IRM PROCEDURAL UPDATE

DATE: 01/21/2025

NUMBER: ts-21-0125-0077

SUBJECT: Form 940 (SP) Replaced Form 940 (PR)

AFFECTED IRM(s)/SUBSECTION(s): 21.7.3

CHANGE(s):

IRM 21.7.3.1.1 Add reference to Form 940 (SP).

(1) The Federal Unemployment Tax Act (FUTA) provides for cooperation between states and the federal government in the establishment and administration of unemployment insurance. Unemployment insurance is a system which provides benefits for unemployed workers. Unemployment taxes, which are paid to federal and state governments by covered employers, subsidize state administered unemployment insurance programs and create a fund that is used to pay unemployment benefits to unemployed workers.

(2) Employees in the Accounts Management (AM) and Field Assistance (FA) organizations respond to taxpayer inquiries (in-person, phone, and paper) as well as claims, certain applications, internal requests, and transcripts related to Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return and Form 940 (SP), Employer's Annual Federal Unemployment (FUTA) Tax Return (Spanish Version).

IRM 21.7.3.2 Added reference to Form 940 (SP) and note explaining Form 940 (SP) replaced Form 940 (PR).

(1) The Federal Unemployment Tax Act (FUTA) provides for cooperation between states and the federal government in the establishment and administration of unemployment insurance. Unemployment insurance is a system which provides benefits for unemployed workers. Unemployment taxes, which are paid to federal and state governments by covered employers, subsidize state administered unemployment insurance programs and create a fund that is used to pay unemployment benefits to unemployed workers.

(2) This IRM subsection contains instructions for adjusting Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, and Form 940 (SP), Employer's Annual Federal Unemployment (FUTA) Tax Return (Spanish Version), tax accounts and requesting manual credit certification from state agencies. Only the first $7,000 paid to each employee is subject to FUTA tax. The FUTA tax applies to payments such as:

- Salaries
- Wages
- Commissions
- Fees
- Bonuses
- Vacation allowances
- Amounts paid to temporary or part-time employees
- Value of goods, lodging, food, clothing, and other non-cash fringe benefits if not excludable per IRC 3306 (b)13, IRC 3306 (b)(14), or IRC 3306 (b)(16)

Note: Form 940 (SP) replaced Form 940 (PR) effective for the tax period beginning January 1, 2023. Form 940 (PR) is no longer available to file for tax periods beginning after December 31, 2022.

(3) When taxpayer contact meets the Taxpayer Advocate Service (TAS) criteria (see IRM 13.1.7, Taxpayer Advocate Service (TAS) Case Criteria) and we are unable to resolve the taxpayer's issue the same day, refer the taxpayer to TAS. The definition of "same day" is within 24 hours. "Same day" cases include cases you can completely resolve in 24 hours as well as cases in which you have taken steps within 24 hours to begin resolving the taxpayer's issue (see IRM 13.1.7.5, Same Day Resolution by Operations). Do not refer cases to TAS unless they meet TAS criteria or the taxpayer asks for TAS assistance. The Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), is used to forward cases to TAS. If a taxpayer prefers to contact TAS directly, provide the TAS toll-free number 877-777-4778.

Note: All IRS employees must be familiar with TAS criteria and the Taxpayer Bill of Rights (TBOR). For more information about TBOR, refer to Pub 1, Your Rights as a Taxpayer, and the TAS Taxpayer Bill of Rights link. The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights.

IRM 21.7.3.3.7 Removed reference to Form 940 (PR).
(1) If the taxpayer checks box "b" on Form 940, Code and Edit codes the return with a CCC "5" indicating the taxpayer is a successor employer.

(2) This designation indicates the employer is entitled to certain credits based on payments made by the predecessor employer. Refer to Publication 15, (Circular E), Employer's Tax Guide, for more information.