

2010



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

Electronic deposit requirement. The IRS has issued proposed regulations under section 6302 which provide that beginning January 1, 2011, you must deposit all depository taxes (such as employment tax, excise tax, and corporate income tax) electronically using the Electronic Federal Tax Payment System (EFTPS). Under these proposed regulations, which are expected to be finalized by December 31, 2010, Forms 8109 and 8109-B, Federal Tax Deposit Coupon, cannot be used after December 31, 2010. For more information about EFTPS or to enroll in EFTPS, visit the EFTPS website at www.eftps.gov, or call 1-800-555-4477. You can also get Pub. 966, The Secure Way to Pay Your Federal Taxes.

Voluntary income tax withholding rates for 2011. The 10%, 15%, and 25% voluntary income tax withholding rates that applied in 2010 increase to 15%, 28%, and 31%, respectively, for payments made in 2011. However, at the time these instructions were prepared for printing, an extension of the previous rates was being discussed in Congress. To find out if additional legislation was enacted to extend the previous rates, monitor the news media or go to IRS.gov, click on Forms and Publications, and then click on Changes to Current Tax Products.

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 **Businesses Topics** heading.

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

Employment tax adjustment process. If you discover an error on a previously filed Form 945, make the correction using 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. For more information, get the Instructions for Form 945-X or visit the IRS website at IRS.gov and type *Correcting Employment Taxes* in the search box.

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

Credit or debit card payments. Payers can pay the balance due shown on Form 945 by credit or debit card. Do not use a credit or debit card to make federal tax deposits. For more information on paying your taxes with a credit or debit card, visit the IRS website at www.irs.gov/epay.

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:

- 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.

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 do not have 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 Treasury
Delaware	New York	Internal Revenue Service
District of Columbia	North Carolina	Internal Revenue Service
Georgia	Ohio	Cincinnati, OH
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 Treasury
Alaska	Montana	Internal Revenue Service
Arizona	Nebraska	Internal Revenue Service
Arkansas	Nevada	Ogden, UT
California	New Mexico	84201-0042
Colorado	North Dakota	
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	Internal Revenue Service
	P.O. Box 409101	P.O. Box 105288
	Ogden, UT	Atlanta, GA
	84409	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
Internal Revenue Service	P.O. Box 105153
Ogden, UT	Atlanta, GA
84201-0042	30348-5153

When to file. For 2010, file Form 945 by January 31, 2011. However, if you made deposits on time in full payment of the taxes for the year, you may file the return by February 10, 2011. 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 IRS.gov and click on *Apply for an Employer Identification Number (EIN) Online*. 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.

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 15% rate in 2011. Recipients paid under the Railroad Unemployment Insurance Act may also elect withholding at a 15% rate in 2011.

Recipients of any of the following federal payments may request federal income tax withholding in 2011 at a rate of 7%, 15%, 28%, or 31% 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, using EFTPS. 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.

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 2011, you are a monthly schedule depositor for Form 945 if the total tax reported on your 2009 Form 945 (line 3) was \$50,000 or less. If the total tax reported for 2009 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).

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 have to file Form 945 in the future, file a final return. Be sure to check the box on line A and enter the date that final nonpayroll payments were made.

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 1099-MISC) or Form W-2G, you must report the federal income tax withheld on Form 945.

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—Total taxes. Add lines 1 and 2. If total taxes are \$2,500 or more, the amount reported on line 3 must equal the total liability for the year reported on line 7M of the Monthly Summary of Federal Tax Liability, or line M of Form 945-A.

Line 4—Total deposits. Enter your total Form 945 deposits for the year, including any overpayment that you applied from filing Form 945-X and any overpayment that you applied from your 2009 return.

Line 5—Balance due. You do not have to pay if line 5 is under \$1. Generally, you should have a balance due only if your total taxes for the year (line 3) 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 "2010" on your check or money order and make it payable to the "United States Treasury." Complete Form 945-V, Payment Voucher, if you are making a payment with Form 945. If line 3 is \$2,500 or more and you deposited all taxes when due, the amount on line 5 should be zero.



If you did not 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 6—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 6 is under \$1, we will send a refund or apply it to your next return only on written request.

Line 7—Monthly Summary of Federal Tax Liability.



*This is a summary of your monthly tax liability, not a summary of deposits made. If line 3 is less than \$2,500, **do not** complete line 7 or Form 945-A.*

Complete line 7 only if you were a **monthly schedule depositor** for the entire year and line 3 is \$2,500 or more. See *Determining your deposit schedule* on page 2.



The amount entered on line 7M must equal the amount reported on line 3.

Report your liabilities on Form 945-A instead of on line 7 if either of the following apply.

- You were a **semiweekly schedule depositor** during 2010. **Do not** complete entries A through M of line 7. Instead, complete and file Form 945-A with Form 945.
- You were a **monthly schedule depositor** for 2010 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 2010 (and for 2011), you must report your liabilities on Form 945-A for the entire year. **Do not** complete entries A through M of line 7. 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 2010 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-digit personal identification number (PIN) for the specific person to speak with — not the name of the firm who prepared your return.

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:

- Give the IRS any information that is missing from your return,
- Call the IRS for information about the processing of your return or the status of your refund or payments,
- Receive copies of notices or transcripts related to your return upon request, and
- Respond to certain IRS notices about math errors, offsets, and return preparation.

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, see Pub. 947, *Practice Before the IRS and Power of Attorney*.

The authorization will automatically expire 1 year from the due date (without regard to extensions) for filing your 2010 Form 945. If you or your designee wants to terminate the authorization, write to the IRS office for your locality using 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 a limited liability company (LLC) treated as a corporation)** — The president, vice president, or other principal officer duly authorized to sign.

- **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 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, 2005-28 I.R.B. 82, available at www.irs.gov/irb/2005-28_IRB/ar16.html.

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, enter your Preparer Tax Identification Number (PTIN) in the space provided. Include your complete address. If you work for a firm, enter the firm's name and the EIN of the firm. You can apply for a PTIN online or by filing Form W-12, IRS Paid Preparer Tax Identification Number (PTIN) Application. For more information about applying for a PTIN online, visit the IRS website at www.irs.gov/taxpros. 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 you to provide your identification number.

You do not have 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, the District of Columbia, and U.S. commonwealths and possessions to administer 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 2.
