

## Reporting Sick Pay Paid by Third Parties

Notice 2015-6

### PURPOSE

This notice provides that Internal Revenue Service (IRS) Form 8922, Third-Party Sick Pay Recap, must be used by third parties and employers to report total payments of certain sick pay paid by third parties on or after January 1, 2014. In particular, Form 8922 must be used for filing “third-party sick pay recaps” to reconcile the reporting of sick pay paid by a third party on behalf of employers to employees in situations in which the liability for the Federal Insurance Contributions Act (FICA) taxes on the sick pay is split between the employer and the third party under applicable regulations.

Forms 8922 must be filed instead of the Form W-2 and Form W-3 third-party sick pay recaps, which were filed with the Social Security Administration (SSA) for third-party sick pay paid before January 1, 2014. Employers and third parties will file the Form 8922 with the IRS rather than the SSA, and will no longer file third-party sick pay recaps with SSA for payments made on or after January 1, 2014. If a taxpayer (either a third party or an employer) was formerly obligated to file with SSA third-party sick pay recaps on Forms W-2 and W-3 for sick pay paid in 2013 and prior years and the sick pay is

paid under the same factual circumstances, that same taxpayer instead will be required to file Form 8922 with IRS for sick pay paid in 2014 and subsequent years.

This modified procedure only affects the filing of the third-party sick pay recaps and does not otherwise affect the current rules for (1) furnishing statements of the third-party sick pay to individual employees on Form W-2, Wage and Tax Statement, (2) filing with SSA copies of the Forms W-2 together with Form W-3, Transmittal of Wage and Tax Statements, that are not third-party sick pay recaps, and (3) reporting such payments to the IRS on Form 941, Employer's QUARTERLY Federal Tax Return (or on Form 944, Employer's ANNUAL Federal Tax Return, if applicable). The change to using Form 8922 also has no effect on liability for FICA tax, income tax withholding, Federal Unemployment Tax Act (FUTA) tax (collectively, "employment taxes"), or other taxes.

This notice also sets forth the rules concerning responsibility for the withholding and payment of employment taxes and for reporting employment taxes and wages with respect to third-party sick pay. This notice supersedes Notice 91-26, 1991-2 C.B. 619.

## **BACKGROUND**

### **DEFINITION OF SICK PAY**

Sick pay is any amount paid to an employee for any period during which the employee is temporarily absent from work because of injury, sickness, or disability. Sick pay does not include disability retirement payments or payments for medical and hospitalization expenses. Third-party sick pay is sick pay that is paid to an employee by some person (the third party) other than the employer for whom services are normally performed. Sections 3121(a) and 3306(b) of the Internal Revenue Code (Code) provide

that any third party that pays sick pay that is included in wages shall be treated as the employer for purposes of the FICA and the FUTA, respectively, with respect to such wages, except as provided in regulations prescribed by the Secretary. As explained below, a third-party payer of sick pay can be either an agent of the employer or a third party that is not an agent of the employer. Section 32.1 of the Temporary Employment Tax Regulations under the Act of December 29, 1981 (Public Law 97-123) (“temporary regulations”) sets forth rules concerning liability for FICA taxes, income tax withholding, and reporting with respect to third-party sick pay and these rules are still in effect.

#### DEFINITION OF AGENT

In determining responsibility for payment and reporting of employment taxes with respect to sick pay, a threshold question is whether the sick pay is paid by the employer for whom services are performed (that is, the common law employer or employer of a statutory employee, such as a corporate officer; hereinafter referred to as “employer”), by a third party that is an agent of the employer, or by a third party that is not an agent of the employer.

Section 32.1(e) of the temporary regulations and section 31.3401(a)-1(b)(8)(i)(b)(1) of the Employment Tax Regulations provide the rules for determining whether a third party is an agent of the employer. Whether a third party is an agent of the employer for sick pay purposes depends on the terms of the agreement between the third party and the employer. The determining factor is whether the third party has insurance risk with respect to the sick pay benefits provided. Under section 32.1(e), a third-party payer is an employer’s agent if the third party bears no insurance risk and is reimbursed on a cost-plus-fee basis for payment of sick pay and similar amounts. For

example, if a third party provides only administrative services for the employer, the third party is the employer's agent. A third party may be an agent even if the third party is responsible for determining which employees are eligible to receive payments. In contrast, if the employer pays the third party an insurance premium rather than reimbursing the third party on a cost-plus-fee basis, the third party is not the agent of the employer. See section 32.1(e)(3) of the temporary regulations and section 31.3401(a)-1(b)(8)(i)(b)(1) of the regulations.

