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Approved for TPCC Chairperson
"AS CORRECTED."
Gerald P. Fournier
December 11, 2008

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checked tech references

2008

CHANGES



Department of the Treasury
Internal Revenue Service

Instructions for Form 945

Annual Return of Withheld Federal Income Tax

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

New Employment Tax Adjustment Process in 2009. If you discover an error on a previously filed Form 945 after December 31, 2008, make the correction using new Form 945-X, Adjusted Annual Return of Withheld Federal Income Tax or Claim for Refund. Form 945-X is a stand-alone form, meaning taxpayers can file Form 945-X when an error is discovered, rather than waiting until the end of the year to file Form 941c with Form 945. For errors discovered and reported prior to 2009, see *Line 3—Adjustment to correct administrative errors*, later. For more information, get the Instructions for Form 945-X or visit the IRS website at www.irs.gov and type "Correcting Employment Taxes" in the search box.

Credit card payments. Employers can pay the balance due shown on Form 945 by credit card. Do not use a credit card to make federal tax deposits. For more information on paying your taxes with a credit card, visit the IRS website at www.irs.gov and click on the *electronic IRS* link.

Paid preparers are required to sign Form 945. A paid preparer must sign Form 945 and provide the information requested in the "Paid Preparer's Use Only" section if the preparer was paid to prepare Form 945 and is not an employee of the filing entity. The preparer must give you a copy of the return in addition to the copy to be filed with the IRS.

Reminders

Additional information. Pub. 15 (Circular E), Employer's Tax Guide, explains the rules for withholding, depositing, and reporting federal income tax. Pub. 15-A, Employer's Supplemental Tax Guide, includes information on federal income tax withholding from pensions, annuities, and Indian gaming profits. For information on withholding from gambling winnings, see the Instructions for Forms W-2G and 5754.

For a list of employment tax products, visit the IRS website at www.irs.gov/businesses and select "Employment Taxes" under the **Business Topics** heading.

Electronic payment. Now, more than ever before, businesses can enjoy the benefits of paying their federal taxes electronically. Whether you rely on a tax professional or handle your own taxes, IRS offers you convenient programs to make paying taxes easier. Spend less time and worry on taxes and more time running your business. Use Electronic Federal Tax Payment System (EFTPS) to your benefit.

For more information about EFTPS, visit www.eftps.gov or call EFTPS Customer Service at [1-800-555-4477](tel:1-800-555-4477).

You may be required to use EFTPS. See *Electronic deposit requirement* on page 3.

Correcting Form 945. If you discovered an error in 2008 on a previously filed Form 945, make the correction using Form 945 for the year in which you discovered the error and attach Form 941c, Supporting Statement to Correct Information. For example, in October 2008, you discovered that you underreported \$1,000 (\$5,000 reported when \$6,000 was actually withheld) in withheld federal income tax on your 2007 Form 945. Correct the error by showing \$1,000 on line 3 of your 2008 Form 945 and attaching a completed Form 941c. For details, see *Line 3—Adjustment to correct administrative errors* on page 3.

How to get forms and publications. You can get most IRS forms and publications by accessing the IRS website at www.irs.gov or by calling the IRS at 1-800-TAX-FORM (1-800-829-3676).

Telephone help. You can call the IRS Business and Specialty Tax Line toll free at 1-800-829-4933 to order FTD coupons (Form 8109) and for answers to your questions about completing Form 945, tax deposit rules, or obtaining an employer identification number (EIN).

Photographs of Missing Children

The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in instructions on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

General Instructions

Purpose of form. Use Form 945 to report withheld federal income tax from nonpayroll payments. **Nonpayroll payments** include:

Lower-case the "S."
• Pensions (including Section 403(b) and governmental section 457(b) plan distributions), annuities, and IRA distributions;

- Military retirement;
- Gambling winnings;
- Indian gaming profits;
- Voluntary withholding on certain government payments; and
- Backup withholding.

Report all federal income tax withholding from nonpayroll payments or distributions annually on one Form 945. **Do not** file more than one Form 945 for any calendar year.

All federal income tax withholding reported on Forms 1099 (for example, Form 1099-R or 1099-MISC) or Form W-2G must be reported on Form 945. **Do not** report federal income tax withholding from wages on Form 945.

All employment taxes and federal income tax withholding reported on Form W-2, Wage and Tax Statement, must be reported on Form 941 or Form 944 (Form 943 for agricultural employees), Schedule H (Form 1040) for household employees, or Form CT-1 for railroad employees.

