a mathematical or other clerical error by the employer. In making such recoveries, the employer shall comply with regulations promulgated by the commissioner for this purpose, which regulations shall include, but not be limited to, provisions governing: the size of overpayments that may be covered by this section; the timing, frequency, duration, and method of such recovery; limitations on the periodic amount of such recovery; a requirement that notice be provided to the employee prior to the commencement of such recovery; a requirement that the employer implement a procedure for disputing the amount of such overpayment or seeking to delay commencement of such recovery; the terms and content of such a procedure and a requirement that notice of the procedure for disputing the overpayment or seeking to delay commencement of such recovery be provided to the employee prior to the commencement of such recovery.

d) repayment of advances of salary or wages made by the employer to the employee. Deductions to cover such repayments shall be made in accordance with regulations promulgated by the commissioner for this purpose, which regulations shall include, but not be limited to, provisions governing: the timing, frequency, duration, and method of such repayment; limitations on the periodic amount of such repayment; a requirement that notice be provided to the employee prior to the commencement of such repayment; a requirement that the employer implement a procedure for disputing the amount of such repayment or seeking to delay commencement of such repayment; the terms and content of such a procedure and a requirement that notice of the procedure for disputing the repayment or seeking to delay commencement of such repayment be provided to the employee at the time the loan is made.
Chargebacks

- Chargebacks on commissions for example
  - CA does permit
- Chargebacks on overpayment of wages from one pay period back as part of regularly scheduled type of pay system
  - CA does permit
Vacation

- If vacation is earned and taken then there is no overpayment situation
- If vacation is permitted to be taken prior to accruing then an overpayment situation can occur
- Federal will follow the same rules as any other overpayment of wages—keep your policy written and up to date
Vacation

- California is the role model on this one
- If an employee is paid vacation before it is earned it is an advance on wages if the employee terminations
- 1988 the DLSE permitted recovery
- It appears that the DLSE has now reversed its position
- Always verify vacation rules in addition to overpayment rules for each state
No, your employer cannot deduct "advanced" vacation (i.e., vacation that is taken before it is earned or accrued) from your final paycheck. Because of work schedules and the wishes of employees, many employers allow employees to take their vacation before it is actually earned. Under California law, vacation benefits are a form of wages, and an employer's practice of allowing employees to take their vacation before it is actually earned or accrued is in effect an advance on wages. Thus, if an employee takes an advance on vacation and then quits or is discharged before all of that advanced vacation is earned or accrued, the effect is that there has been an overpayment of wages which is a debt owed to the employer.

The California courts have noted on a number of occasions that an advance on wages, as with any other debt owed (either to the employer or a third party), is subject to the provisions of the attachment law. However, since wages are exempt from prejudgment attachment, neither the employer nor any third party can recover the debt by way of attachment of the employee's final pay, as to do so would violate the public policy considerations underlying the wage exemption statutes. Thus, in California since the wage garnishment law provides the exclusive judicial procedure by which a judgment creditor can execute against the wages of a judgment debtor, an employer may not resort to self-help to recover debts owed to the employer by an employee from the wages then due to the employee.
A private employer may withhold payment for accrued paid time off, if an employee separates from employment voluntarily, if the following apply: (1) at time of hire, the employer provided the employee written notice of the limitation of payment of accrued time off; (2) the employee has been employed by the employer for less than 1 year; and (3) the employee gave the employer less than 5 days' written or verbal notice (ND CentCode, Sec. 34-14-09.2, added by Ch. 249 (S.B. 2138), L. 2011).
Let’s review a few more states on overpayments:

- Indiana
- Michigan
- New Hampshire
- Oklahoma
- Washington
- Tennessee
- Texas
Sec. 22-2-6-4.[Wage deductions; Overpayments; Disputed amounts; Limitations].—

Sec. 4. (a) If an employer has overpaid an employee, the employer may deduct from the wages of the employee the amount of the overpayment. A deduction by an employer for reimbursement of an overpayment of wages previously made to an employee is not a fine under IC 22-2-8-1 or an assignment of wages under section 2 of this chapter. An employer must give an employee two (2) weeks notice before the employer may deduct, under this section, any overpayment of wages from the employee's wages.

(b) An employer may not deduct from an employee's wages an amount in dispute under IC 22-2-9-3.

(c) The amount of a wage deduction made by an employer under subsection (a) is limited to the following:

(1) Except as provided in subdivision (2), the maximum part of the aggregate disposable earnings of an employee for any work week that is subjected to an employer deduction for overpayment may not exceed the lesser of:

(A) twenty-five percent (25%) of the employee's disposable earnings for that week; or

(B) the amount by which the employee's disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by 29 U.S.C. 206(a)(1) in effect at the time the earnings are payable.