A third party that is an agent under section 32.1(e) is an agent for purposes of the sick pay that it pays regardless of whether the third party files Form 2678, Employer/Payer Appointment of Agent, to request authorization as an agent to perform the acts of the employer under section 3504 of the Code. However, a third party that is an agent under section 32.1(e) may request authorization under section 3504 of the Code by filing Form 2678. A third-party payer of sick pay that is not an agent under section 32.1(e) may not become an agent of the employer under section 3504 with respect to the sick pay because the third party is treated as the employer with respect to the sick pay under the last sentence of section 3121(a), as explained more fully below.

For purposes of the remainder of this notice, the term "agent" refers to a third party that is an agent within the meaning of section 32.1(e) of the temporary regulations and section 31.3401(a)-1(b)(8)(i)(b)(1) of the regulations.

#### WHETHER SICK PAY IS SUBJECT TO INCOME TAX WITHHOLDING

The requirements for federal income tax withholding on sick pay and the applicable method for determining the amount of withholding depend on whether the

sick pay is paid by the employer of the employee, by an agent of the employer, or by a third party that is not the agent of the employer.

#### A. SICK PAY PAID BY THE EMPLOYER

Sick pay paid by the employer to an employee is wages subject to income tax withholding to the extent the sick pay is includible in the gross income of the employee. Section 31.3401(a)-1(b)(8)(i)(a) of the regulations provides that income tax withholding is required on all employer payments of amounts includible in gross income under section 105(a) and section 1.105-1 of the Income Tax Regulations to an employee under an accident or health plan for a period of absence from work on account of personal injuries or sickness. If the sick pay is regular wages, the amount of withholding is based on the Form W-4, Employee's Withholding Allowance Certificate, filed by the employee with the employer, and the applicable withholding tables. If the sick pay is supplemental wages, the amount of withholding is determined using the general rules applicable in determining income tax withholding on supplemental wages. See section 31.3402(g)-1 of the regulations.

#### B. SICK PAY PAID BY AN AGENT OF THE EMPLOYER

Sick pay paid by an agent of the employer is also wages subject to income tax withholding to the extent includible in gross income. Section 31.3401(a)-1(b)(8)(i)(b)(2) of the regulations provides further that sick pay paid by a third party that is an agent of the employer is supplemental wages, and therefore subject to the rules regarding withholding on supplemental wages provided in section 31.3402(g)-1 of the regulations. To determine the amount of income tax withholding on supplemental wages paid by an agent, see sections 31.3401(a)-1(b)(8)(i)(b)(2) and 31.3402(g)-1(a) of the regulations.

### C. SICK PAY PAID BY A THIRD PARTY THAT IS NOT AN AGENT OF THE EMPLOYER

Section 31.3401(a)-1(b)(8)(i)(a) of the regulations provides that sick pay that is paid by a third party that is not an agent of the employer (that is, a third party with insurance risk) is not wages under section 3401(a) and thus is not subject to mandatory income tax withholding under section 3402(a). However, section 31.3402(o)-3 provides that employees receiving third-party payments of sick pay in this situation may request withholding, and if such a request is made, the third-party payer must deduct and withhold as requested. To request withholding, an employee must submit a completed Form W-4S, Request for Federal Income Tax Withholding from Sick Pay, to the third party. See section 31.3402(o)-3 for rules relating to submission of Forms W-4S and withholding by third parties that are not agents.

### WHETHER SICK PAY IS SUBJECT TO FICA AND FUTA TAXES

The determination of whether sick pay is subject to FICA and FUTA taxes is based on the same rules regardless of whether the sick pay is paid by the employer, an agent of the employer, or a third party that is not an agent of the employer.