Do not report on Form 945 federal income tax withheld on distributions to participants from nonqualified pension

plans (including **nongovernmental** section 457(b) plans) and some other deferred compensation arrangements that are treated as wages and are reported on Form W-2. Report such withholding on Form 941 or Form 944. See Pub. 15 (Circular E) for more information. **on page 1**

Who must file. If you withhold federal income tax (including backup withholding) from nonpayroll payments, you must file Form 945. See *Purpose of form* above. You are not required to file Form 945 for those years in which you do not have a nonpayroll tax liability. **Do not** report on Form 945 withholding that is required to be reported on Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

Where to file. In the list **below**, find the location of your legal residence, principal place of business, office, or agency. Send Form 945 to the address listed for your location.



Where you file depends on whether or not you are including a payment with the return.

If you are in . . .	Without a payment . . .	With a payment . . .
Connecticut	New Jersey	Department of the
Delaware	New York	Treasury
District of Columbia	North Carolina	Internal Revenue
Georgia	Ohio	Service
Illinois	Pennsylvania	Cincinnati, OH
Indiana	Rhode Island	45999-0042
Kentucky	South Carolina	
Maine	Tennessee	
Maryland	Vermont	
Massachusetts	Virginia	
Michigan	West Virginia	
New Hampshire	Wisconsin	
Alabama	Missouri	Department of the
Alaska	Montana	Treasury
Arizona	Nebraska	Internal Revenue
Arkansas	Nevada	Service
California	New Mexico	Ogden, UT
Colorado	North Dakota	84201-0042
Florida	Oklahoma	
Hawaii	Oregon	
Idaho	South Dakota	
Iowa	Texas	
Kansas	Utah	
Louisiana	Washington	
Minnesota	Wyoming	
Mississippi		
No legal residence or principal place of business in any state:	Internal Revenue Service P.O. Box 409101 Ogden, UT 84409	Internal Revenue Service P.O. Box 105288 Atlanta, GA 30348-5288
If you are filing Form 945 for an exempt organization or government entity (federal, state, local, or Indian tribal government), use the following addresses, regardless of your location:	Department of the Treasury Internal Revenue Service Ogden, UT 84201-0042	Internal Revenue Service P.O. Box 105153 Atlanta, GA 30348-5153

When to file. For 2008, file Form 945 by **February 2, 2009**. However, if you made deposits on time in full payment of the taxes for the year, you may file the return by February 10, 2009. Your return will be considered timely filed if it is properly addressed and mailed First-Class or sent by an IRS-designated private delivery service on or before the due date. See Pub. 15 (Circular E) for more information on IRS-designated private delivery services.

Employer identification number (EIN). If you do not have an EIN, you may apply for one online. Go to the IRS website at www.irs.gov and click on the *Online EIN Application* link. You may also apply for an EIN by calling 1-800-829-4933, or

you can fax or mail Form SS-4, Application for Employer Identification Number, to the IRS.

Note. If you are reporting withholding on pension distributions, be sure to be consistent in using the same name and EIN for all reporting and depositing of taxes (for example, on Forms 945, 1099-R, and 8109/EFTPS). Filing Form 945 with an incorrect name and EIN or failure to use the same name and EIN in all reporting and depositing of taxes may result in penalties and delays in processing your return.

Penalties and interest. There are penalties for filing Form 945 late and for paying or depositing taxes late, unless there is reasonable cause. See section 11 of Pub. 15 (Circular E) for more information on deposit penalties. There are also penalties for failure to furnish information returns (for example, Forms 1099-MISC, 1099-R, or W-2G) to payees and failure to file copies with the IRS.



If amounts 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 any unpaid trust fund tax. This penalty may apply when 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 have been responsible for collecting, accounting for, and paying over these taxes, and who acted willfully in not doing so. "Willfully" in this case means voluntarily, consciously, and intentionally. A responsible person acts willfully if the person knows that the required actions are not taking place.

Voluntary income tax withholding. States must allow **unemployment compensation** recipients to elect to have federal income tax withheld at a 10% rate in 2009. Recipients paid under the Railroad Unemployment Insurance Act may also elect withholding at a 10% rate in 2009.

Recipients of any of the following federal payments may request federal income tax withholding in **2009** at a rate of 7%, 10%, 15%, or 25% on:

- Social security and Tier 1 railroad retirement benefits,
- Certain crop disaster payments, and
- Commodity Credit Corporation loans.

The payee may request withholding on Form W-4V, Voluntary Withholding Request, or you may develop your own substitute form. Any voluntary withholding on these payments must be reported on Form 945 (and on the required information return—Form 1099-G, Form SSA-1099, or Form RRB-1099) and is subject to the deposit rules.

