1099
YEAR-END PLANNING

TABLE OF CONTENTS

I. INDEPENDENT CONTRACTOR OR EMPLOYEE?

INDEPENDENT CONTRACTOR OR EMPLOYEE?

Do you really have employees? Or are they independent contractors? The business relationship between the organization (you) and the person performing the services is an incredibly important one to define. Only once these roles are defined will you know how payments should be treated.

FOUR TYPES OF WORKERS

There are four ways the person who performs the services for your organization can be classified: common law employee, statutory employee, statutory non-employee or an independent contractor.

COMMON LAW EMPLOYEE

The key to common-law rules is control. If the organization can control what will be done (the results of the work) and how it will be done (the method by which the work is performed), then the person performing the services is the organization's employee.

It doesn't matter under common-law rules what your title is or how your workers are classified. Managers, support staff, supervisory personnel ... they're all employees. Partners, however, are not employees.

STATUTORY EMPLOYEE

Common-law employees are not the only type of employees. Independent contractors can still be considered employees by statute if they fall under any of the following four categories:

- A driver who distributes beverages (other than milk) or food (meat, vegetable, fruit or bakery products) or who delivers dry cleaning if the driver is the organization's agent or paid on commission.
- A full-time life insurance sales agent who sells primarily for one life insurance company.
- Someone who works at home on materials for an organization. The organization supplies the materials and materials must be returned to the organization if the organization furnishes specifics for the work to be done.
- A full-time salesperson who works on behalf of an organization.

STATUTORY NON-EMPLOYEE

These individuals fall into three categories: direct sellers, licenses real estate agents and certain companion sitters.

INDEPENDENT CONTRACTOR

An individual who provides services to another individual or business. This individual is a separate business entity doing work on behalf of an organization. nization with wholesalers, retailers, contractors or hotel operators, etc. as their primary business activity.

SO HOW DO I TELL WHICH I HAVE?

An employer-employee relationship is most often determined by the "common-law" test. As noted above, the common-law test focuses on control, specifically related to two elements:

- What must be done (the results of the work)
- How it must be done (the way the work is performed)

An individual is considered an employee if the employer can control both aspects of the test. In other words, you have the right to control the results of the work and how the work is performed.

A worker is considered an independent contractor if the employer can only control the result of the work. Simply put, if the individual can dictate how the work is performed, that person is considered an independent contractor.

WHY DOES THIS MATTER?

If an individual is considered an employee, you as the business owner are required to withhold payroll tax. If they're an independent contractor, you're not. And when it comes to year-end planning/tax time, employees receive Form W-2, while independent contractors receive Form 1099-MISC.

ANYTHING ELSE I NEED TO KNOW?

An important distinction for independent contractors is that they are, in fact, independent. But how do you really define independence versus control? The IRS uses three categories to help determine employee status:

BEHAVIORAL CONTROL

Here we're talking about the right to direct or control how the worker performs a specific task. Specifically, this category looks at types of instruction given (what tools to use, what workers to hire, when the work is to be performed, etc.), if there's an evaluation system to measure details of performance and if ongoing training is given.

If these items are all present, it generally points toward an employee/employer relationship.

FINANCIAL CONTROL

When looking at financial control, the IRS looks at factors that point to control of the economic aspects of a worker's activities. Things to consider include:

- Significant investment: Has the individual made a significant investment in tools or facilities used to perform the task for your organization?
- Unreimbursed expenses: Has the individual chosen to incur expenses and bear the cost of the services provided for your organization?
- Services available to relevant market: Does the individual make themselves available to other organizations or individuals similar to your organization?

If the answers to the above questions are yes, then you're looking at an independent contractor relationship. Other items to note in this category include method of payment (hourly v. flat fee for services) and opportunity for profit or loss (is the individual free to make business decisions affecting his/her own profit or loss).

RELATIONSHIP OF PARTIES

This category hinges on the question of how the worker and the business perceive each other in terms of intent concerning control.

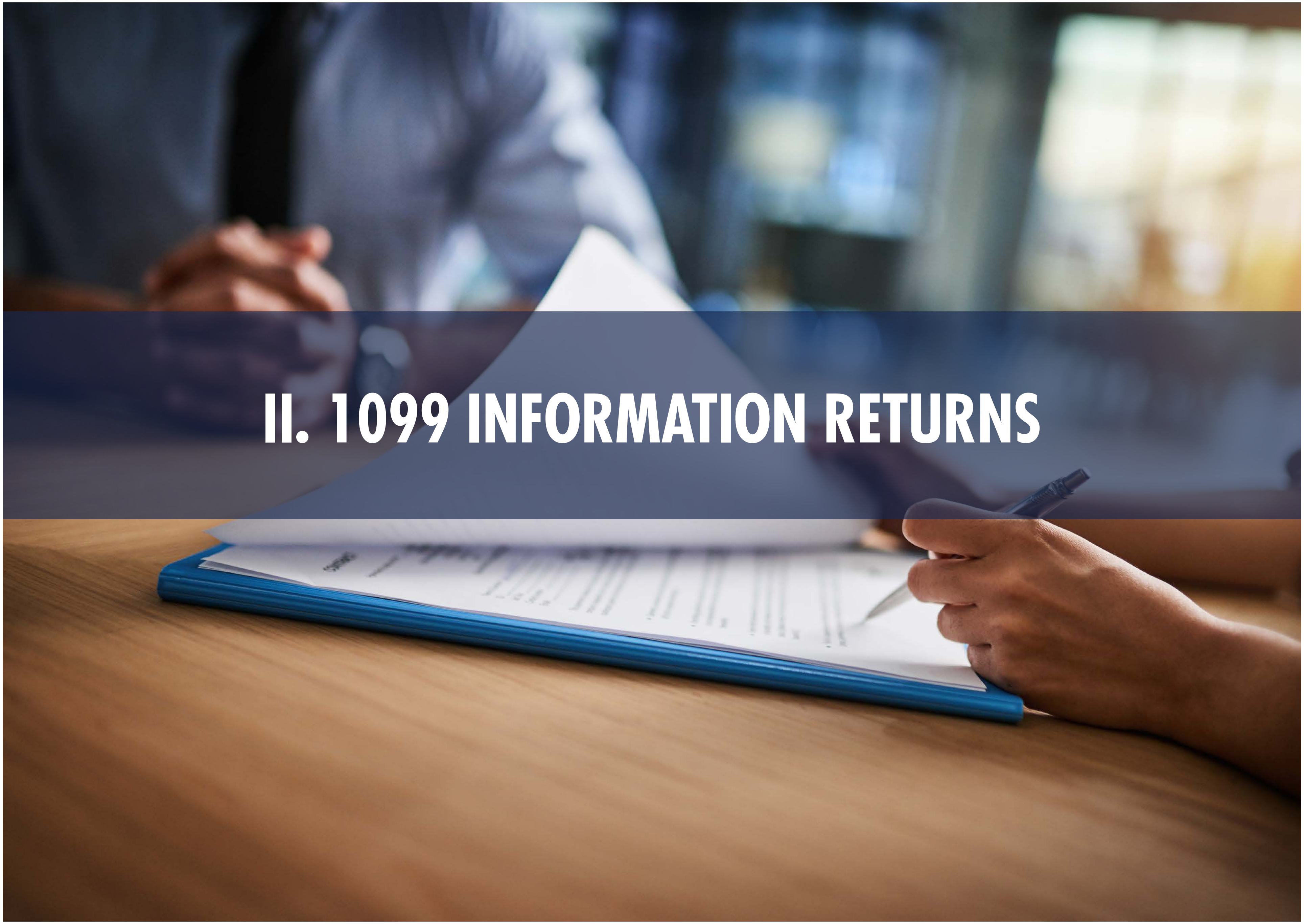
What does intent concerning control mean? Here are some triggers:

- Intent of parties/written contracts: a written agreement describing the worker as an independent contractor, methods of payment, expenses to be reimbursed, etc.
- Employee benefits: providing a worker with benefits including paid vacation or sick pay, health insurance, life insurance, etc.
- Regular business activity: services performed by the individual are a key aspect of the regular business of the organization

STILL NOT SURE?