In the case of earnings for a pay period other than a week, the earnings must be computed upon a multiple of the federal minimum hourly wage equivalent to thirty (30) times the federal minimum hourly wage as prescribed in this section.

(2) If a single gross wage overpayment is equal to ten (10) times the employee's gross wages earned due to an inadvertent misplacement of a decimal point, the entire overpayment may be deducted immediately.
Section 7(4) of Wage Payment Act: Employers may recover overpayments within 6 months after making the overpayments without written consent if: (1) the overpayment resulted from a clerical mistake or mathematical miscalculation made by the employer or the employee, (2) the employer gives the employee a written explanation of the deduction at least one pay period before the wages affected by the deduction are paid, (3) the deduction is not more than 15% of the gross wages earned in the pay period, (4) the deduction is made after all deductions required by law or collective bargaining agreement and any employee-authorized deduction are made, and (5) the deduction does not reduce regular gross wages below the applicable minimum wage.

New Hampshire now allows withholding from wages for any purpose on which the employer and employee mutually agree that does not grant financial advantage to the employer, if the employee has given his or her written authorization and deductions are duly recorded. The withholding may not be used to offset payments intended for purchasing items required in the performance of the employee's job in the ordinary course of the operation of the business. *(H.B. 647, Laws 2011, approved June 7, 2011, effective August 6, 2011.)*
Sec. R. 380:30-1-11., (a) If an employer determines that an employee has been overpaid, the employer may recover the overpaid sum from the employee in one of two ways:

1. Lump sum cash repayment; or
2. Agreement for payroll deduction in a lump sum or in installments over a term not to exceed the length of the term in which the erroneous payments were made, provided that such agreement is made pursuant to the provisions of this subchapter regarding deductions.

(b) The election as to which method is used, and the terms thereof, shall be made by the employee in writing, and shall be subject to all other provisions of law and which may apply. The employee may elect to use a combination of the above two methods, if the employer agrees.

(c) Upon termination of the employment agreement, any remaining balance of overpayment shall be considered an offset to any final wages otherwise due the employee.
Sec. WAC 296-126-030. Adjustments for overpayments.—

(1) An overpayment occurs when an employer pays an employee for:
(a) More than the agreed-upon wage rate; or
(b) More than the hours actually worked.

(2) Recouping the overpayment may reduce the employee’s gross wages below the state minimum wage.

(3) An employer cannot recover an overpayment when the disputed amount concerns the quality of work.

(4) An employer can recover an overpayment from an employee’s paycheck provided the overpayment was infrequent and inadvertent. Infrequent means rarely, not occurring regularly, or not showing a pattern. Inadvertent means an error that was accidental, unintentional, or not deliberately done. The burden of proving the inadvertent error rests with the employer who made the error. The employer has ninety days from the initial overpayment to detect and implement a plan with the employee to collect the overpayment. If the overpayment is not detected within the ninety-day period, the employer cannot adjust an employee’s current or future wages to recoup the overpayment. Recouping of overpayments is limited to the ninety-day detection period.

(5) In the case of employees covered by an unexpired collective bargaining agreement that expires on or after January 1, 2006, in which overpayments are included in the terms of the collective bargaining agreement, the effective date of this rule shall be the later of:
(a) The first day following expiration of the collective bargaining agreement; or
(b) The effective date of the revised collective bargaining agreement.
The following are examples of when overpayments may or may not be allowed:

Example 1. Allowed. Overpayment of agreed wage rate: An employee was paid an agreed rate of ten dollars per hour but received a paycheck at the rate of eleven dollars per hour. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the amount overpaid in the previous pay period.

Example 2. Allowed. Overpayment for hours worked: An employee worked seventy-two hours in the pay period, but the employee was paid for eighty hours for that period. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the eight hours overpaid in the previous pay period.

Example 3. Not allowed. Overpayment not detected within ninety days of first occurrence: An employer agreed to pay an employee ten dollars per hour, but when the first check was received, the amount paid was paid at eleven dollars per hour. The employee may or may not have brought it to the attention of the employer. Six months later the employer detected the overpayments and adjusted the employee's wages in the next paycheck for the entire amount of the overpayment. This is not an allowable adjustment because it was not detected within ninety days from the first occurrence.
(6) The employer must provide advance written notice to the employee before any adjustment is made. The notice must include the terms under which the overpayment will be recouped. For example: One adjustment or a series of adjustments.