Depositing Withheld Taxes

Deposit all nonpayroll (Form 945) withheld federal income tax, including backup withholding, by using EFTPS or by depositing at an authorized institution using Form 8109, Federal Tax Deposit Coupon. Some taxpayers are required to use EFTPS to deposit their taxes (see *Electronic deposit requirement* on page 3). Combine all Form 945 taxes for deposit purposes. **Do not** combine deposits for Forms 941, 943, 944, or Form CT-1 with deposits for Form 945. If you deposit using Form 8109, be sure to darken the space for Form "945" on Form 8109.

Generally, the deposit rules that apply to Form 941 also apply to Form 945. However, because Form 945 is an annual return, the rules for determining your deposit schedule (discussed below) are different from those for Form 941. See section 11 of Pub. 15 (Circular E) for a detailed discussion of the deposit rules.

Determining your deposit schedule. There are two deposit schedules—**monthly** or **semiweekly**—for determining when you must deposit withheld federal income tax. These schedules tell you when a deposit is due after a tax liability arises (that is, you make a payment subject to federal income tax withholding, including backup withholding). Before the beginning of each calendar year, you must determine which of the two deposit schedules you must use.

For 2009, you are a monthly schedule depositor for Form 945 if the total tax reported on your 2007 Form 945 (line 4) was \$50,000 or less. If the total tax reported for 2007 exceeded \$50,000, you are a semiweekly schedule depositor.



If you are a monthly schedule depositor and accumulate a \$100,000 liability or more on any day during a calendar month, your deposit schedule changes on the next day to semiweekly for the remainder of the year and for the following year. For more information, see the \$100,000 Next-Day Deposit Rule in section 11 of Pub. 15 (Circular E).

Electronic deposit requirement. You must make electronic deposits of all depository taxes (such as employment tax, withheld income tax, excise tax, and corporate income tax) using EFTPS in 2009 if:

- The total deposits of such taxes in 2007 were more than \$200,000 or
- You were required to use EFTPS in 2008.

If you are required to use EFTPS and use Form 8109 instead, you may be subject to a 10% penalty. If you are not required to use EFTPS, you may participate voluntarily. To get more information or to enroll in EFTPS, visit the EFTPS website at www.eftps.gov or call [1-800-555-4477](tel:1-800-555-4477).

Specific Instructions

State code. If you made your deposits using Form 8109 or by using an EFTPS bank account in a state other than that shown in your address on Form 945, enter the state code for the state where you made deposits or initiated EFTPS transfers in the box provided in the upper left corner of Form 945. Use the two-letter United States Postal Service state abbreviation as the state code. Enter the code "MU" in the state code box if you deposit in more than one state. If you deposit in the **same state** as shown in your address, **do not** make an entry in this box.

Line A—Final return. If you go out of business or end operations and you will not be required to file Form 945 in the future, file a final return. Be sure to check the box in line A and enter the date that final nonpayroll payments were made. **Add a space.** **Lower-case the "S."**

Line 1—Federal income tax withheld. Enter the federal income tax that you withheld (or were required to withhold) from pensions (including distributions from Section 403(b) and governmental section 457(b) plans), annuities, IRA distributions, military retirement, Indian gaming profits, and gambling winnings (regular gambling withholding only). Also enter any voluntary amount that you withheld on certain government payments. If you are required to report federal income tax withholding on Forms 1099 (for example, Form 1099-R or Form W-2G), you must report the federal income tax withheld on Form 945. **Roll up to previous line.**

Note. Federal income tax withholding reported on Form W-2 **must** be reported on Form 941, Form 943, Form 944, or Schedule H (Form 1040), as appropriate.

Line 2—Backup withholding. Enter any backup withholding, including backup withholding on gambling winnings.

Regulated investment companies (RICs) and real estate investment trusts (REITs) must report any backup withholding on Form 945 in the year that the dividends are actually paid. This includes January payments of dividends declared during October, November, and December of the prior year. See the Instructions for Form 1099-DIV for special reporting requirements.

Line 3—Adjustment to correct administrative errors.



*If you discover an error in 2008 on a previously filed Form 945, make the correction using the 2008 Form 945 and attach Form 941c, as described below. If you discover any error on a previously filed Form 945 after December 31, 2008, make the correction using new Form 945-X, Adjusted Annual Return of Withheld Federal Income Tax or Claim for Refund, and see "New Employment Tax Adjustment Process in **in 2009 on page 1.**"*

Only when an error is discovered in 2008 on a previously filed Form 945, make the correction using the 2008 Form 945 and attach Form 941c.