No set of factors will give you a definite answer. When the IRS looks at who is an employee and who isn't, they look at all the facts and circumstances within that situation.

If you find yourself second guessing if an individual is an employee or and independent contractor, there's a special form known as Form SS-8. The IRS uses the information on that form, as well as any other information they can obtain from the parties involved, to determine the status of the worker in question.


II. 1099 INFORMATION RETURNS

FORM 1099 SERIES: GENERAL FILING REQUIREMENTS

GENERAL REQUIREMENTS

Taxpayers that make certain payments to nonemployees during a calendar year must furnish annual information returns both to the IRS and to the nonemployee recipient of the payment. The filing of these returns helps the IRS determine whether the nonemployee is reporting all income received during the year.

In order to facilitate the reporting of these payments, IRS has developed the Form 1099 Series, which is a group of forms used to report ordinary kinds of payments made by a taxpayer:

- Dividends
- Interest
- Retirement Distributions
- Miscellaneous income payments

Although each Form 1099 has its own specific reporting requirements, there are several filing requirements that apply uniformly to each of these forms.

Certain foreign financial institutions (FFI) or U.S. payors having a FATCA filing requirement under chapter 4 may satisfy their requirements by reporting on Forms 1099 under the election described in Regs 1.1471-4(d)(5)(i)(A) or (B). Specific check boxes are included on the 1099 forms to identify an FFI filing this form to satisfy the chapter 4 requirement.

If the due date for filing a Form 1099 with a recipient or with the IRS falls on a Saturday, Sunday, or legal holiday, the form is deemed timely if it is filed the next succeeding business day.

The due date for furnishing statements to recipients for Forms 1099-B, 1099-S, and 1099-MISC (**if reporting amounts in boxes 8 or 14**) has been extended to February 15.

Taxpayers can request an automatic 30-day extension of time for filing by completing Form 8809 "Application for Extension of Time to File Information Returns." You must file Form 8809 by the due date of the returns in order to get the 30-day extension. Under certain hardship conditions you may apply for an additional 30-day extension. See the instructions for Form 8809 for more information.

DATES TO KNOW

NORMAL AND EXTENDED DUE DATES

- Form 1099 must be furnished to recipients either in person or by first-class mail by January 31st of the year following the calendar year to which such forms relate.
- These forms also must be filed with the IRS on or before February 28th of the following year, or by March 31st if filing electronically.
- However, all Forms 1099-MISC reporting Nonemployee compensation in Box 7 must be filed with the IRS on or before January 31, 2019. This applies to both paper and electronically filed forms.

HOW TO FILE FORM 1099 WITH THE IRS

Forms 1099 filed by paper with the IRS must be accompanied by transmittal Form 1096, "Annual Summary and Transmittal of U.S. Information Returns." Taxpayers must use a separate Form 1096 for each type of return. Because paper forms are scanned, all Forms 1096 and Copies A must be prepared in accordance with IRS instructions and mailed to the applicable service center.

To order official IRS forms, call 1-800-TAX-FORM (1-800-829-3676) or order online, and scannable forms will be mailed to you.

STATE AND LOCAL TAX DEPARTMENTS

Contact the applicable state and local tax department as necessary for reporting requirements and where to file Copy 1 (Forms 1099-MISC and 1099-R). Generally, the state or local tax department you need to contact will be located in the recipient's state of legal residence.

SUBSTITUTE STATEMENT TO RECIPIENTS

Substitute Forms 1099 (generally Copy B) can be used, provided they comply with format and content requirements as specified in Pub. 1179, which is revised annually. All substitute statements to recipients must contain the tax year, form number, and form name prominently displayed together in one area of the statement.

BACKUP WITHHOLDING

In some situations backup withholding may be required at a 24% rate for interest payments, dividends, rents, royalties, commissions, nonemployee compensation, and certain other payments. If the payment is one of these reportable payments, backup withholding will apply if:

- The payee fails to furnish his or her taxpayer identification number.
- Interest, dividend and barter exchange accounts opened before 1984 and broker accounts considered active during 1983 must give correct TIN, but do not have to sign.[1]
- For interest, dividend, and broker and barter exchange accounts opened or instruments acquired after 1983, the payee fails to certify, under penalties of perjury, that the TIN provided is correct.
- The IRS notifies the payer to impose backup withholding because the payee furnished an incorrect TIN.
- For interest and dividend accounts or instruments, the payer is notified that the payee is subject to backup withholding (under section 3406(a)(1)(C), or
- For interest and dividend accounts opened or instruments acquired after 1983, the payee fails to certify to the payer, under penalties of perjury, that he or she is not subject to backup withholding.

[1]IRS Publication 1281

EXAMPLES OF PAYMENTS TO WHICH BACKUP WITHHOLDING DOES NOT APPLY INCLUDE BUT ARE NOT LIMITED TO:

- Wages.
- Distributions from a pension, annuity, profit-sharing or stock bonus plan, any IRA, an owner-employee plan, or other deferred compensation plan.
- Distributions from a medical or health savings account and long-term care benefits.
- Certain surrenders of life insurance contracts.
- Distribution from qualified tuition programs or Coverdell ESAs.
- Gambling winnings if regular gambling winnings withholding is required under section 3402(q). However, if regular gambling winnings withholding is not required under section 3402(q), backup withholding applies if the payee fails to furnish a TIN.
- Real estate transactions reportable under section 6045(e).
- Cancelled debts reportable under section 6050P.
- Fish purchases for cash reportable under section 6050R.

Generally, the period for which the 24% should be withheld is as follows:

- Withhold on payments made until the TIN is furnished in the manner required. Special backup withholding rules may apply if the payee has applied for a TIN. The payee may certify this on Form W-9 by noting "Applied For" in the TIN block and by signing the form. This form then becomes an "awaiting-TIN" certificate, and the payee has 60 days to obtain a TIN and furnish it to you. If no TIN is received from the payee within 60 days, begin backup withholding and continue until the TIN is provided. The 60-day exemption from backup withholding applies only to interest and dividend payments and certain payments made with respect to readily tradable instruments. Therefore, any other payment, such as nonemployee compensation, is subject to backup withholding even if the payee has applied for and is awaiting a TIN.
- If a notice is received from the IRS that the payee's TIN is incorrect, you may choose to withhold on any reportable payment made to the account(s) subject to backup withholding after receipt of the notice but you must begin backup withholding with any reportable payment made to the account more than 30 business days after the notice is received. Stop withholding within 30 days after you receive a certified Form W-9 (or other form that requires the payee to certify under penalty of perjury). The IRS will furnish a notice to the payer and the payer is required to promptly furnish a "B" notice or an acceptable substitute to the payee.
- If an IRS notice is received that states that the payee is subject to backup withholding due to notified payee underreporting, you may choose to withhold on any reportable payment made to the account(s) subject to withholding after receipt of the notice, but you must withhold on any reportable payment made to the account more than 30 business days after you receive the notice. The payer must notify the payee when this procedure starts. The IRS will notify the payer in writing when the withholding can stop, or the payee may furnish a written certification from the IRS stating when the withholding will stop. In most cases, the stop date will be January 1 of the year following the year of the notice.