(7) The employer must provide documentation of the overpayment to the affected employee or employees.

(8) The employer must identify and record all wage adjustments openly and clearly in employee payroll records.

(9) Regardless of the provisions of this section, if appropriate, employers retain the right of private legal action to recover an overpayment from an employee.

(10) This regulation does not apply to public employers. See chapter 49.48 RCW, Wages—Payment—Collection.

Effective July 1, 2011: An employer may offset an employee's wages due and owing for an amount the employee owes the employer if: (1) an employer enters into an agreement with an employee to advance the employee wages prior to the date the wages are due and owing, agrees to otherwise lend the employee money, or permits the employee to charge personal items on the business or corporate credit card issued to the employee;
(2) the employee signs a written agreement prior to any actions occurring pursuant to item (1) allowing the employer to offset the employee's wages for any amount the employee owes the employer, and the employer has in its possession at the time of the offset a copy of such signed agreement; (3) the employer notifies the employee in writing 14 days prior to the payment of wages due and owing that: (a) there is an amount the employee owes the employer; (b) the employee's wages may be offset if the amount owed is not paid prior to the payment of wages due and owing; and
(c) the employee may submit an affidavit as described just below; and (4) the employee has not paid the amount owed the employer that was described in the notice sent by the employer.

The employer is not entitled to offset an employee's wages due and owing if the employee sends a sworn affidavit to the employer, and a copy of such affidavit to the Tennessee Department of Labor and Workforce Development, no later than seven days after receiving notification from the employer, contesting the amount owed.
If an employee contests an amount owed, then the employer may commence an appropriate civil action to recover the amount the employer alleges that the employee owes the employer.

Change due to passage of H.B. 1819
a) A wage advance occurs when an employer advances to an employee a monetary sum that represents wages not yet earned, or wages that have been earned but are not yet due for payment.

(b) An employer may recoup the wage advance from the employee's next regularly scheduled paycheck directly following the advance if:

1. the employer provides the employee with notice that the amount is an advance that will be recovered from the next paycheck; and
2. the employee agrees to the amount to be recouped.

(c) If the wage advance is not recouped in the next regularly scheduled paycheck following the advance, the employer shall comply with §61.018 of the Act. (general deductions)
What to do with each of the taxes and the calendar year

IRS and Overpayments
IRS Requirements

- Overpayments must be included in the employee’s income for the payroll period when received
- Applies for federal income tax (FIT), social security and Medicare
- The appropriate tax treatment depends on the type of tax involved and when the money is repaid to the employer
The Private Letter Ruling

- Private letter rulings can be used only by the taxpayer who requests it.
- Rules IRS used for the ruling apply to all employers that need to make tax adjustments for overpaid compensation.
In 1988 company closed a nonqualified profit sharing plan and made distributions
Distributions were treated as wages and all taxes including withholding were withheld and paid by company
After long grievance period it was determined that a new distribution amount was to be made in 1990
Facts of Case for Private Letter Ruling

Company asked the IRS if they could do the following:

- Company would take 10% to recoup overpayments until excess distributions were collected
- Company wanted to correct payroll taxes withheld, deposited and reported in 1990

IRS Said NO!
IRS did not address the issue of the amount or method of recouping the overpayment.

IRS said no to the year of reporting and correction.
What the Taxes Require

- Each type of tax requires a different handling when it comes to overpayment
- So you must begin by taking the rules for that tax into account
- Whether or not the repayment is in the same calendar year is critical for IRS rules
- Same calendar year is handled differently than in a subsequent calendar year
- Let’s look at federal income tax first
Federal Income Tax-Same Calendar Year

- If employee repays in same calendar year money is received employer excludes from income on Form W-2
- If results in overpayment of FIT employee will receive refund upon filing of Form 1040
Example

- On the following slide we have our example for Paul who is hired by Acme
- We will use this example for both FIT and FICA
- We will use this same example for both current year and for subsequent calendar years
- We will examine each tax first by each scenario of current and subsequent year payback
- At the end we will put it all together
Example 1- Repayment Made in Same Calendar Year-The Facts

- Acme, Inc. hired Paul on May 17, 2016
- Salary of $6,000 per month
- Paul received a sign-on bonus of $2,000
- Required to repay if he left Acme within one year of being hired
- Paul resigned from Acme on October 14, 2016
Breakdown of the Bonus Check

<table>
<thead>
<tr>
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<th>2016 Bonus Check</th>
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<tbody>
<tr>
<td>FIT Wages</td>
<td>$2,000.00</td>
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<tr>
<td>SS Wages</td>
<td>$2,000.00</td>
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<tr>
<td>Medicare Wages</td>
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<tr>
<td>FIT W/H</td>
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<tr>
<td>SS W/H</td>
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<td>Medicare W/H</td>
<td>$29.00</td>
</tr>
<tr>
<td>Net Pay</td>
<td>$1,347.00</td>
</tr>
</tbody>
</table>

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Paul repaid the net sign-on bonus of $1347.00 to the company.

