A payroll audit is an examination of the records of a contributing employer in a multi-employer plan to determine whether the employer has made the required contributions to the participating plan. This article is based on the chapter discussing payroll audits, written by Lawrence R. Beebe, in the Trustees Handbook, Seventh Edition, being published this fall by the International Foundation.

The primary purpose of an audit is to determine whether an employer has reported all of the hours or wages that a collective bargaining agreement (CBA) requires be reported. The payroll audit is also used to determine any deficient or delinquent amounts due to the plan because the employer failed to report all hours or wages. Trustees help fulfill their fiduciary duties for a plan by having a payroll audit performed by an external certified public accountant (CPA).

Why should trustees conduct payroll audits as part of their fiduciary responsibility?

Trustees have a responsibility to collect delinquent contributions. In the case of Central States Pension Fund v. Central Transport, Inc., the court rejected the argument that the responsibility for collecting delinquent contributions was that of the union, the Department of Labor (DOL) or beneficiaries. ERISA has given this responsibility to trustees, and if trustees don’t fulfill their responsibility in a prudent manner, they can be held personally liable.

A trustee should insist that the trust fund have a detailed written collection policy for the administrative staff to follow. This policy should state how the payroll audit will be conducted. The form and content of the audit should be a part of the plan’s written collection policy.

Another reason for conducting payroll audits has to do with a plan’s audited financial statements. Auditors of employee benefit plans must follow procedures established by the accounting profession. Primary among these is that the audit must be conducted in accordance with generally accepted auditing standards (GAAS). An auditor who deviates from GAAS may be subject to civil and criminal liability. Loss of license and/or other sanctions by the American Institute of Certified Public Accountants (AICPA) might also occur. One of the GAAS requires the independent auditor to gather material to support the opinion the CPA renders regarding the plan’s financial statements. As part of gathering this evidence, the auditor must verify the income of the plan, including employer contributions. In a multiemployer plan audit it is difficult, if not impossible, to gather enough information regarding the completeness of employer contributions without doing payroll audits.

AICPA has published an audit guide (an interpretation of GAAS that should be adhered to by CPAs) entitled Audits of Employee Benefit Plans. This guide states that in audits of multiemployer plans, an auditor should compare the employer’s contribution reports with information shown in the participant’s payroll records to gain information about participant data. The guide does not use the term payroll audit, but the requirement is clear. The guide suggests several alternatives to payroll audits, but each of these alternatives has its own complications and risks.

What happens if the auditor cannot...
gather the necessary information about participant data? In such a circumstance, the auditor will not be able to give an unqualified opinion on the plan's financial statements. Because the scope of the auditor's work was not sufficient, the auditor will have to give a qualifying opinion or disclaimer of opinion. The failure to have an unqualified opinion can have disastrous consequences to a plan.

If a plan has more than 100 participants, DOL and the Internal Revenue Service require that an independent auditor's report be attached to a plan's financial statements, which accompany the federal Form 5500. DOL will not accept an auditor's report that has been qualified due to trustee failures to have a payroll audit program. When the filing is rejected because of a qualified opinion, DOL treats the filing as if it were a nonfiling. DOL can assess penalties of up to $1,100 per day against plan administrators that fail to file timely and complete reports.

Other reasons for a payroll audit program include:

- We want to believe that all employers pay their contributions to employee trust funds because they are genuinely concerned about the welfare of their workers. For most employers, this is true. For others, the only factor that may keep them honest is the fear that they will be caught and penalized if they don't pay when required. A payroll audit program puts the less-than-honorable employer on notice that trustees are serious about collecting contributions. If employer X down the street is audited and penalized for nonreporting, then employer Y may pay what he owes to avoid the same penalties. Payroll auditing can be preventive medicine.
- Payroll audits can help deal with suspicions that an employer is not fulfilling the terms of the CBA. When participants receive their annual benefit statements, local union officials may complain that an employer is not reporting all employees covered by the CBA. The payroll audit should find these unreported employees. Of course, if the employer hides or disguises payments to employees by paying for work in cash, the payroll audit may not be successful in discovering the problem.
- There is the chance that an employer will go nonunion or not renew the CBA. In addition to assessing any withdrawal liability, the final payroll audit determines whether the employer properly remitted all contributions due up to the date of termination. Employers that cease to be covered by a CBA also present a problem. Employers may stop their contributions before the CBA expires. A payroll audit on terminating employers ensures that remittances are sent through the termination date of the CBA.
- New employers often present a problem because they may not understand the reporting requirements set forth in the CBA. Many funds have a policy of auditing new employers after six or nine months of reporting. As part of this process, the audited employer can be trained how to report properly.
- When an employer experiences financial difficulty, payment of the employees’ fringe benefits slows or often stops completely. Most plans have a mechanism to police such delinquencies. If an employer fails to cooperate with the collection enforcement action that follows, the plan will refer the matter to legal counsel. The attorneys representing the plan will very likely request a payroll audit to support their legal action.