Report backup withholding on Form 945, Annual Return of Withheld Federal Income Tax. Also, report backup withholding and the amount of the payment on Forms W-2G, 1099-B, DIV, G, INT, MISC, OID, or PATR even if the amount of the payment is less than the amount for which an information return is normally required. Payments of withheld taxes must be deposited using EFTPS.

TAXPAYER IDENTIFICATION NUMBER (TIN) MATCHING

TIN Matching allows a payer to match TIN and name combinations with IRS records before submitting the forms to the IRS. TIN Matching is one of the e-services products that is offered and is accessible through the IRS website. See Publication 2108-A, On-Line Taxpayer Identification (TIN) Matching Program, or go to the IRS.gov and enter keyword "TIN matching" in the upper right corner for the registration procedure. Payers who validate the TIN and names combinations before filing will likely receive fewer backup withholding (CP2100) notices and penalty notices. E-services technical support is available by calling 866-255-0654.

TRUNCATING PAYEE IDENTIFICATION NUMBER

Final regulations permit filers of information returns in the Form 1098, 1099 and Form 5498 series to truncate a payee's SSN, EIN, ITIN, or ATIN number on recipient statements for the tax year 2018. Filers may truncate a payee's identification number on the payee statement (including substitute and composite substitute statements) furnished to the payee in paper form or electronically. Generally, the payee statement is that copy of an information return designated "Copy B" on the form. For some forms, the term "payee" will refer to beneficiary, borrower, debtor, insured, participant, payer, policyholder, recipient, shareholder, student, or transferor. If a filer truncates an identification number on Copy B, other copies of the form furnished to the payee may also include a truncated number.

A filer may not truncate a payee's identification number on any forms filed with the IRS or with state or local governments, on any payee statement furnished electronically, or on any payee statement not in the Form 1098, 1099, or 5498 series. A filer's identification number may not be truncated.

To truncate, replace the first 5 digits of the 9-digit number with asterisk (*) or Xs (for example, an SSN 123-45-6789 would appear on the paper payee statement as ***-**-6789 or XXX-XX-6789).

ELECTRONIC FILING

If the payer is required to file 250 or more returns of any individual Form 1099 type, it must file these returns electronically. The 250-or-more requirement applies separately to each type of form. For example, if you must file 500 Forms 1098 and 100 Forms 1099-A, you must file Forms 1098 electronically, but you are not required to file Forms 1099-A electronically. To receive a waiver from the required filing of information returns electronically, submit Form 8508, Request for Waiver From Filing Information Returns Electronically, at least 45 days before the due date of the returns. You cannot apply for a waiver for more than 1 tax year at a time. If a waiver for original returns is approved, any corrections for the same types of returns will be covered under the waiver. 1099s may be filed electronically through the Filing Information Returns Electronically System (FIRE System); however you must have the software that can produce a file in the proper format according to Pub 1220. The FIRE system does not provide a fill-in form option for information return reporting. You can access the FIRE system via the internet at: http://FIRE.IRS.gov.

PENALTIES FOR NONCOMPLIANCE

The penalties which can be imposed for failing to comply with the reporting and filing requirements associated with the Form 1099 Series, such as failing to file timely or electronically when required, failing to include all information required, or incorrect information included on the return has increased substantially. The amount of the penalty is based on when the correct information return is filed:

- **$50 per information return if correctly filed within 30 days**; maximum penalty $547,000 per year ($191,000 for small businesses)
- **$100 per information return if correctly filed more than 30 days after the due date but by August 1st**; maximum penalty $1,641,000 per year ($547,000 for small businesses)
- **$270 per information return if filed after August 1st or not filed at all**; maximum penalty $3,282,500 per year ($1,094,000 for small businesses)
- **$270 per information return for failure to file electronically**, unless you establish reasonable cause. However, you can file up to 249 returns on paper; those returns will not be subject to a penalty for failure to file electronically.

A small business is defined as having average annual gross receipts for the three most recent tax years (or for the period of existence, if shorter) ending before the calendar year in which the information returns were due of $5 million or less.

The following are exceptions to the failure to file penalty:

- The penalty will not apply to any failure that was due to reasonable cause and not to willful neglect. In general, one must be able to show that the failure was due to an event beyond control or due to significant mitigating factors. It must also be shown that the company acted in a responsible manner and steps were taken to avoid the failure.
- An inconsequential error or omission is not considered a failure to include incorrect information. An inconsequential error or omission does not prevent or hinder the IRS from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. Errors and omissions that are never inconsequential are those related to (a) a TIN, (b) a payee's surname, and (c) any money amount.
- *De minimus* rule for corrections. If reasonable cause cannot be shown, the penalty for failure to file correct information returns will not apply to a certain number of returns if:

  1.a. The information returns were timely filed.

  1.b. Either all the information was not included, or the incorrect information was included.

  1.c. The corrections were filed by August 1st.

If all of the conditions in a, b, and c above are met, the penalty for filing incorrect returns will not apply to the greater of 10 information returns or ½ of 1% (0.005) of the total number of information returns that are required to file for the calendar year.

Failure to provide correct payee/recipient statements by January 31 or February 15 (as required) without reasonable cause is subject to the same penalty provisions as those for late or failure to file noted earlier.

Any failure to file or provide a correct information return that is due to intentional disregard of the filing or correct information requirements is penalized at a minimum of $540 per information return with no maximum penalty.

KEEPING COPIES

Generally, keep copies of information returns filed with the IRS or have the ability to reconstruct the data for at least 3 years, 4 years for Form 1099-C, from the due date of the returns. Keep copies of information returns 4 years if backup withholding was imposed.

Special reporting requirements apply in many cases, the complete instructions for the proper completion and reporting of the following Forms 1099 can be found at www.irs.gov under the Forms and Publications tab.

FORM 1096 - ANNUAL SUMMARY AND TRANSMITTAL

Information return filers use Form 1096 to transmit paper Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G - to the IRS. Do not use the paper Form 1096 to transmit electronically. For electronic submissions, see Pub. 1220, “Specifications for Filing Forms 1098, 1099, 3921, 3922, 5498, and W-2G Electronically”. When transmitting information returns to IRS, filers should use a separate Form 1096 for different groups of information returns - e.g., a separate 1096 for a group of Form 1099-MISC and another 1096 for a group of Form 1099-R.

Form 1096 generally must be filed by the last day of January (in the case of Forms 1099-MISC reporting income in Box 7) or February when used to transmit Forms 1098, 1099, 3921, 3922, and W-2G. When used to transmit a Form 5498, 5498-ESA or 5498-SA the Form 1096 generally is due by May 31.

FORM 1099-MISC

Form 1099-MISC, "Miscellaneous Income," must be filed by a business for certain payments made to nonemployees in the course of trade or business. Personal payments are not reportable. A trade or business is any entity that operates for gain or profit. However, non-profit organizations are also subject to these reporting requirements. Organizations also subject to these reporting requirements include trusts of qualified pension or profit-sharing plans of employers, certain organizations exempt from tax under section 501(c) or (d), farmers' cooperatives that are exempt from tax under section 521, and widely held fixed investment trusts. Payments made by federal, state, or local governments are also reportable.

Form 1099-Misc is required for each person to whom payments have been made during the year:

- $10 or more in royalties or broker payments in lieu of dividends or tax–exempt interest;
- $600 or more in rents, services (including parts and materials), prizes and awards, other income payments, medical and health care payments, crop insurance proceeds, cash payments for fish you purchase from anyone engaged in the trade or business of catching fish, or generally, the cash paid from notional principal contract to an individual, partnership, or estate;
- Any fish boat proceeds;
- Gross proceeds to an attorney;
- In addition, use Form 1099-Misc to report direct sales of at least $5000 of consumer products to a buyer for resale anywhere other than a permanent retail establishment; or
- Any backup withholding regardless of the amount of payment.