Explanation: Since Paul received the bonus and repaid it in the same year (2016), Acme will reduce Paul’s taxable income, as well as withheld FIT—but can Acme get the FIT back is always the question.

Let’s look at his payroll history for 2016 as it applies to FIT wages and taxes withheld.
### Example 1 for FIT—Chart

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<tr>
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<td>$3,400.00</td>
<td>$3,400.00</td>
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</table>

Since the repayment occurred in a subsequent quarter Acme would need to file a Form 941-X to correct the wages and FIT withheld.
FIT—In Prior Calendar Year

- Employee receives an overpayment in prior year but repays in current calendar year
- Amount cannot be excluded from employee’s income for any year
- Can take a deduction on Form 1040
- Form W-2 is unaffected
- A separate receipt should be given
- Acme can’t get the FIT back from the IRS at this point
## Example 2 Chart for FIT in Prior Year

<table>
<thead>
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</thead>
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<td>Net Pay</td>
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</table>

1. This shows as a deduction on Paul’s personal income tax return for the amount of the repayment only.
2. Paul can claim a deduction on his 2016 1040 Form for the repayment. Acme cannot claim a credit or refund from the IRS for prior year federal income tax withheld. Acme must request from Paul.
FICA Taxes

- Social security and Medicare are handled differently than FIT when it comes to overpayments
- Again the timing of the repayment is critical
- But the Form 941-X and possible Form W-2c may be involved as well
- Let’s examine FICA taxes
FICA Taxes in Current Year

- Employee receives and repays overpayment in current calendar year
- If returned after Form 941 is filed employer refunds all FICA taxes on overpayment to employee
- Form 941-X is processed claiming both employee and employer portions of FICA on overpayment
- Employer keeps records of the refund
- Employee provides signed statement that he or she will not seek refund from IRS
Example 1- Repayment Made in Same Calendar Year - The Facts

- Acme, Inc. hired Paul on May 17, 2016
- Salary of $6,000 per month
- Paul received a sign-on bonus of $2,000
- Required to repay if he left Acme within one year of being hired
- Paul resigned from Acme on October 14, 2016
- Repaid the net sign-on bonus of $1347.00 to the company.
Example 1—Chart

<table>
<thead>
<tr>
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<tr>
<td>SS Wages</td>
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Since Paul received the bonus and repaid it in the same year (2016), Acme will reduce Paul’s taxable social security and Medicare wages and withheld SS and Medicare.
Example 1 Continued...

- Acme filed corrections for the payments by filing Form 941-X in the fourth quarter of 2016.
- Acme recovered the employer share of social security and Medicare taxes through Form 941-X.
- If the repayment had been for an amount overpaid in the same quarter as the correction, a Form 941-X would not have been required.
FICA Taxes In Prior Year

- Overpayment is made in previous year but repaid in current calendar tax year
- Does not affect wages or withholding in year in which it is repaid
- If the overpayment results in an overpayment of FICA (employee did not reach social security limit) a Form W-2c must be issued for overpayment calendar year
- Employer must consider wage bases on prior year overpayment
FICA in Prior Year Continued…

- Form 941-X is processed
- Employer claims both employer and employee portions
- Employee needs to sign statement they will not seek refund from IRS for the social security or Medicare
Example 2 - Repayment Made In a Subsequent Calendar Year - Facts

- Acme, Inc. hired Paul on May 17, 2016
- Salary of $6,000 per month
- Paul received a sign-on bonus of $2,000
- Bonus must be repaid if he leaves before one year of service
- Paul resigned from Acme on February 28, 2017
- He repaid the net sign-on bonus of $1347 to the company.
### Example 2 Chart

<table>
<thead>
<tr>
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(3) Acme will claim the applicable social security and Medicare taxes on the amount Paul repaid as an adjustment when filing form 941-X during the first quarter of 2017. Paul must sign a statement that he has not and will not request a refund of social security and Medicare taxes from IRS.