FICA taxes are imposed on wages, which are defined in section 3121(a) as all remuneration for employment, unless specifically excepted. FICA taxes consist of Old-Age, Survivors, and Disability Insurance taxes (“social security taxes”) imposed on employers and employees by sections 3111(a) and 3101(a), respectively, and Hospital Insurance taxes (“Medicare taxes”) imposed on employers and employees by sections 3111(b) and 3101(b), respectively. Section 3102 provides that the employee FICA taxes imposed by section 3101 shall be collected by the employer by deducting the

amount of the tax from wages as and when paid. Section 3101(b)(2) imposes the Additional Medicare Tax on employees, and section 3102(f) imposes special rules for the employer's collection of Additional Medicare Tax. Section 3301 imposes FUTA tax with respect to wages. Section 3306(b) defines wages for FUTA purposes as all remuneration for employment with certain specific exceptions.

#### A. SICK PAY EXCLUDED FROM WAGES UNDER FICA AND FUTA CODE PROVISIONS

Generally, sick pay paid with respect to employment by employers and third parties is wages for purposes of FICA and FUTA taxation, but the following payments are statutorily excluded from the definition of wages in section 3121(a) and section 3306(b):

(1) Payments made under workers' compensation acts or under statutes in the nature of workers' compensation acts (sections 3121(a)(2)(A) and 3306(b)(2)(A) of the Code, and section 31.3121(a)(2)-1(a) and (d) of the regulations);

(2) Payments made on account of sickness or accident disability made by an employer to or on behalf of an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer (sections 3121(a)(4) and 3306(b)(4) of the Code and sections 31.3121(a)(4)-1 and 31.3306(b)(4)-1 of the regulations);

(3) Payments made after the calendar year of the employee's death (sections 3121(a)(14), 3306(b)(15)); and

(4) For purposes of the social security tax portion of the FICA, payments made with respect to employment by one employer that exceed the social security tax

maximum wage base under section 3121(a)(1) and, for purposes of the FUTA, payments that are paid with respect to employment by one employer and that exceed the FUTA maximum wage base under section 3306(b)(1). Agents and third-party payers paying sick pay with respect to employment by an employer to an employee of that employer may combine sick pay with other wages paid by that employer for that employee's employment (and other wages paid by other agents or third parties for that employee's employment by that employer) to determine the applicability of the maximum wage base exceptions for social security tax and FUTA tax.

**B. PAYMENTS ON ACCOUNT OF SICKNESS OR ACCIDENT DISABILITY THAT ARE NOT SUBJECT TO FICA AND FUTA TAXATION UNDER THE TEMPORARY REGULATIONS**

In addition to the statutory exceptions explained in the preceding section, section 32.1(d) of the temporary regulations provides that the following payments on account of sickness or accident disability are not subject to FICA and FUTA taxes:

(1) Payments on account of sickness or accident disability that are attributable to contributions by the employee for insurance and excludable from the gross income of the employee. See section 32.1(d)(3) of the temporary regulations (see also section 1.105-1(c), (d), and (e) of the Income Tax Regulations).

(2) Payments for the permanent loss or permanent loss of use of a member or function of the body, or the permanent disfigurement, of the taxpayer, the taxpayer's spouse or a dependent (as defined in section 152), provided the amount of the payments are computed with reference to the nature of the injury without regard to the period the employee is absent from work. See section 32.1(d)(2) of the temporary



regulations (see also section 105(c) of the Code and section 1.105-3 of the regulations).  
and

(3) Payments that are excluded from gross income under Code section 104(a)(2) (the amount of any damages, other than punitive damages, received on account of personal physical injuries or physical sickness), 104(a)(4) (amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or for certain other federal service), or 104(a)(5) (amounts received by an individual as disability income attributable to injuries incurred as a direct result of a terroristic or military action as defined in section 692(c)(2)). See section 32.1(d) of the temporary regulations (see also section 1.104-1 of the regulations).

#### **C.TREATMENT OF THIRD-PARTY SICK PAY FOR PURPOSES OF THE ADDITIONAL MEDICARE TAX**

Generally, the 0.9% Additional Medicare Tax imposed by section 3101(b)(2) that employers are required to withhold under section 3102(f) applies to third-party sick pay if the sick pay that is wages in combination with other wages subject to Medicare tax paid to the employee exceeds the threshold amount (\$200,000). Generally, wages paid by an employer and sick pay wages paid by the third party are aggregated to determine whether the \$200,000 withholding threshold has been met.