EXAMPLES OF PAYMENTS FOR WHICH FORMS 1099-MISC ARE NOT REQUIRED:

- Generally payments to a corporation;*
- Payments for merchandise, telegrams, telephone, freight, storage and similar items;
- Payments of rent to real estate agents;
- Wages paid to employees (report on Form W-2);
- Military differential wage payments made to employees while they are on active duty in the Armed forces or other uniformed services (report on W-2);
- Business travel allowances paid to employee (may be reportable on W-2);
- Cost of current life insurance protection (report on Form W-2 or Form 1099-R, Distributions from Pensions, Annuities, Retirement, or Profit-Sharing plans, IRAs, Insurance Contracts, etc.);
- Payments to a tax-exempt organization including tax-exempt trusts (IRAs, HSAs, Archer MSAs, and Coverdell ESAs), the United States, a state, the District of Columbia, a U.S. possession, or a foreign government; and
- Payments made to or for homeowners from the HFA Hardest Hit Fund or the Emergency Homeowners' Loan Program or similar state program.
- Payments made with a credit card or payment card and certain other types of payments, including third party network transactions, must be reported on Form 1099-K by the payment settlement entity under section 6050W and are not subject to reporting on Form 1099-Misc.
- A payment to an informer as an award, fee, or reward for information about criminal activity is not required to be reported if the payment is made by a federal, state, or local government agency, or by a nonprofit organization exempt from tax under section 501(c)(3) that makes the payment to further the charitable purpose of lessening the burdens of government.
- Do not use Form 1099-MISC to report scholarship or fellowship grants. Scholarship or fellowship grants that are taxable to the recipient because they are paid for teaching, research, or other services as a condition for receiving the grant are considered wages and must be reported on Form W-2. Other taxable scholarships or fellowship payments (to a degree or nondegree candidate) are not required to be reported to the IRS on any form.

*Reportable payments to corporations include medical and health payments reported in box 6, fish purchases for cash reported in box 7, attorneys' fees reported in box 7, gross proceeds paid to an attorney reported in box 14, substitute payments in lieu of dividends or tax exempt interest reported in box 8, and payments by a federal executive agency for services reported in box 7.

RENTS-BOX 1

Form 1099-MISC must be filed for each person to whom a taxpayer has paid at least $600 in rents. For these purposes, rents include real estate rentals paid for office space (unless paid to a real estate agent) and machine rentals (for example, renting a bulldozer to level your parking lot), and pasture rentals. Note that if a rental fee for a machine is included in a contract that covers both the use of the machine and the operator, the contract fee rental should be prorated between the rent of the machine, reporting in box 1 and the operator's charge (reported as nonemployee compensation) in box 7.

Public housing agencies must report in box 1 rental assistance payments made to owners of housing projects. See Rev. Rul. 88-53, 1988-1 C.B. 384.

Coin-operated amusements: If an arrangement between an owner of coin-operated amusements and an owner of a business establishment where the amusements are placed is a lease of the amusements or the amusement space, the owner of the amusements or the owner of the space, whoever makes the payments, must report the lease payments in box 1 of Form 1099-MISC if the payments total at least $600. However, if the arrangement is a joint venture, the joint venture must file a Form 1065, U.S. Return or Partnership Income, and provide each partner with the information necessary to report the partner's share of the taxable income. Coin-operated amusements include video games, pinball machines, jukeboxes, pool tables, slot machines, and other machines and gaming devices operated by coins or tokens inserted into the machines by individual users. For more information, see Rev. Rul. 92-49, 1992-1 C.B. 433.

ROYALTIES-BOX 2

If a taxpayer made royalty payments during the calendar year of at least $10 or more before reduction for severance and other taxes that may have been withheld and paid, it must file Form 1099-MISC. Royalty payments that must be reported include royalty payments for oil, gas, coal, timber, sand, gravel and other mineral interests. Also include payments for intangible property such as patents, copyrights, trade names, trademarks, franchises, books and other literary compositions, musical compositions, artistic works, secret processes and formulas.

Report gross royalties (before reduction for fees, commissions, or expenses) paid by a publisher directly to an author or literary agent in box 2 unless the agent is a corporation. The literary agent (whether or not a corporation) that received the royalty payment on behalf of the author must report the gross amount of royalty payments to the author on Form 1099-MISC whether or not the publisher reported the payment to the agent on its Form 1099-MISC.

Payments for surface royalties should be reported in box 1. Oil or gas payments for a working interest should be reported in box 7. Do not report timber royalties made under a pay-as-cut contract; report these timber royalties on Form 1099-S, Proceeds From Real Estate Transactions.

OTHER INCOME-BOX 3

Enter other income of $600 or more to be reported on Form 1099-MISC that is not reportable in one of the other boxes on the form. Prizes and awards of $600 or more that are not for services rendered are reported on Form 1099-MISC box 3. Include the FMV (fair market value) of merchandise won on game shows. Also include amounts paid to a winner of a sweepstakes not involving a wager. If a wager is made, report the winnings on Form W-2G, Certain Gambling Winnings. Prizes and awards granted in recognition of past accomplishments in religious, charitable, scientific, artistic, educational, literary, or civic fields are not reported on Form 1099-MISC if: (1) the winners are chosen without action on their part, and (2) the winners are not expected to perform future services, and (3) the payer transfers the prize or award to a charitable organization or governmental unit pursuant to a designation made by the recipient.

Do not include prizes and awards paid to your employees. Report these on Form W-2. Prizes and awards for services performed by nonemployees, such as an award for the top commission salesperson should be reported in box 7.

Other items required to be reported in box 3 include the following:

- Generally, all punitive damages, any damages for nonphysical injuries or sickness, and any other taxable damages. Report punitive damages even if they relate to physical injury or physical sickness. Generally, report all compensatory damages for nonphysical injuries or sickness, such as employment discrimination or defamation. However, do not report damages (other than punitive damages):
    - Received on account of personal physical injuries or physical sickness;
    - That do not exceed the amount paid for medical care for emotional distress;
    - Received on account of nonphysical injuries (for example, emotional distress) under a written binding agreement, court decree, or mediation award in effect on or issued by September 13, 1995; or
    - That are for replacement of capital, such as damages paid to a buyer by a contractor who failed to complete construction of a building.

Damages received on account of emotional distress, including physical symptoms such as insomnia, headaches, and stomach disorders, are not considered received for a physical injury or physical sickness and are reportable unless described above. However, damages received on account of emotional distress due to physical injuries or physical sickness are not reportable.

- Payments for deceased employee wages.
- Payments for Indian gaming profits, payments to tribal members.
- Termination payments to former self-employed insurance salespeople. These payments are not subject to self-employment tax and are reportable in box 3 (rather than box 7) if all the following apply:
    - The payments are received from an insurance company because of services performed as an insurance salesperson for the company.
    - The payments are received after termination of the salesperson’s agreement to perform services for the company.
    - The salesperson did not perform any services for the company after termination and before the end of the year.
    - The salesperson enters into a covenant not to compete against the company for at least 1 year after the date of termination.
    - The amount of the payments depends primarily on policies sold by the salesperson or credited to the salesperson’s account during the last year of the service agreement or to the extent those policies remain in force for some period after termination, or both.
    - The amount of the payments does not depend at all on length of service or overall earnings from the company (regardless of whether eligibility for payment depends on length of service).

If the termination payments do not meet all these requirements, report them in box 7.

- A payment or series of payments made to individuals for participating in a medical research study or studies.
- Payments for H-2A visa agricultural workers who did not give you a valid taxpayer identification number. You must also withhold federal income tax under the backup withholding rules
- If you are an FFI reporting pursuant to an election described in Regulations section 1.1471-4(d)(5)(i)(A) a U.S. account required to be reported under chapter 4 to which during the year you made no payments reportable on an applicable Form 1099, enter zero in box 3. In addition, if you are an FFI described in the preceding sentence and, during the year, you made payments to the account required to be reported under chapter 4, but those payments are not reportable on an applicable Form 1099 (for example, because the payment is under the applicable reporting threshold), you must report the account on this Form 1099-MISC and enter zero in box 3.