(4) Acme files Form 941-X in 2017. Acme will recover the employee and employer shares of social security and Medicare taxes through Form 941-X.
Let’s look at example 1 repaid in the same calendar year for all taxes—recap of scenario:

- Acme, Inc. hired Paul on May 17, 2016
- Salary of $6,000 per month
- Paul received a sign-on bonus of $2,000
- Required to repay if he left Acme within one year of being hired
- Paul resigned from Acme on October 14, 2016
- Repaid the net sign-on bonus of $1347.00 to the company.
Since Paul received the bonus and repaid it in the same year (2016), Acme will reduce Paul’s taxable income, social security and Medicare wages, as well as withheld FIT, SS, and Medicare.

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<td>$3,400.00</td>
<td>$3,400.00</td>
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<tr>
<td>SS W/H</td>
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<td>$124.00</td>
<td>$1,736.00</td>
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<tr>
<td>Medicare W/H</td>
<td>$435.00</td>
<td>$29.00</td>
<td>$406.00</td>
<td>$406.00</td>
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<tr>
<td>Net Pay</td>
<td>$23,805.00</td>
<td>$1,347.00</td>
<td>$22,458.00</td>
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</tr>
</tbody>
</table>
Example 2-Repayment Made In a Subsequent Calendar Year-Facts

- Acme, Inc. hired Paul on May 17, 2016
- Salary of $6,000 per month
- Paul received a sign-on bonus of $2,000
- Bonus must be repaid if he leaves before one year of service
- Paul resigned from Acme on February 28, 2017
- He repaid the net sign-on bonus of $1347 to the company.
- Since Paul resigned and repaid only the net amount of his sign-on bonus, Acme will not be able to take an adjustment for the federal income tax withheld from the sign-on bonus on form 941-X for the first quarter of 2017—Paul must pay back FIT
### Example 2 Chart

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>FIT Wages</td>
<td>$35,000.00</td>
<td>$12,000.00</td>
<td>$2,000.00</td>
<td>(1)</td>
<td>(1)</td>
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<tr>
<td>SS Wages</td>
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<td>$12,000.00</td>
<td>$2,000.00</td>
<td>($2,000.00)</td>
<td>($2,000.00)</td>
</tr>
<tr>
<td>Medicare Wages</td>
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<td>$12,000.00</td>
<td>$2,000.00</td>
<td>($2,000.00)</td>
<td>($2,000.00)</td>
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<tr>
<td>FIT W/H</td>
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<td>$1,560.00</td>
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<td>($248.00) (4)</td>
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<td>Net Pay</td>
<td>$27,772.50</td>
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</tr>
</tbody>
</table>

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Example 2 Code Explanations

(1) This shows as a deduction on Paul’s personal income tax return for the amount of the repayment only.

(2) Paul can claim a deduction on his 2017 1040 Form for the repayment. Acme cannot claim a credit or refund from the IRS for prior year federal income tax withheld. Acme must request from Paul.

(3) Acme will claim the applicable social security and Medicare taxes on the amount Paul repaid as an adjustment when filing form 941-X during the first quarter of 2017. Paul must sign a statement that he has not and will not request a refund of social security and Medicare taxes from IRS.

(4) Acme files Form 941-X. in 2017. Acme will recover the employee and employer shares of social security and Medicare taxes through Form 941-X.
Gross or Net?

- Employer cannot collect federal income tax withheld on prior year overpayments
- Ask for gross be refunded
- Employer can subtract out FICA if asking for refund from IRS
Example 2- Repayment Made In a Subsequent Calendar Year-Facts

Since Paul resigned and repaid only the net amount of his sign-on bonus, Acme will not be able to take an adjustment for the federal income tax withheld from the sign-on bonus on form 941-X for the first quarter of 2017.
Example 2 continued…

How does the company recoup the FIT withheld? Acme must request an additional repayment from Paul for $500 to recapture the federal income tax withheld from the sign-on bonus.
FUTA Taxes

- Employer may be able to claim refund after employee repays overpayment
- Employee’s earnings must not exceed $7,000 wage base

<table>
<thead>
<tr>
<th>Form 940 for 2016: Employer’s Annual Federal Unemployment (FUTA) Tax Return</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 1: Tell us about your return. If any line does NOT apply, leave it blank. See instructions before completing Part 1.</td>
</tr>
<tr>
<td>1a</td>
</tr>
<tr>
<td>1b</td>
</tr>
<tr>
<td>Part 2: Determine your FUTA tax adjustments. If any line does NOT apply, leave it blank.</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>Part 4: Determine your adjustments. If any line does NOT apply, leave it blank.</td>
</tr>
<tr>
<td>8</td>
</tr>
</tbody>
</table>

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In most states the same IRS rules will apply to state for income tax.

In most states the same situation will apply as for FUTA taxes for SUI.
Are There Any Questions?
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