#### **LIABILITY FOR PAYMENT OF FICA TAX, FUTA TAX, AND INCOME TAX WITHHOLDING ON SICK PAY AND REPORTING OF SICK PAY ON FORMS 940, 941 and W-2**

The liability for the payment of FICA tax, FUTA tax, and federal income tax withholding and the reporting of sick pay depends on whether the sick pay is paid by the employer of the employee, an agent of the employer, or a third party that is not an agent of the employer.

#### A. SICK PAY PAID BY AN EMPLOYER OR BY AN AGENT OF THE EMPLOYER

If sick pay is paid by the employer of the employee, the employer is liable for withholding and payment of employee FICA tax and federal income tax withholding from the sick pay that is wages, and the employer is also liable for the payment of employer FICA tax and FUTA tax with respect to the sick pay. The employer reports the sick pay, the income tax withholding, and the FICA tax with respect to the sick pay on Form 941, and the sick pay and FUTA tax with respect to the sick pay on Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return. The employer also reports the sick pay on Form W-2.

A third party that makes payments of sick pay as an employer's agent as defined under section 32.1(e) is not considered the employer and generally has no responsibility for the payment of FICA tax, FUTA tax, and income tax withholding on the sick pay. The employer remains liable for FICA tax, FUTA tax, and income tax withholding on the sick pay. However, the employer and the agent may enter into an agreement that makes the agent responsible for some or all of the payment and reporting of employment taxes with respect to the sick pay. For example, the agreement may make the agent responsible only for the payment of the income tax withholding and the employee FICA tax on the sick pay. If the agent has agreed to be responsible for the

income tax withholding and employee FICA tax on the sick pay, the agent must deposit, pay, and report the taxes under the agent's employer identification number (EIN). In that case, the employer remains responsible for FUTA tax, for reporting the employer FICA tax on its Form 941, and for reporting the sick pay on Forms W-2 under the employer's name and EIN. Alternatively, the employer and the agent may enter into an agreement that makes the agent responsible for employee and employer FICA tax, FUTA tax, income tax withholding on the sick pay, and for reporting on Form W-2. In that case, the agent must deposit and pay the FICA and FUTA taxes, report the employer and employee FICA taxes on its Form 941, and report the sick pay on Forms W-2 under the agent's name and EIN. The agreement with the agent does not relieve the employer of liability for the taxes if the taxes are not paid. See section 32.1(e)(3) of the temporary regulations.

The employer (or the agent if the agent has agreed to be responsible for the taxes and for the reporting on Form W-2 under an agreement with the employer) must furnish each employee to whom it paid sick pay a Form W-2 including the sick pay by January 31 of the following year. See section 6051(a) of the Code. The employer (or the agent) must also file the Form W-2 including the sick pay, together with Form W-3, with SSA, generally by the last day of February (or March 31 if the Forms W-2 are electronically filed) of the following year. The employer may either combine the sick pay with other wages paid to the employee and prepare a single Form W-2 for each employee, or the employer may prepare a separate Form W-2 including only the sick pay and related taxes for each employee and another Form W-2 including other wages and related taxes for each employee. The Form W-2 furnished and filed by the

employer or the agent with respect to the sick pay is required to include the following information:

(a) the employer's name, address, and EIN (or the agent's name, address, and EIN if the agent has agreed to be responsible for the taxes with respect to the sick pay);

(b) the employee's name, address, and social security number;

(c) the Federal income tax withheld, if any, from the sick pay (in the box titled "Federal income tax withheld");

(d) the amount of sick pay the employee must include in income (in the box titled "Wages, tips, other compensation");

(e) the amount not includible, if any, because the employee contributed to the sick pay plan (in the box for payments that must be reported with specific letter codes (for example, box 12 of the 2014 Form W-2));

(f) the amount of sick pay subject to employee social security tax (in the box titled "Social security wages");

(g) the employee social security tax withheld from the sick pay (in the box titled "Social security tax withheld");

(h) the amount of sick pay subject to employee Medicare tax (in the box titled "Medicare wages and tips"); and

(i) the employee Medicare tax withheld, including additional Medicare tax withheld (in the box titled "Medicare tax withheld").