FEDERAL INCOME TAX-BOX 4

Enter backup withholding. Persons who have not furnished their TINs to you are subject to withholding on payments required to be reported in boxes 1, 2 (net of severance taxes), 3, 5 (to the extent paid in cash), 6, 7 (except fish purchases for cash), 8, 10, and 14. For 2018 the backup withholding rate is 24% and is reported on Form 945, Annual Return of Withheld Federal Income Tax.

Also enter any income tax withheld from payments to members of Indian tribes from the net revenues of class II or class III gaming activities conducted or licensed by the tribes.

FISHING BOAT PROCEEDS-BOX 5

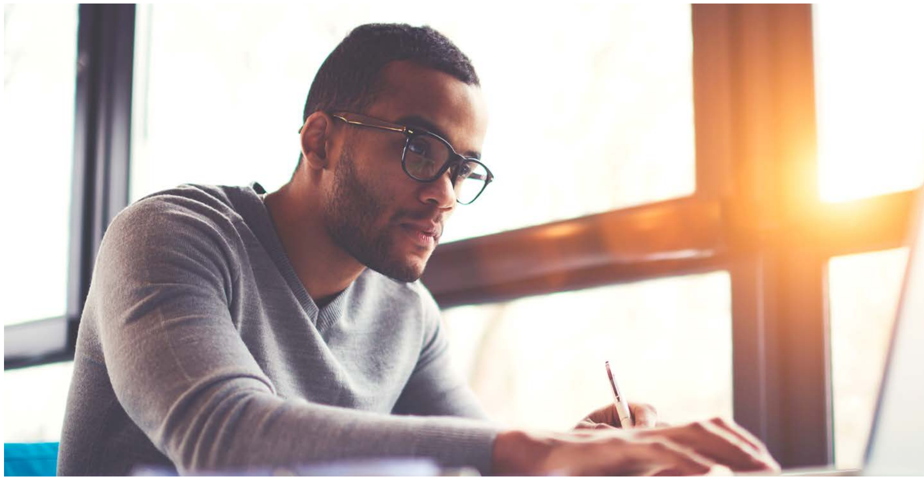
Enter the individual's share of all proceeds from the sale of catch or the FMV of a distribution in kind to each crew member of fishing boats with normally fewer than 10 crew members, or payments of up to $100 per trip that are contingent on a minimum catch and are paid solely for additional duties for which additional cash payments are traditional in the industry. A fishing boat has normally fewer than 10 crew members if the average size of the operating crew was fewer than 10 on trips during the preceding 4 calendar quarters.

MEDICAL AND HEALTH CARE PAYMENTS-BOX 6

Enter payments of $600 or more made in the course of your trade or business to each physician or other supplier or provider of medical or health care services in box 6. Include payments made by medical or health care insurers under health, accident, and sickness insurance programs. If payment is made to a corporation, list the corporation as the recipient rather than the individual providing the services. Payments to persons providing health care services often include charges for injections, drugs, dentures, and similar items. In these cases the entire payment is subject to information reporting. Payments to pharmacies for prescription drugs are not required to be reported.

The exemption from issuing Form 1099-MISC to a corporation does not apply to payments for medical or health care services provided by corporations, including professional corporations. However, it is not required to report payments made to a tax-exempt hospital or extended care facility or to a United States (or its possessions), a state, the District of Columbia, or any of their political subdivisions, agencies, or instrumentalities.

Generally, payments made under a flexible spending arrangement or a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of section 106 are exempt from the reporting requirements of section 6041.



NONEMPLOYEE COMPENSATION-BOX 7

The types of nonemployee compensation that must be reported on Form 1099-MISC, box 7 include fees, commissions, prizes and awards for services performed by a nonemployee, other forms of compensation for services performed for a trade or business by an individual who is not an employee, and fish purchases for cash. Include oil and gas payments for a working interest, whether or not services are performed. Also include expenses incurred for the use of an entertainment facility that you treat as compensation to a nonemployee. Federal executive agencies that make payments to vendors for services, including payments to corporations, must report the payments in this box.

If the following four conditions are met, you must generally report a payment as nonemployee compensation:

- The payment is made to someone who is not your employee;
- The payment is for services in the course of your trade or business (including government agencies and nonprofit organizations).
- The payment is made to an individual, partnership, estate or, in some cases, a corporation; and
- The payment is at least $600 during the year.

Generally, amounts reportable in box 7 are subject to self-employment tax. If payments to individuals are not subject to this tax and are not reportable elsewhere on Form 1099-MISC, report the payment in box 3.

EXAMPLES OF PAYMENTS TO BE REPORTED ON FORM 1099-MISC INCLUDE:

- Professional service fees, such as fees to attorneys (including corporations), accountants, contractors, engineers, architects, etc.
- Fees paid by one professional to another, such as fee-splitting or referral fees.
- Payments by attorneys to witnesses or experts in legal adjudication.
- Payment for services, including payment for parts or materials used to perform the services if supplying the parts or materials was incidental to providing the service.
- Commissions paid to nonemployee salespersons that are subject to repayment but not repaid during the calendar year.
- A fee paid to a nonemployee, including an independent contractor, or travel reimbursement for which the nonemployee did not account to the payer, if the fee and reimbursement total at least $600.
- Payments to nonemployee entertainers for services.
- Exchanges of services between individuals in the course of their trade or businesses.
- Taxable fringe benefits for nonemployees.
- Gross oil and gas payments for a working interest.
- Payments to an insurance salesperson who is not your common law or statutory employee.
- Directors' fees – see below.
- Commissions paid to licensed lottery ticket sales agents.
- Fish purchases for cash.
- Nonqualified deferred compensation. (Section 409A)
- Golden parachute payments. Excess payments are reported in box 13.

DIRECTOR'S FEES

Directors of a corporation are defined by statute as nonemployees. If an organization pays its board members to attend board meetings or otherwise compensates them for performing their duties as directors, the organization should treat them as independent contractors. Directors' fees and other remuneration, including payments made after retirement must be reported on Form 1099-MISC, box 7.

An employer can provide certain benefits (insurance premiums, for example) to directors as taxable income which is also reported on Form 1099-MISC. Reimbursement of expenses without proper documentation paid to directors are also reportable to the IRS on Form 1099-MISC. Per diem allowances may be used for directors without including them on Form 1099 provided the time, place, and business purpose of the travel are substantiated by adequate records and the director does not directly or indirectly own 10% of the entity paying the per diem.

SUBSTITUTE PAYMENTS IN LIEU OF DIVIDENDS OR INTEREST-BOX 8

Enter aggregate payments of at least $10 received by a broker for a customer in lieu of dividends or tax-exempt interest as a result of a loan of a customer's securities. For this purpose, a customer includes an individual, trust, estate, partnership, association, company, or corporation. It does not include a tax-exempt organization, the United States, any state, the District of Columbia, a U.S. possession, or a foreign government. Substitute payment means a payment in lieu of (a) a dividend or (b) tax-exempt interest to the extent that interest (including OID) has accrued while the securities were on loan.