In any event, you cannot make an adjustment on Form 945 to correct federal income tax withholding or backup withholding reported in a prior calendar year unless it is to correct an administrative error. An administrative error occurs if the amount you entered on Form 945 is not the amount that you actually withheld.

For example, if the total federal income tax actually withheld was incorrectly reported on Form 945 due to a math or transposition error, this is an administrative error. The administrative error adjustment corrects the amount reported on Form 945 to agree with the amount actually withheld from nonpayroll payments.

Indicate negative adjustments with a minus sign (if possible). Otherwise, use parentheses. You will not be allowed a refund or credit for any prior year's overpayment of federal income tax that you withheld from a payee. This is because the payees use the amount of withholding shown on the information return (for example, Form 1099-R) as a credit ~~when filing their income tax returns.~~

If you are making an adjustment to correct a prior year administrative error, report the net adjustment (including an adjustment to federal income tax withholding and backup withholding) on line 3. Complete Form 941c, Supporting Statement To Correct Information, or an equivalent statement, and file it with Form 945 to provide the required information on the adjustment.

Be sure to identify the adjustment in the *Explanation of Adjustments* section of Form 941c as correcting an administrative error and provide a description of the error(s). Do not file Form 941c separately from Form 945.

Reporting the adjustment on line 8 or on Form 945-A. The amount of the adjustment also must be taken into account in the Monthly Summary of Federal Tax Liability (line 8) or on Form 945-A, Annual Record of Federal Tax Liability. If the adjustment increases your tax liability, include the adjustment with any other amount on the entry space for the date that you discovered the error and increase any required deposit by the adjustment amount. If the adjustment decreases your tax liability, use the adjustment amount as a credit to offset subsequent liabilities on line 8 or Form 945-A until it is used up. For more information, see section 13 of Pub. 15 (Circular E). The Pub. 15 (Circular E) instructions for making adjustments refer to Form 941 but also apply to Form 945 adjustments.



If you are not required to complete line 8 or Form 945-A because your total taxes are less than \$2,500, do not show the adjustment on line 8 or on Form 945-A.

Line 4—Total taxes. Add lines 1 and 2 and add or subtract any net adjustment on line 3. If total taxes are \$2,500 or more, the amount reported on line 4 must equal the total liability for the year reported on line 8M of the Monthly Summary of Federal Tax Liability, or line M of Form 945-A.

Line 5—Total deposits. Enter your total Form 945 deposits for the year, including any overpayment applied from your 2007 return.

Line 6—Balance due. You do not have to pay if line 6 is under \$1. Generally, you should have a balance due only if your total taxes for the year (line 4) are less than \$2,500. If you made payments under the accuracy of deposits rule, see section 11 of Pub. 15 (Circular E). Enter your EIN, "Form 945," and "2008" on your check or money order and make it payable to the "United States Treasury." If line 4 is \$2,500 or more and you deposited all taxes when due, the amount on line 6 should be zero. Complete Form 945-V, Payment Voucher, if you are making a payment with Form 945.



If you fail to make required deposits (using EFTPS or Form 8109, as required) and instead pay these amounts with your return, you may be subject to a penalty.

Line 7—Overpayment. If you deposited more than the correct amount for the year, you can have the overpayment refunded or applied to your next return by checking the appropriate box. The IRS may apply your overpayment to any past due tax account under your EIN. If line 7 is under \$1, we will send a refund or apply it to your next return only on written request.

Line 8—Monthly Summary of Federal Tax Liability.



This is a summary of your monthly tax liability, **not** a summary of deposits made. If line 4 is less than \$2,500, **do not** complete line 8 or Form 945-A.

Complete line 8 **only** if you were a **monthly schedule depositor** for the entire year and line 4 is \$2,500 or more. See *Determining your deposit schedule* on page 3.



The amount entered on line 8M must equal the amount reported on line 4.

Report your liabilities on Form 945-A instead of on line 8 if:

- You were a **semiweekly schedule depositor** during 2008. **Do not** complete entries A through M of line 8. Instead, complete and file Form 945-A with Form 945.
- You were a **monthly schedule depositor** for 2008 and during any month you accumulated nonpayroll taxes of \$100,000 or more. Because this converted you to a semiweekly schedule depositor for the remainder of 2008 (and for 2009), you must report your liabilities on Form 945-A for the entire year. **Do not** complete entries A through M of line 8. For more information, see the *\$100,000 Next-Day Deposit Rule* in section 11 of Pub. 15 (Circular E).