## **B. SICK PAY PAID BY THIRD-PARTY PAYER THAT IS NOT AN AGENT**

### **1. Liability for FICA, FUTA, and income tax withholding**

Under section 31.3402(o)-3 of the regulations and section 32.1(c) of the temporary regulations, a third party that makes payments of sick pay other than as an agent of the employer is liable for federal income tax withholding (if requested by the employee), as described above, and the employee FICA tax with respect to the sick pay. The third party is also liable for the employer FICA tax and FUTA tax, unless the third party transfers this liability to the employer. The liability for the employer FICA tax and FUTA tax is transferred to the employer if the third party takes the following steps as set forth in section 32.1(e)(1) of the temporary regulations:

- (1) withholds employee FICA tax from the sick pay;
- (2) makes timely deposits of employee FICA tax; and
- (3) notifies the employer of the sick pay payments on which employee FICA tax were withheld and deposited.

The third party must notify the employer within the time required for the third party's deposit of the employee FICA tax to satisfy the notification requirement.<sup>1</sup>

## 2. Reporting requirements if liability for employer tax is not transferred to the employer

If the third party that is not the employer's agent does not follow the requirements for transferring liability for the employer FICA tax and the FUTA tax to the employer, the third party is treated as the employer for purposes of liability and reporting of both

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<sup>1</sup> Section 32.1(g)(3) of the temporary regulations provides that a special rule applies to sick pay payments made to employees by a third-party insurer under an insurance contract with a multi-employer plan established under a collectively bargained agreement. If the third-party insurer making the payments withholds the employee FICA tax from the sick pay payments and makes timely deposits of the employee FICA tax, and gives the plan (rather than the employer) the required timely notification of the payments, then the plan (not the third-party insurer) must pay the employer portion of the FICA tax and the FUTA tax. Similarly, if within six business days of the plan's receipt of notification, the plan gives notice to the employer, the employer (not the plan) must pay the employer portion of the FICA tax and the FUTA tax.

employee and employer FICA tax, FUTA tax, and income tax withholding. The third party reports the sick pay on Form 940 and Form 941, and must deposit, pay, and report the FICA tax, FUTA tax, and income tax withholding under its EIN. The third party must give each employee to whom it paid sick pay a Form W-2 by January 31 of the following year. See section 32.1 of the temporary regulations and section 6051(a). The Form W-2 must include the third party's name, address, and EIN as the employer. The third party must also file the Form W-2 including the sick pay, together with Form W-3, with SSA, generally by the last day of February (or March 31 if the Forms W-2 are electronically filed) of the following year.

### 3. Reporting requirements if liability for employer tax is transferred to the employer

If the third party follows the steps described in B.1. to transfer the liability for the employer FICA tax and FUTA tax, then the employer and not the third party must deposit, pay, and report the employer FICA tax and FUTA tax. See section 32.1(e) of the temporary regulations. The employer reports the sick pay wages on the line on the Form 941 for "wages, tips, and other compensation" but does not report the income tax withheld from the sick pay on Form 941. The employer reports the sick pay wages as taxable wages on Form 941 for social security tax purposes and Medicare tax purposes, and then makes a current quarter's adjustment for sick pay on the Form 941 to reflect the employee social security and Medicare tax paid by the third party. The employer also files Form 940 with respect to the sick pay. In addition, the employer is required to furnish and file Forms W-2 reporting the sick pay (although the employer and the third

party may agree that the third party will furnish and file the Forms W-2 reporting the sick pay, as discussed at the end of this section).

If the third party transfers liability for the employer FICA tax and FUTA tax to the employer, the third party remains liable with regard to the employee FICA tax and any income tax withheld based on the employees' Forms W-4S. The third party reports any income tax withheld on the sick pay on the line on Form 941 for income tax withholding, reports the sick pay wages as taxable wages on Form 941 for social security tax purposes and Medicare tax purposes, and then makes a current quarter's adjustment for sick pay on the Form 941 to reflect the employer portion of social security and Medicare tax paid by the employer. Because the sick pay is reported as wages on the third party's Form 941 but the third party does not issue Forms W-2 with respect to the sick pay (unless the employer and the third party agree that the third party will furnish and file the Forms W-2 reporting the sick pay, as discussed at the end of this section), the wages on the third party's Form 941 and the total wages reported on Forms W-2 filed by the third party do not match.