PAYER MADE DIRECT SALES-BOX 9

For reporting direct sales of $5,000 or more of consumer products to a person on a buy-sell, deposit-commission, or other commission basis for resale anywhere other than a permanent retail establishment. Enter the amount in box 7and an "X" in the checkbox for sales-box 9

	No reporting requirement	Reportable
Fee for attendance at meetings		X
Reimbursement of actual expenses based on proper record-keeping and qualifying per diems:		
Public transportation	X	
Lodging, Mileage	X	
Meals	X	
Convention or conference	X	
Other	X	
Reimbursement of expenses without documentation or via non-qualifying per diem:		
Mileage		X
Lodging		X
Meals		X
Convention or conference		X
Medical insurance premiums		X
Life insurance premiums:		
Payer is beneficiary	X	
Director names beneficiary		X

CROP INSURANCE PROCEEDS-BOX 10

Crop insurance proceeds paid to farmers by insurance companies must be reported on Form 1099-MISC, box 10, unless the farmer has informed the insurance company that expenses have been capitalized under Internal Revenue Code Section 278, 263A, or 447.

EXCESS GOLDEN PARACHUTE PAYMENTS–BOX 13

A parachute payment is any payment that meets all of the following conditions:

1. The payment is in the nature of compensation.
2. The payment is to, or for the benefit of, a disqualified individual*.
3. The payment is contingent on a change in the ownership of a corporation, the effective control of a corporation, or the ownership of a substantial portion of the assets of a corporation (a change in ownership or control).
4. The payment has (together with other payments described in 1, 2, and 3, above, made to the same individual) an aggregate present value of at least three times the individual's base amount.

*A disqualified individual is one who at any time during the 12-month period prior to and ending on the date of the change in ownership or control of the corporation (the disqualified individual determination period) was an employee or independent contractor and was, in regard to that corporation, a shareholder, an officer, or a highly compensated individual.

Enter any excess golden parachute payments. An excess parachute payment is the amount of the excess of any parachute payment over the base amount (the average annual compensation for services includible in the individual's gross income over the most recent 5 tax years).

GROSS PROCEEDS PAID TO ATTORNEYS-BOX 14

Attorneys' fees of $600 or more paid in the course of your trade or business are reportable on Form 1099-MISC, box 7. However, if you make a payment to an attorney in connection with a legal settlement and the attorney's fee cannot be specifically determined, the total amount paid to the attorney (gross proceeds) must be reported in box 14. If the attorney fees are part of a legal settlement and can be specifically determined, the amount of fees must be reported in box 7. For example, an insurance company pays to settle a claim directly to the attorney. These rules apply whether or not the legal services are provided to the payer and whether or not the attorney is the exclusive payee. The exemption from filing for corporations does not apply to attorneys. Gross proceeds payments must be reported to the attorney even though some or all of the payment also must be reported to another party (e.g., the attorney's client).

Under the regulations, "payments to an attorney" include payments by check or other method such as cash, wire, or electronic transfer. A payment to an attorney, in the case of a payment by check, means a check on which the attorney is named as a sole, joint, or alternative payee.

The attorney is the payee on a check written to the attorney's client trust fund. However, the attorney is not a payee when the attorney's name is included on the payee line as "in care of", such as a check written to "client c/o attorney," or if the attorney's name is included on the check in any other manner that does not give the attorney the right to negotiate the check. The regulations define a payer as a person who makes a payment if that person is an obligor on the payment, or the obligor's insurer or guarantor.

Under the regulations, the term "legal services" means all services related to, or supportive of, the practice of law performed by, or under the supervision of, an attorney. In addition, payments to an attorney that are unrelated to the practice of law are not subject to reporting.

JOINT OR MULTIPLE PAYEES:

- Check delivered to one payee attorney – If more than one attorney is listed as payee on a check, the information return should be filed with respect to the attorney who received the check.
- Check delivered to payee non-attorney – If at least one attorney is listed as a payee on a check and the check is delivered to a payee who is not an attorney, then an information return must be filed with respect to the first listed payee attorney on the check.
- Check delivered to non-payee – If two or more attorneys are listed as payees on a check and the check is delivered to a non-payee, then an information return must be filed with respect to the first-listed payee attorney on the check.

EXCEPTIONS-A 1099 INFORMATION RETURN IS NOT REQUIRED WITH RESPECT TO THE FOLLOWING PAYMENTS:

- Payments of wages or other compensation paid to an attorney by the attorney's employer. These payments must be reported on Form W-2.
- Payments of compensation or profits paid or distributed to its partners by a partnership engaged in providing legal services.
- Payments of dividends or corporate earnings and profits paid to its shareholders by a corporation engaged in providing legal services.
- Payments of attorney fees only that are required to be reported as nonemployee compensation on Form 1099-MISC in box 7. Payments made to an attorney in the attorney's capacity as the person responsible for closing a real estate sale or financing transaction. Note that this exception was expanded to include payments made to attorneys in connection with real estate financing. The exception now covers, for example, payments made to attorneys in connection with refinancing and mortgages (not limited to purchase-money mortgages).
- Payments made to an attorney in the attorney's capacity as a bankruptcy trustee.

SECTION 409A DEFERRALS-BOX 15A

You do not have to complete this box. If you do complete this box, enter the total amount deferred during the year of at least $600 for the nonemployee under all nonqualified plans. The deferrals during the year include earnings on the current year and prior year deferrals.

For deferrals and earnings under nonqualified deferred compensation plans for employees, see the instructions for Forms W-2 and W-3.

SECTION 409A INCOME-BOX 15B

Enter all amounts deferred (including earnings on amounts deferred) that are includible in income under Section 409A because the nonqualified deferred compensation plan fails to satisfy the requirements of Section 409A. Do not include amounts properly reported on a Form 1099-MISC, corrected Form 1099-MISC, Form W-2, or Form W-2c for a prior year. Also, do not include amounts that are considered to be subject to a substantial risk of forfeiture for purposes of section 409A.

The amount included in box 15b is also includible in box 7 and generally is subject to self-employment tax.

STATE INFORMATION-BOXES 16-18

These boxes, and Copies 1 and 2, are provided for your convenience only and need not be completed for the IRS. If you withheld state income tax on a payment, you may enter it in box 16. In box 17 enter the state code and payer's state identification number. In box 18 you may enter the amount of the state payment. Use Copy 1 to provide information to the state tax department. Give Copy 2 to the recipient.

FORM 1099-DIV

Form 1099-DIV, "Dividends and Distributions," must be filed for each person to or for whom a payer:

- Paid dividends (including capital gains and exempt-interest dividends) and other distributions on stock of $10 or more;
- Withheld and paid any foreign tax on dividends and other distributions on stock;
- Withheld any federal income tax under the backup withholding rules; or
- Paid $600 or more as part of a liquidation.