Third-Party Designee. If you want to allow any individual, corporation, firm, organization, or partnership to discuss your 2008 Form 945 with the IRS, check the "Yes" box in the Third-Party Designee section of Form 945. Also, enter the name, phone number, and any five numbers that the designee chooses as his or her personal identification number (PIN). The authorization applies only to the tax form upon which it appears.

By checking the "Yes" box, you are authorizing the IRS to speak with the designee to answer any questions relating to the information reported on your tax return. You are also authorizing the designee to:

- Exchange information concerning your tax return with the IRS and
- Request and receive written tax return information relating to your tax return including copies of specific notices, correspondence, and account transcripts.

You are not authorizing the designee to receive any refund check, bind you to anything (including additional tax liability), or otherwise represent you before the IRS. If you want to expand the designee's authorization or desire automatic issuances of copies of notices, see Pub. 947, *Practice Before the IRS and Power of Attorney*.

The Third-Party Designee authorization is substantially equivalent to Form 8821, Tax Information Authorization, but automatically expires one year from the due date (without regard to extensions) for filing your 2008 Form 945. If you or your designee desire to terminate the authorization, a written statement conveying your wish to revoke the authorization should be submitted to the IRS service center where the return was processed. Use the address for *Where to file (without a payment)* in the chart on page 2.

Who must sign. Form 945 must be signed as follows:

- **Sole proprietorship** — The individual who owns the business.
- **Corporation** (including an LLC treated as a corporation) — The president, vice president, or other principal officer duly authorized to act.
- **Partnership** (including an LLC treated as a partnership) or **unincorporated organization** — A responsible and duly authorized member or officer having knowledge of its affairs.
- **Single member limited liability company (LLC) treated as a disregarded entity** — The owner of the limited liability company (LLC).
- **Trust or estate** — The fiduciary.

Form 945 may also be signed by a duly authorized agent of the taxpayer if a valid power of attorney has been filed.

Alternative signature method. Corporate officers or duly authorized agents may sign Form 945 by rubber stamp, mechanical device, or computer software program. For details and required documentation, see Rev. Proc. 2005-39. You can find Rev. Proc. 2005-39 on page 82 of Internal Revenue Bulletin 2005-28 at www.irs.gov/pub/irs-irbs/irb05-28.pdf.

Paid preparers. A paid preparer must sign Form 945 and provide the information in the "Paid Preparer's Use Only" section if the preparer was paid to prepare Form 945 and is not an employee of the filing entity. Paid preparers must sign paper returns with a manual signature. The preparer must give you a copy of the return in addition to the copy to be filed with the IRS.

If you are a paid preparer, write your SSN or your Preparer Tax Identification Number (PTIN) in the space provided. If you work for a firm, also write the firm's name and the EIN of the firm. You can apply for a PTIN using Form W-7P, Application for Preparer Tax Identification Number. You cannot use your PTIN in place of the EIN of the tax preparation firm.

Generally, do not complete this section if you are filing the return as a reporting agent and have a valid Form 8655, Reporting Agent Authorization, on file with the IRS. However, a reporting agent must complete this section if the reporting agent offered legal advice, for example, advising the client on determining whether federal income tax withholding is required on certain payments.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on Form 945 to carry out the Internal Revenue laws of the United States. We need it to figure and collect the right amount of tax. Sections 3402, 3405, and 3406 of the Internal Revenue Code require taxpayers to pay over to the IRS federal income tax withheld from certain nonpayroll payments and distributions, including backup withholding. Form 945 is used to determine the amount of the taxes that you owe. Section 6011 requires you to provide the requested information if the tax applies to you. Section 6109 requires filers and return preparers to provide their identification numbers. Failure to provide this information in a timely manner may subject you to penalties and interest.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

Generally, tax returns and return information are confidential, as required by section 6103. However, section 6103 allows or requires the Internal Revenue Service to

disclose or give the information shown on your tax return to others described in the Code. For example, we may disclose your tax information to the Department of Justice for civil and criminal litigation, and to cities, states, ~~and the District of Columbia for use in administering~~ their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

The time needed to complete and file Form 945 will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 7 hr., 9 min.; **Learning about the law or the form**, 47 min.; and **Preparing and sending the form to the IRS**, 56 min. If you have comments concerning the accuracy of these time estimates or suggestions for making Form 945 simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send Form 945 to this address. Instead, see *Where to file* on page 1.