As noted above, the employer and the third party may enter into an agreement designating the third party as the employer's agent for purposes of filing Forms W-2 reporting the sick pay. The agreement is separate from the procedure that results in the transfer of liability for the employer tax from the third party to the employer. Because the sick pay is reported as wages on the employer's Form 941 but the employer does not issue Forms W-2 with respect to the sick pay, the wages on the employer's Form 941 and the total wages reported on Forms W-2 filed by the employer do not match. The agreement must specify what part, if any, of the payments under the sick pay plan

is excludable from the employees' gross income because it is attributable to employees' contributions to the plan. Under the agreement, the third party furnishes to the employee and files a Form W-2 reporting the sick pay for each employee who receives sick pay from the third party.

Under section 31.6051-3 of the regulations, a third party that is not an agent and that has not agreed to file Forms W-2 reporting the sick pay (as described in the preceding paragraph) must furnish the employer with a sick pay statement by January 15 of the year following the year in which the sick pay was paid. The written statement must contain the following information about each employee who received sick pay:

- (1) the name;
- (2) the employee's social security number, if social security taxes, Medicare taxes, or income taxes were withheld from the sick pay;
- (3) the sick pay paid to the employee;
- (4) any federal income tax withheld;
- (5) any employee social security tax withheld; and
- (6) any employee Medicare tax withheld.

## **FORM 8922**

The SSA and IRS match amounts reported on Forms 941 and on the aggregate of Forms W-2 filed by taxpayers to verify that employers' and employees' wage records are correct and appropriate FICA tax and income tax withholding are paid. If liability for the employer FICA tax on sick pay is transferred from the third party to the employer, the sick pay wages and liability for the employer FICA tax are reported on the Form 941 of the employer, and the sick pay wages and liability for the employee FICA are



reported on the Form 941 of the third party. However, the sick pay wages are reported only on Forms W-2 filed by one party. Because of this split reporting, the Forms 941 and Forms W-2 of the third party may have differing wage totals and taxes, or the Forms 941 and the Forms W-2 of the employer may have differing wage totals and taxes. The Form 8922 is designed to reconcile differences between wages and taxes reported on Form 941 and wages and taxes reported on Forms W-2 arising from the payment of third-party sick pay in these circumstances.

Beginning with sick pay wages paid on or after January 1, 2014, an employer or third party is required to file Form 8922 after the end of the calendar year if the employer is including the employer FICA tax on sick pay wages on the employer's Form 941 but the third party (whether as an agent that has agreed to be responsible for such reporting or not as an agent) is including the employee FICA tax on the same sick pay wages on the third party's Form 941 (split liability). Whether the employer or the third party is required to file the Form 8922 depends on which entity is filing Form W-2 with respect to the sick pay. If the sick pay is reported on Forms W-2 under the name and EIN of the third party (whether as an agent that has agreed to be responsible for such reporting or not as an agent) in this split liability situation, Form 8922 must be filed by the employer. If the sick pay is reported on Forms W-2 under the name and EIN of the employer in this split liability situation, the third party (whether as an agent or not as an agent) must file Form 8922.

More specifically, the requirement to file Form 8922 can arise in three situations:

(1) A third party is required to file Form 8922 when the third party is liable for the employee FICA tax (whether or not the third party is also liable for income tax

withholding) but the liability for the employer FICA tax and for reporting the sick pay on Forms W-2 has been transferred to the employer;

(2) An employer is required to file Form 8922 when the third party is liable for the employee FICA tax and income tax withholding, the liability for the employer FICA tax has been transferred to the employer, and the employer and third party have entered into an agreement to have the third party act as the employer's agent for reporting on Forms W-2; and

(3) A third party that is an agent under section 32.1(e) is required to file Form 8922 when the agency agreement provides that (a) the agent will withhold and pay employee FICA tax and report the taxes on its Form 941, and (b) the employer will pay the employer FICA tax, report the employer FICA tax on its Form 941, and report the employee's wages on Forms W-2.

When there is no split reporting of sick pay on Forms 941, there is no obligation to file Form 8922. Accordingly, except as provided in (3) above, there is generally no obligation to file Form 8922 with respect to sick pay paid by an agent. There is also no obligation to file Form 8922 when the third party paying the sick pay is not an agent and does not transfer liability for the FICA employer tax on the sick pay to the employer.

The taxpayer required to file Form 8922 includes its name, address, and telephone number as the filer's name. If the third party is the filer, the third party also checks the "insurer/agent" box. The Form 8922 shows sick pay subject to federal income tax (Box 1), the Federal income tax withheld from sick pay, if any (Box 2), sick pay subject to social security tax (Box 3), social security tax withheld from sick pay (Box

4), sick pay subject to Medicare tax (Box 5), and Medicare tax withheld from sick pay (Box 6).