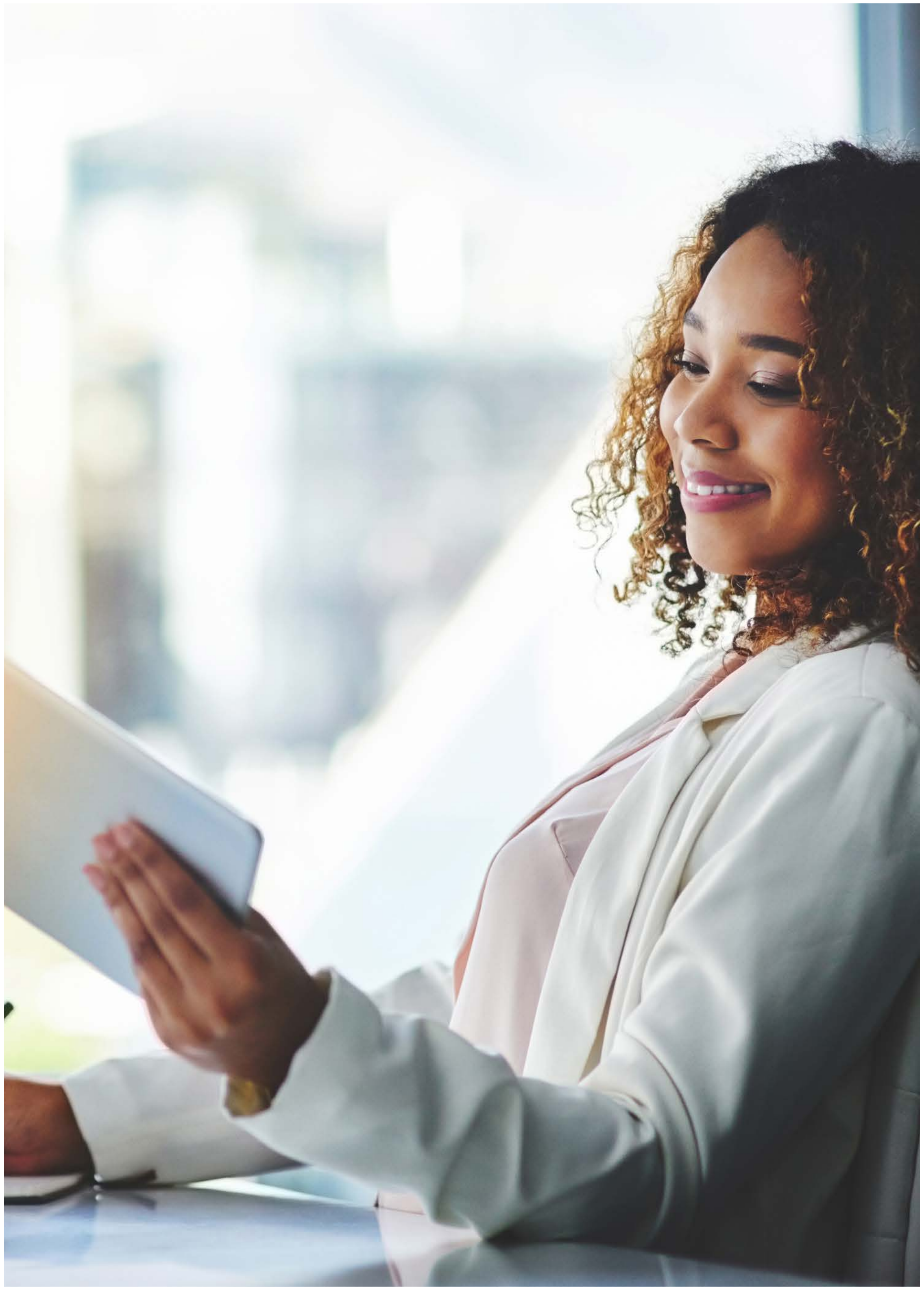
A distinction is made for qualified dividends paid during the tax year from domestic corporations and qualified foreign corporations which receive preferred tax treatment. These payments should be reported in both boxes 1a and 1b. See the instructions for 1099-DIV for exceptions to this preferred tax treatment.

If a payer receives a dividend payment of $10 or more as a trustee or middleman for another person and the payer pays such dividend to any other person, the payer must file Form 1099-DIV.

Taxable dividend distributions from life insurance contracts and employee stock ownership plans are reported on Form 1099-R. Payments of section 404(k) dividends directly from the corporation to the plan participants must be reported on Form 1099-DIV.

A payer does not report on Form 1099-DIV payments made to certain payees, including a corporation, a tax-exempt organization, any IRA, Archer MSA, or HSA, a U.S. agency, a state, the District of Columbia, a U.S. possession, or a registered securities or commodities dealer. A payer also does not report on Form 1099-DIV certain distributions, commonly referred to as "dividends," that are actually interest. Instead, these payments are reported on Form 1099-INT. Such payments include "dividends" on deposits or on share accounts in cooperative banks, credit unions, domestic building and loan associations, domestic and federal savings and loan associations, and mutual savings banks.

If a payment is made that may be a dividend, but it is not possible to determine if any part of a payment may be a dividend by the time the Form 1099-DIV must be filed, the entire payment must be reported as a dividend.



FORM 1099-INT

Form 1099-INT, “Interest Income” interest payments are only reported when:

- Interest of $10 or more paid or credited on earnings from savings and loan associations, credit unions, bank deposits, corporate bond holders of tax credit bonds, etc.
- Interest of $600 or more from other sources, in the course of your trade or business.
- Forfeited interest due to premature withdrawals of time deposits.
- Federal backup withholding and foreign tax withheld and paid on interest.
- Payments of any interest to bearers of certificates of deposit.

Report only interest payments made in the course of your trade or business including federal, state and local government agencies and activities deemed nonprofit, or for which you were a nominee/middleman.

Exempt-interest dividends from a mutual fund or other regulated investment company (RIC) are no longer reported on Form 1099-INT. Those amounts will now be reported on Form 1099-DIV.

No form 1099-INT is required to be filed for payments made to exempt recipients or for interest excluded from reporting. Do not report tax deferred interest, such as interest that is earned but not distributed from an IRA.

If a payer receives an interest payment of $10 or more as a trustee or middleman for another person and the payer pays such interest to any other person, the payer must file Form 1099-INT.

Use box 10 to report the Committee on Uniformed Security Identification Procedures (CUSIP) number for each tax-exempt bond for which interest was reported in box 8.

Box 13 has been added to report bond premium on tax-exempt bonds.

FORM 1099-OID

File Form 1099-OID, Original Issue Discount, if the original issue discount (OID) includible in gross income is at least $10 and you are any of the following:

- An issuer with any bond outstanding or other evidence of indebtedness in registered or bearer form issued with OID;
- An issuer of a certificate of deposit (CD) made, purchased, or renewed after 1970 if the CD has OID and a term of more than 1 year;
- A financial institution having other deposit arrangements such as time deposits or bonus-savings plans, if the arrangements have OID and a term of more than 1 year;
- A broker or other middleman holding an OID obligation, including CDs, as nominee for the actual owner;
- A trustee or middleman of a widely held fixed investment trust (WHFIT) or widely held mortgage trust (WHMT) or;
- A real estate mortgage investment conduit (REMIC), a holder of an ownership interest in a financial asset securitization investment trust (FASIT), or an issuer of a collateralized debt obligation (CDO).

Also, a Form 1099-OID must be filed for any person for whom any foreign tax or federal income tax under the backup withholding rules was withheld and paid on OID even if the amount of the OID is less than $10.

Use the Description box 5 to report the CUSIP number, abbreviation of the issuer, coupon rate or year of maturity when applicable.

FORM 1099-R

Form 1099-R, "Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc." is used to report any distribution of $10 or more from pension sharing or retirement plans, any individual retirement arrangements, annuities, pensions, insurance contracts, survivor income benefit plans, permanent and total disability payments under life insurance contracts, charitable gift annuities, etc. This form is used when the payment is a total distribution, in which the recipient's entire account balance is paid out in a single taxable year, as well as for reporting periodic payments made from retirement income plans. Form 1099-R is also used to report death benefit payments made by employers that are not made as part of a pension, profit-sharing, or retirement plan. Reportable disability payments made from a retirement plan must also be reported on Form 1099-R.

There are 9 numeric codes and 18 alpha codes to use when reporting amounts in box 7 of Form 1099-R.

Enter the total amount of the distribution before income tax or other deductions were withheld in box 1, gross distribution. Include direct rollovers, IRA rollovers to accepting employer plans, premiums paid by a trustee or custodian for the cost of current life or other insurance protection, including a recharacterization and a Roth IRA conversion. Also include in this box distributions to plan participants from governmental §457(b) plans. However, in the case of a distribution by a trust representing certificates of deposit redeemed early, report the net amount distributed.

