Multiemployer Payroll Auditing

by Lawrence R. Beebe

Reproduced with permission from Benefits Magazine, Volume 56, No. 9, September 2019, pages 40-46, published by the International Foundation of Employee Benefit Plans (www.ifebp.org), Brookfield, Wis. All rights reserved. Statements or opinions expressed in this article are those of the author and do not necessarily represent the views or positions of the International Foundation, its officers, directors or staff. No further transmission or electronic distribution of this material is permitted.
Update

Recent changes to multiemployer plan payroll audit standards and guidance may require multiemployer plans to change their payroll audit procedures.
Payroll auditing has changed significantly since Phil Vivirito and I wrote the first edition of Payroll Auditing: A Guide for Multiemployer Plans published by the International Foundation of Employee Benefit Plans in 2008.

There was no written guidance on multiemployer payroll auditing at that time. Phil and I, with a combined 60 years of experience in payroll auditing, thought we could provide that guidance. We wrote the book based on how we performed payroll audits.

After the first edition of the payroll auditing guide was published, we began communicating with other payroll auditors and found that there were many similarities in how we all conducted payroll audits, but there were many differences as well. The second edition of the book, published by the International Foundation in 2013, was a vast improvement over the first edition, partly because it detailed the various methodologies that could be used for payroll auditing. Even in 2013, there was still no additional guidance on payroll auditing by any authoritative source.

However, that has changed over the last few years, with the American Institute of Certified Public Accountants (AICPA) releasing a new standard and guidance. This article will describe typical practices for payroll auditing and explain the recent changes. It is designed to help multiemployer plans decide what changes they should make in the conduct of payroll audits in light of the new developments.

**AUP vs. Consulting Services Engagements**

Payroll audits are performed on multiemployer plan contributing employers to satisfy two primary objectives. One is to ensure that trustees are fulfilling their fiduciary responsibility, as required by the Employee Retirement Income Security Act (ERISA), to collect all contributions due to the plan. The second is an accounting objective, referred to as the completeness objective, which is satisfied by ensuring that contributions to the plan are complete and accurate.

The accounting and payroll records necessary to verify contributions for each employer are maintained at the employer’s location, and most often the payroll auditor must travel to that location to perform the necessary verification process.

Payroll Auditing: A Guide for Multiemployer Plans states that “. . . the payroll audit procedures that the trustees and auditor have agreed (to) will be performed.” This implies that payroll audits are being performed as agreed-upon procedures (AUP) engagements. Many certified public accounting (CPA) firms issued reports on their payroll audits stating that they were AUP engagements because that term is used by AICPA.

With AUP engagements, the client and the CPA agree on the procedures to be followed in the audit. Payroll auditing did not perfectly fit the AUP standards set by AICPA, but AUP engagements were a better fit than anything else the AICPA had.

An informal survey that I took in 2017 revealed that most of the 20 firms surveyed were doing payroll audits as AUP engagements. However, two firms were doing substantial numbers of payroll audits as consulting engagements, and another firm performed some payroll audits as AUP engagements and some as consulting engagements.

If a CPA firm performs payroll audits as consulting services engagements, the firm must follow the standards on standards for consulting services as promulgated by AICPA.

**Takeaways**

- Multiemployer payroll audits are performed to ensure that trustees are fulfilling their fiduciary responsibility to collect all contributions to the plan and to ensure that contributions to the plan are complete and accurate.
- Written guidance on multiemployer payroll auditing was scant until 2016, when new standards and guidance were issued by the American Institute of Certified Public Accountants (AICPA).
- Many certified public accounting (CPA) firms stated that their multiemployer payroll audits were agreed-upon procedures (AUP) engagements, which means the client and the CPA agree on the procedures to be followed in the audit.
- Some CPA firms conduct payroll audits as consulting engagements, which are not subject to peer review.
- In 2016, AICPA issued a statement on Standards for Attestation Engagements (SSAE) No. 18, Attestation Standards: Clarification and Recodification, which codifies and clarifies all existing attestation standards.
- AICPA is publishing a multiemployer chapter to its audit and accounting guide for employee benefit plans. The chapter provides additional guidance on the performance of payroll audits and on what procedures need to be performed and what documentation is needed.
• **What is the difference between payroll audits performed as AUP engagements and those performed as consulting engagements?** An AUP engagement is one type of attest service covered by AICPA standards. The CPA practitioner “...expresses a conclusion about the reliability of a written assertion that is the responsibility of another party.” There are actually two other parties in a payroll audit—the **engaging party** (i.e., the employee benefit plan hiring the auditor) and the **responsible party** (i.e., the employer whose records the CPA is inspecting). On the other hand, in a consulting service payroll audit, the “...practitioner develops findings, conclusions and recommendations (that are) presented.”

In neither an AUP payroll audit nor a consulting service payroll audit is the independence of the CPA impaired, as long as the CPA does not perform any management functions as part of the engagement.

• **Why are some CPA firms performing their payroll audits as consulting engagements instead of as AUP engagements?** An AUP engagement is classified by AICPA as an attest engagement—just as audited and reviewed statement engagements performed by CPAs are attest engagements. CPA firms are required to have a peer review performed by another CPA firm every three years. As part of the peer review, the reviewing CPA firm selects attest engagements to review as part of the process. Each engagement selected for review is subject to a thorough examination of all of the working papers and documentation. A consulting engagement, however, is not an attest engagement and therefore is not subject to peer review. Since the procedures performed in a payroll audit whether performed as an AUP engagement or a consulting engagement are the same, firms prefer issuing the report under the consulting standards that are not subject to peer review.