Form 8922 also includes boxes for the “Other party’s name” and “Other party’s employer identification number.” If the employer files Form 8922, the employer shows the name and EIN of the third party paying the sick pay for which there is split reporting.

However, to ease the transition from Form W-2 and Form W-3 third-party sick pay recaps to use of Form 8922, a different rule currently applies for purposes of third parties who are filing Form 8922. If the third party is filing Form 8922 (that is, the “Insurer/Agent” box on Form 8922 is checked), the third party may, but is not required to, provide the other party’s (that is, the employer’s) name and EIN. If the third party is providing the other party’s (that is, the employer’s) name and EIN, it must file a separate Form 8922 with respect to the sick pay paid to employees of that employer.

Thus, the third party has three choices in filing Form 8922:

(1) It may submit one Form 8922 that completes all information on the form other than the boxes for other party’s name and other party’s EIN.

(2) It may choose to provide the other party’s name and the other party’s EIN with respect to all third-party sick pay that it pays for all employers. If it makes this choice, it files a separate Form 8922 for the sick pay wages and taxes related to each employer.

(3) It may choose to provide the other party’s name and other party’s EIN for the third-party sick pay that it pays for some but not all employers. If it makes this choice, it files a separate Form 8922 for the sick pay wages and taxes related to each employer

for which it is supplying the name and EIN, and it files one Form 8922 for the wages and taxes related to the employers for which it is not supplying the name and EIN.

This rule for third parties filing Form 8922 is designed to ease the administrative burden on third-party filers who may be paying third-party sick pay on behalf of many employers and reflects the fact that, at this time, Form 8922 may not be filed electronically but must be filed on paper. The rule will be subject to review in future years to determine whether it remains appropriate. The IRS intends to give advance notice if the rule is changed to require third parties to provide each employer's name and EIN. For example, if the Form 8922 becomes eligible for electronic filing, the third party may be required to furnish the other party's name and EIN with respect to each employer. The advance notice of any changes to this requirement may be provided in the instructions for Form 8922.

The rule applicable to third parties filing Form 8922 is not applicable to employers because employers will likely have a limited number of other parties (often only one) for which reporting the name and EIN will be required. Accordingly, the IRS anticipates that the administrative burden will be significantly less than it would be for third parties.

#### **EXAMPLE WHEN THE THIRD PARTY TRANSFERS THE SOCIAL SECURITY AND MEDICARE TAX LIABILITY TO THE EMPLOYER**

This example illustrates the reporting of third-party sick pay and other pay with respect to one employee only, and does not consider other wages paid by the employer or third party to employees that would also be reported on Form 941, Form W-2, or Form 8922.

Employee T of M Corp. received \$5,000 of sick pay (subject to income tax and includible in wages for purposes of social security tax and Medicare tax) from P Corp. (third party) in the first quarter of 2014. Employee T also received \$10,000 of remuneration for employment from M Corp. in the first quarter of 2014 and total remuneration for employment of \$40,000 from M Corp. during calendar year 2014. All remuneration for employment received by employee T from M Corp. in 2014 was includible in wages for purposes of social security, Medicare tax, and income tax withholding. P Corp. withheld employee T's share of social security and Medicare taxes from the \$5,000 sick pay P Corp. paid to employee T, and also withheld federal income tax as requested by employee T on Form W-4S. P Corp. deposited these taxes and provided M Corp. timely notification of the amount of wages paid on which the taxes were withheld and deposited. By taking these steps, P Corp. transferred to M Corp. the liability for the employer portion of social security and Medicare taxes on the sick pay and the obligation to file Form W-2 with respect to the sick pay.

The companies complete Forms 941, W-2, W-3, and Form 8922 with respect to employee T as described in the following paragraphs.

