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July 7, 2017

Delivered via email to Ralph.M.Terry@irs.gov

Ms. Laurie Brimmer
Internal Revenue Service
Room 6526
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Response to Request for Comments on Form 8974

Dear Ms. Brimmer:

On behalf of the National Association of Professional Employer Organizations (NAPEO),¹ I would like to convey NAPEO's appreciation for the opportunity to submit comments pursuant to the Paperwork Reduction Act (PRA) on the Internal Revenue Service's (IRS) collection of information in connection with Form 941 (Employer's Quarterly Federal Tax Return) and related schedules and forms.² Our comments below focus on Form 8974 (Qualified Small Business Payroll Tax Credit for Increasing Research Activities) and some changes to the form that we believe would be helpful in improving its clarity and increasing its usability, including especially in the certified professional employer organization (CPEO) context.

CPEO-SPECIFIC COMMENTS ON FORM 8974

- **CPEO Responsibility:** The Form 8974 instructions for Line 8 and Line 9 indicate that the CPEO must "prepare" a Form 8974 for each client taking the credit. However, a CPEO would not have the information necessary with respect to each client to complete most of the form. We suggest that the instructions be changed to state that a CPEO must "file" a

¹ The National Association of Professional Employer Organizations (NAPEO) is The Voice of the PEO Industry. PEOs provide payroll, benefits, regulatory compliance assistance, and other HR services to small and mid-sized companies. PEOs work with between 156,000 to 180,000 businesses employing between 2.7 and 3.4 million people, and the industry generates between \$136 and \$156 billion in gross revenues annually. For more information about the PEO industry and NAPEO, please visit www.napeo.org.

² 82 Fed. Reg. 21,455 (May 8, 2017).

Form 8974 for each client taking the credit (instead of requiring the CPEO to “prepare” a Form 8974).

- **Employer Identification Number (EIN):** We request that the instructions clarify that, in the case of a CPEO, the EIN requested at the top of Form 8974 should be the CPEO client’s EIN, and not the CPEO’s EIN.
- **CPEO as Filer Indicator:** We request that a box be added to Form 8974 to indicate “Type of Filer – CPEO,” in addition to a box to include the CPEO’s EIN. This would be similar to the updated Form 941 (Schedule R) and would enable the IRS to track that the Form 8974 is being filed by a CPEO on behalf of a client.
- **Client Contact:** We request that Form 8974 include a line for client contact information (e.g., name and client phone number) so that any questions that arise in connection with the form can be directed to the client.
- **Client Tax Return Amendments and Audits:**
 - We request clarification that any implications resulting from a client that amends its income tax return with a qualified small business payroll tax credit change would be applied to a CPEO on a prospective basis. If such changes are not allowed to be addressed by the CPEO on a prospective basis, the CPEO could have multiple Form 941-X amended returns.

For example, if a client filed its corporate tax return on April 16, 2017 and did not make an election for the qualified small business payroll tax credit, the client could amend its corporate tax return under Notice 2017-23 on October 2, 2017. The October 2nd amended return would allow the credit to be used in the first quarter of 2018. We seek clarification that a CPEO would not be required to amend Form 941 with respect to the third and fourth quarters of 2017 to utilize the payroll tax credit.

- Similar to the point above, there may be situations in which a CPEO client amends a corporate tax return, and that change results in a qualified small business payroll tax credit that is less than the amount previously provided to the CPEO. We request clarification with respect to how the CPEO should back out of the credit already utilized or take other corrective action.
- Similar again to the point above, there may be situations in which a client is audited by the IRS, and the IRS disallows the qualified small business payroll tax credit. We request clarification that (1) the CPEO would not be required to amend the associated Form 941 that was filed by the CPEO and (2) the client would be responsible for the IRS assessment related to the payroll tax credit utilized by the CPEO with respect to that client.

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- **Filing Methods:** CPEOs are generally required to file Form 941 and all required schedules electronically. In connection with this electronic filing requirement, we request clarification on how Form 8974 should be filed electronically. For example, should CPEOs file Form 8974 as a PDF attachment or as an XML file? Similarly, in situations in which a CPEO is allowed to file Form 941 and all required schedules on paper, please provide clarification with respect to how the CPEO should attach the Forms 8974.

COMMENT ON FORM 8974 NOT SPECIFIC TO CPEOS

- **Amount of Carryforward Credit:** We request that an additional line be added to Form 8974 (Line 13) showing the amount of the qualified small business payroll tax credit that remains and is available for use in future periods. This amount should be rolled forward to a beginning balance line item in the subsequent quarter.

* * * * *

We appreciate your consideration of our comments on Form 8974, especially as the form may be applicable in the CPEO context. Should you have any questions with respect to the issues discussed herein or any other related matters, please contact me at (202) 347-2230 or Thom Stohler of NAPEO at (703) 739-8167.

Sincerely,



Randolf H. Hardock
Davis & Harman LLP
(On behalf of the National Association of
Professional Employer Organizations)

Cc: via email

Christa Bierma (Treasury)
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