One of the problems with AUP engagements arises when CPAs issue their payroll audit reports, and the reports detail significant findings stating that employers owe significant delinquent contributions. Some employers have disputed the findings, and the disputes are litigated. As part of their defense, some employers have argued that the CPAs have not followed the AUP standards as promulgated by AICPA and that the employer never agreed to the procedures performed. Some employers have even hired experts to opine on the alleged failure of the CPAs performing payroll audits to rigidly follow AICPA AUP pronouncements.

Phil Vivirito has testified several times on behalf of the CPA firms that conducted the payroll audits. First of all, he has testified that the employer is not one of the two parties to the AUPs. The two parties are the plan that hires the CPA to do the payroll audit and the auditor.

Secondly, he has testified that payroll auditors conduct their work as AUP engagements because they fit payroll audits better than anything else AICPA prescribed. He admits that payroll auditors do not adhere to the AICPA AUP pronouncements exactly because they do not fit payroll audits exactly. Judges, in each instance, have upheld the payroll audits as performed and have recognized the employer is simply trying to find a way to circumvent the reporting requirement.

**Reliance on Payroll Audits**

In its review of the working papers of CPAs performing multiemployer audits, the Department of Labor (DOL) states that many CPAs are not stating how they are relying on the payroll...
Multiemployer payroll audits

Audit process in their work on contributions. CPAs are, in many instances, not testing the work performed by the payroll auditors. CPAs should have a well-documented narrative in their working papers on how they are relying on payroll audits and also should describe their testing process on the payroll audits performed.

New Standards

New developments since publication of the updated payroll auditing guide in 2013 include the following:

- In 2016, AICPA issued a statement on Standards for Attestation Engagements (SSAE) No. 18, Attestation Standards: Clarification and Recodification, which codifies and clarifies all existing attestation standards.
- AICPA is publishing a multiemployer chapter to its audit and accounting guide for employee benefit plans. That chapter provides additional guidance on the performance of payroll audits and on what procedures need to be performed and what documentation is needed concerning an employee benefit plan's payroll audit program by the CPA rendering an opinion on the plan's financial statements.

The purpose of SSAE No. 18 Attestation Standards: Clarification and Recodification was to codify and clarify the previously issued AUP pronouncements. One of the expressed goals was to make it easier for CPAs to follow the AUP pronouncements. Unfortunately, the group within AICPA writing the new standard failed to consider the needs of CPAs performing payroll audits as AUP agreements. After SSAE No. 18 was issued, a discussion was held between AICPA and CPAs who perform payroll audits to discuss the new standards. As a result, in March 2018, AICPA issued Q&A 6935 to cover SSAE No. 18 as it applies to payroll auditing.

Q&A 6935 contains the following guidance:

1. One engagement letter can be obtained from a plan trustee covering all payroll audits performed during the period covered by the engagement letter. Typically, the engagement letter would cover all payroll audits scheduled in the coming year, and those scheduled payroll audits should be identified in the engagement letter. SSAE No. 18 originally required engagement letters to be obtained for each audit. The signed engagement letter should be obtained prior to the performance of any of the payroll audits identified in that letter.
2. CPAs who perform engagements as AUPs, including payroll audits, are required by SSAE No. 18 to obtain representation letters from the engaging party (the plan in a payroll audit) and from the responsible party (the employer in a payroll audit). Previously, CPAs were not required to obtain a representation letter from the employer. Q&A Section 6935 recognizes that the representations from the plan would be the same for each AUP engagement, and therefore states the practitioner may request and obtain one representation letter from the engaging party (i.e., the plan). The Q&A states that the representation letter should be dated as of the date of the last AUP report performed pursuant to the engagement letter. Since the representations made by the plan will not change, and since problems with one or more of the payroll audits performed could delay the issuance of the report for a period of years, a best practice would be to give the representation letter the same date as the engagement letter.

3. Most collective bargaining agreements (CBAs) and/or trust agreements between a plan and a contributing employer require employers to allow payroll audits on their payroll and accounting records to ensure that all required contributions have been made. Q&A Section 6935 states under those circumstances it " . . . may not be necessary for the practitioner to request and obtain a representation letter from the employer covering the completeness and accuracy of payroll records." The CPA would still request the letter if the CPA believes that it is important for the participating employer to acknowledge compliance with the CBA. If the repre-

Additional Resources

Visit www.ifebp.org/payrollauditsample to view the following sample documents:

- Engagement letter for payroll audits performed as agreed-upon procedures (AUP) payroll audits
- Engaging party representation letter
- Responsible party representation letter
- AUP payroll audit report
- Engagement letter for consulting services payroll audits
- Consulting services payroll audit report
sentation letter is requested and the employer refuses to provide such representation, the CPA should acknowledge the failure to obtain such a representation in the AUP report.

Conclusion

The requirements for performing payroll audits have changed. CPAs should carefully consider whether to perform these engagements as AUP engagements or as consulting engagements after considering pronouncements issued by AICPA.

Endnotes

1. An attestation engagement is an arrangement with a client when a certified public accountant (CPA) investigates and reports on subject matter created by a client. Examples include audits, reviews and compilations of financial statements and agreed-upon procedure (AUP) engagements.
3. Ibid.

Lawrence R. Beebe, CPA, is a partner with the Bethesda, Maryland accounting firm of WithumSmith+Brown, PC. His accounting and auditing practice has more than 40 years of experience, specializing in labor and employee benefit plans. Beebe is Chair of the Affordable Care Act (ACA) Expert Panel of the International Foundation and has previously chaired the International Foundation Accountants, Continuing Education and Financial Review Committees. He previously served on the International Foundation Advisory Board of Directors and the AICPA employee benefit expert panel. Beebe holds a B.S. degree in accounting from the University of Maryland and an M.A. degree from Central Michigan University.