GROWERTALKS

Features

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Payroll 2023 Style

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Payroll, typically the biggest expense of a business, has come a long way since its creation in 1913. The 16th Amendment to the Constitution gives Congress the "power to lay and collect taxes on incomes." The Fair Labor Standards Act of 1938 established the minimum wage, overtime, recordkeeping and youth employment standards, further complicating payrolls.

In general, an employer is responsible for its share of certain federal payroll taxes, including employer contributions under the Federal Insurance Contribu-tions Act (FICA). Social Security is financed by a 12.4% payroll tax on wages up to the taxable earnings cap, with half (6.2%) paid by workers and the other half paid by employers.

For 2023, the FICA tax is composed on a Social Security Tax of 6.2% on a wage base of $160,200 (up from $147,000 in 2022) with the 1.45% Medicare tax applying to all wages.

Comparable rules apply to self-employed growers for self-employment tax. They must pay 12.4% on amounts up to the Social Security wage base and 2.9% for Medicare tax with half of the overall amount deductible.

The above payroll tax rates do not include an additional 0.9% in Medicare tax paid by highly compensated employees on earnings that exceed threshold amounts based on their filing status. Employers must withhold the additional Medicare tax from wages of employees earning more than $200,000 in a calendar year.

Those other payroll costs and deductions

Among the responsibilities of every employer are other payroll costs that are based on legal requirements or optional benefits offered by a growing or retail operation. These can include:

• **Worker's Compensation Insurance:** All states require worker's compensation insurance for workers in a business. Although most states make an exception for owners, shareholders or employees, it's the states that set the rates for worker's compensation insurance based on the industry, size and number of employees.

• **State Disability Insurance:** California, Hawaii, New Jersey, New York, Rhode Island and Puerto Rico have mandatory requirements for employers to support programs that pay a portion of worker wages for work missed due to caregiving or a disability.

• **Paid leave:** If the business offers time off for personal days, vacation, sick days, parental leave or other purposes, these are part of the payroll process. Paychecks usually list compensation paid as part of an employee's paid leave benefits, even when the employee's pay is the same as normal.

• **Health care costs:** A business with 50 or more employees is almost always required to provide a health plan for employees under the Affordable Care Act. Health care plans are also an option in many smaller businesses. As part of the payroll process, the employer will deduct any portion of the premiums paid by the workers, as well as being responsible for the employer's portion.

• **Retirement plan contributions:** If the business sponsors an employee retirement plan, it must manage contributions via the payroll process. Employee contributions will be deducted from their pay with the employer responsible for its matching share.

• **Employee reimbursements:** A business that funds or reimburses the expense of a home office or work-related travel, generally handles them as part of the payroll process and includes them with the employee's paycheck. Income tax rates for reimbursements and other stipends are different from those for regular income and should be classified as such.

• **Extra withholding:** If an employee has indicated on their Form W-4 (Employee's Withholding Certificate) an additional amount that should be withheld each pay period it should be included with their federal income tax payment.

• **Bonuses:** Bonuses are a way of compensating employees for a good year without becoming locked into increased wages. For withholding purposes, bonuses can be lumped together under the heading of "supplemental wages," a heading that includes commissions, overtime pay, payments for accumulated sick leave, awards and prizes, and back pay, as well as payments for non-deductible moving expenses.

• **Gifts:** The IRS considers most gifts made to employees to be compensation. As a result, those gifts are included in income for tax purposes and withholding rules generally apply. It's a similar story for gifts, such as cash and cash-equivalent gifts such as gift cards and gift certificates. Gifts, usually of minimal value, are exempt.

• **Other benefits:** Other benefits offered by a business—including charity matching, HSA contributions and wellness programs—may, depending on the program, involve deductions for employee contributions or require payments into an associated account or include a stipend with the employee's paycheck.

Penalties for tardiness

The IRS charges a late fee if an employer doesn't deposit the employment tax owed on time. Called a Failure to Deposit Penalty, the penalties are:

• One to five days, 2% of unpaid amount

• Six to 15 days, 5% of unpaid amount

• More than 15 days, 10% of unpaid amount

• More than 10 days after receipt of the first IRS notice, 15% of the unpaid amount

State and local payroll taxes

In addition to federal payroll taxes, most businesses are responsible for state payroll taxes. The most common state payroll tax is for state unemployment insurance (SUTA), of which employers cover a full 100%. Unemployment insurance is based on a tax base that varies state by state. Depending on the state agency, unemployment tax payments are made along with payroll taxes or as a separate payment each taxing period.

Some states collect additional payroll taxes for such things as workforce development, disability insurance and transit, which the business is responsible for paying and deducting from payroll.

Not too surprisingly, many greenhouse growers are subject to even more payroll taxes based on ZIP code, county or municipality where they're based. These could be taxes either the employer, the employee—or both—are responsible for.

Misclassification

Employers, especially those in the flower and plant industry, have long preferred to treat workers as independent contractors, reaping payroll tax savings, no fringe benefits or other expenses associated with employees. Although California and several other states have cracked down on who is and who isn't an independent contractor, and the IRS has announced its own misclassification of workers crackdown, many businesses continue to lower their tax bills by shifting from having employees to using increasing numbers of independent contractors.

Whether on the federal or state level, the key question is usually the degree of control over the work and who exercises that control that determines the "independent" status. To help, an employer can submit a Form SS-8, Determination of Worker Status for Purposes of Federal Employment Tax and Income Tax Withholding, for a worker classification determination. There's also the IRS's 20-factor common-law test for employers to ensure they're in compliance with both federal and state laws.

Controlling payroll costs

In addition to the increasingly risky use of independent contractors, there are other strategies for keeping payroll costs manageable. One tax credit, a direct reduction of the operation's tax bill rather than the income on which it is based, is the Work Opportunity Tax Credit or WOTC.

The WOTC is designed to encourage employers to hire workers from certain targeted groups that historically have found it challenging to find employment. The amount of the tax credit ranges from $2,400 up to $9,600 per employee. Generally, the credit equals 40% of the qualified first-year wages for individuals who work at least 400 hours that first year, limited only by the amount of the operation's income tax liability or Social Security tax owed.

The WOTC is available for wages paid to certain individuals who begin work on or before December 31, 2025, and includes members from groups including veterans and recipients of various kinds of public assistance.

To qualify for the credit, an employer must first request certification by submitting IRS Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit, to their state workforce agency (SWA). It must be submitted to the SWA within 28 days after the eligible worker begins work. (Employers should not submit Form 8850 to the IRS.)

Reimbursing employees for mileage, tools or other job-related expenses typically incurs payroll taxes. However, by establishing an accountable plan, a business can avoid paying payroll taxes on these payments, thereby excluding them from employees' taxable income. Naturally, the plan should require employees to provide proper documentation confirming expenses are work-related.

A grower might consider offering tax-exempt fringe benefits instead of the more traditional monetary raises. The cost of tax-exempt fringe benefits—such as health benefits, education assistance, dependent care assistance, group term life insurance and retirement planning services—can be deducted similarly to wages and bonuses without a payroll tax obligation. What's more, employees will not owe income or payroll taxes on the benefits.

Obviously, understanding the basic rules for withholding payroll taxes—and paying over withheld amounts—on the wages of all employees in the commercial growing or retail business is a good start. Guidance and advice from a competent, qualified advisor is virtually a necessity. **GT**

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