#### M CORP. (EMPLOYER)

For the first quarter Form 941, M Corp. includes \$15,000 of wages for employee T, including the \$10,000 of wages it paid and the \$5,000 of sick pay employee T received from P Corp., on the line for "Wages, tips, other compensation" (Line 2 of the 2014 Form 941). M Corp. does not include the amount of federal income tax withholding withheld by P Corp. on the line for "Federal income tax withheld from wages, tips, and other compensation" (Line 3) because P Corp. will include that

withholding on its Form 941. M Corp. then computes social security tax (Line 5a) and Medicare tax liability (Line 5c) with respect to employee T based on including the total social security wages (\$15,000) and Medicare wages (\$15,000) received by employee T from M Corp. and P Corp. However, because P Corp. withheld and deposited employee T's share of social security and Medicare taxes for the \$5,000 of sick pay, M Corp. reports an adjustment in the amount of the employee social security and Medicare taxes withheld on the sick pay on the line for "Current quarter's adjustment for sick pay" (Line 8).

At the end of the year, M Corp. issues a Form W-2 to employee T. The form combines \$40,000 of wages M Corp. paid and \$5,000 of sick pay from P Corp. It also combines the taxes withheld by both corporations in reporting the taxes withheld on Form W-2. The sick pay would be included in the box for "Wages, tips, other compensation" (Box 1 of the 2014 Form W-2), the box for "social security wages" (Box 3)," and the box for "Medicare wages and tips" (Box 5). M Corp. also checks the "third-party sick pay" (Box 13) checkbox as required. The income tax withheld by P Corp is included in the box for "Federal income tax withheld" (Box 2); the social security tax withheld by P Corp. is included in the box for "Social security tax withheld" (Box 4); and the Medicare tax withheld by P Corp. is included in the box for "Medicare tax withheld" (Box 6). On its Form W-3, M Corp. shows the amount of income tax withheld by P Corp. on employee T's sick pay in the box for "Income tax withheld by payer of third-party sick pay" (Box 14 of the 2014 Form W-3). M Corp. does not file Form 8922 with respect to the sick pay paid by P Corp. because M Corp. is fulfilling the Form W-2 reporting requirements to employee T with respect to the wages.

## P CORP. (THIRD PARTY)

For the first quarter Form 941, P Corp. does not include the \$5,000 sick pay it paid to employee T on the line for “Wages, tips, other compensation” (Line 2 of the 2014 Form 941). It includes the amount of federal income tax withholding requested by employee T with respect to the sick pay on the line for “Federal income tax withheld from wages, tips, and other compensation” (Line 3). The sick pay it paid to employee T is included in the lines for “Taxable social security wages” (Line 5a) and “Taxable Medicare wages & tips” (Line 5c).

Because P Corp. transferred the employer tax liability on employee T’s sick pay to M Corp., it must adjust social security and Medicare taxes. It does this on the line for “Current quarter’s adjustment for sick pay” (Line 8).

Because the employer FICA tax on the third-party sick pay is reported on the return of M Corp. and the sick pay is reported on Forms W-2 issued by M Corp., at the end of the year, P Corp. prepares a Form 8922 to report the sick pay it paid employees of M Corp. in 2014. On the Form 8922, it includes P Corp.’s name and identification number as the filer of the form, and checks the box for “Insurer/agent.” P Corp. also completes the other boxes on the form, including the \$5,000 sick pay subject to income tax paid to employee T (“Sick pay subject to federal income tax,” Box 1), and information related to that sick pay, and P chooses to complete the boxes for other party’s name (M Corp.) and other party’s identification number, and files these forms with the IRS by March 2, 2015.

## EFFECT ON OTHER DOCUMENTS

Notice 91-26 is superseded.

## REQUEST FOR COMMENTS

The IRS requests comments on the appropriate length of time to retain the rule under which third-party filers (insurers or agents) of Form 8922 are not required to complete the boxes for the other party's name and EIN, including whether third-party filers would need additional transition time prior to being required to complete these boxes if electronic filing of Form 8922 becomes available. Comments should be submitted in writing on or before June 30, 2015. Please include "Notice 2014-xx" on the cover page. All Comments will be available for public inspection and copying.

Comments may be submitted in one of three ways:

1. By mail to CC:PA:LPD:PR (Notice 2014-xx), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.
2. Electronically to [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov) Please include "Notice 2014-xx" in the subject line of any electronic communications.
3. By hand-delivery Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (Notice 2014-xx), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. N.W., Washington, DC 20224.

## DRAFTING INFORMATION

The principal author of this notice is Alfred G. Kelley of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice, contact Mr. Kelley at (202) 317-4774 (not a toll-free call).