Include in box 1 the value of U.S. Savings Bonds distributed from a plan. Enter the appropriate taxable amount in Box 2a. Also include in box 1 amounts distributed from a qualified retirement plan for which the recipient elects to pay health insurance premiums under a cafeteria plan or that are paid to the recipient. In addition to reporting distributions to beneficiaries of deceased employees, report here any death benefit payments made by employers that are not made as part of a pension, profit sharing, or retirement plan. Also enter these amounts in box 2a; enter Code 4 in box 7. Do not report accelerated death benefits on Form 1099-R. Report them on Form 1099-LTC.

For section 1035 exchanges that are reportable on Form 1099-R, enter the total value of the contract in box 1, 0 in box 2a, the total premiums paid in box 5, and Code 6 in box 7. If you are making a distribution from a designated Roth account, enter the gross distribution in box 1, the taxable portion in box 2a, the basis included in the distributed amount in box 5, any amount allocable to an IRR made within the previous 5 years in box 10, and the first year of the 5-taxable-year period for determining qualified distributions in box 11. If you distribute employer securities or other property, include in box 1 the FMV of the securities or other property on the date of distribution. If cash or capital gain property is donated in exchange for a charitable gift annuity, report the total amount distributed during the year in box 1.

When determining the taxable amount to be entered in box 2a, do not reduce the taxable amount by any portion of the $3,000 exclusion for which the participant may be eligible as a payment of qualified health and long-term care insurance premiums for retired public safety officers under §402(l).

Generally, you must enter the taxable amount in box 2a. However, if you are unable to reasonably obtain the data needed to compute the taxable amount, leave this box blank and check box 2b – Taxable amount not determined. Do not enter excludable or tax-deferred amounts reportable in boxes 5, 6, and 8. Enter 0 in box 2a for:

- A direct rollover(other than a qualified rollover contribution under §408A(e) from a qualified plan (including a governmental § 457(b) plan) or section 403(b) plan or a rollover from a designated Roth account into a Roth IRA,
- A traditional, SEP, or SIMPLE IRA directly transferred to an accepting employer plan,
- An IRA recharacterization, or
- A non-taxable section 1035 exchange of life insurance, annuity, or endowment or long-term care insurance contracts.
- A nontaxable charge or payment, for the purchase of a qualified long-term care insurance contract, against the cash value of an annuity contract or the cash surrender value of a life insurance contract.

Report payments to military retirees or payments of survivor benefit annuities on Form 1099-R. Report military retirement pay awarded as a property settlement to a former spouse under the name and taxpayer identification number of the recipient, not that of the military retiree.

Report on Form 1099-R, not Form W-2, income tax withholding and distributions from a governmental section 457(b) plan maintained by a state or local government employer. Distributions from a governmental section 457(b) plan to a participant or beneficiary include all amounts that are paid from the plan.

Report any reportable distributions from commercial annuities. Also report distributions to employee plan participants from section 409A nonqualified deferred compensation plans including nongovernmental section 457(b) plans on Form W-2, not on Form 1099-R; for nonemployees, these payments are reportable on Form 1099-MISC.

FORM 1099-PATR

Form 1099-PATR, "Taxable Distributions Received from Cooperatives", must be filed by a cooperative if:

- Paid $10 or more in patronage dividends (as defined below) and other distributions described in Internal Revenue Code Section 6044(b); or
- Withheld federal income tax on patronage dividends and other distributions under the backup withholding rules regardless of the amount of payment.

A patronage dividend is a distribution from cooperatives that is passed through to their patrons. Include in boxes 6 – 10 the patron's share of unused credits and deductions, including the Domestic Production Activities Deduction.

FORM 1099-LTC

File Form 1099-LTC, "Long-Term Care and Accelerated Death Benefits", if you pay any long-term care benefits, including accelerated death benefits. Payers include insurance companies, governmental units, and viatical settlement providers.

Long-term care benefits means:

- Any payments made under a product that is advertised, marketed, or offered as long-term care insurance (whether qualified or not); and
- Accelerated death benefits (excludable in whole or in part from gross income under section 101(g)) paid under a life insurance contract or paid by a viatical settlement provider.

LONG-TERM CARE BENEFITS PAID:

These benefits are all the amounts paid out on a per diem or other periodic basis or on a reimbursed basis. It includes amounts paid to the insured, to the policyholder, and to third parties. You are not required to determine whether any benefits are taxable or nontaxable.

ACCELERATED DEATH BENEFITS:

An accelerated death benefit is any amount paid under a life insurance contract to or on behalf of an insured that is terminally or chronically ill. It also includes any amount paid by a viatical settlement provider for the sale or assignment of a death benefit under a life insurance contract.

FORM 1099-SA

File Form 1099-SA, "Distributions from an HSA, Archer MSA or Medicare Advantage MSA", to report distributions made from a HSA, Archer MSA or Medicare Advantage MSA (MA MSA). The distribution may have been paid directly to a medical service provider or to the account holder. A separate return must be filed for each plan type.

Excess employer contributions (and the earnings on them) withdrawn from employee HSA's by the employer should not be reported as a distribution on form 1099-SA or as a contribution on Form 5498-A.

Qualified health savings accounts (HSA) distributions from flexible spending arrangements (FSA's) may no longer be made.

FORM 1042-S

Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding" is filed to report income subject to withholding paid to nonresident aliens, foreign partnerships, foreign corporations, or nonresident alien or foreign fiduciaries of estates or trusts. You must file a 1042-S even if you did not withhold tax because the income was exempt due to a U.S. tax treaty or the Code. This includes but not limited to certain interest, dividends, rents, compensation for services performed in the United States, premiums, annuities or other gains, profits, or income unless specifically exempted under the Internal Revenue Code or a tax treaty. IRS Publication 901 (U.S. Tax Treaties) is a useful tool in determining what withholding percentages or exemptions apply for particular countries.

If Form 1042-S is required, Form 1042-T Annual Summary and Transmittal of Forms 1042-S and Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, must also be filed.

FORM 1099-A

File Form 1099-A, "Acquisition or Abandonment of Secured Property", for each borrower if you lend money in connection with your trade or business and, in full or partial satisfaction of the debt, acquire an interest in the property that is security for the debt, or there is reason to know that the property has been abandoned. You need not be in the business of lending money to be subject to this reporting requirement.

If, in the same calendar year, you cancel a debt in connection with a foreclosure or abandonment of secured property, it is not necessary to file both Form 1099-A and Form 1099-C for the same debtor. You may file Form 1099-C only. You will meet the Form 1099-A filing requirement for the debtor by completing boxes 4, 5 and 7 on Form 1099-C. However, if you file both Forms 1099-A and 1099-C, do not complete boxes 4, 5 and 7 on Form 1099-C.

Property means any real property (such as a personal residence), any tangible property, and tangible personal property except:

- No reporting is required for tangible personal property (such as a car) held only for personal use. However, you much file Form 1099-A, if the property is totally or partly held for use in a trade or business or for investment.
- No reporting is required if the property securing the loan is located outside the United States and the borrower has furnished the lender a statement, under penalties of perjury, that the borrower is an exempt foreign person (unless the lender knows the statement is false).

Truncating an individual's identifying number is no longer available on Forms 1099-A or C. Complete nine-digit numbers must now be reported.

FORM 1099-C

File Form 1099-C, "Cancellation of Debt", for each debtor for whom debt was canceled of $600 or more only if: You are an entity described below and if an identifiable event has occurred. It does not matter whether the actual cancellation is on or before the date of the identifiable event. The creditor's phone number must be provided in the creditor's information box. Form 1099-C is not filed when fraudulent debt is canceled due to identity theft.

Codes for identifying the type of event or other actual discharge before an identifiable event that led to the issuance of Form 1099-C are required in Box 6.

FILE FORM 1099-C IF YOU ARE:

- A financial institution described in section 581 and 591(a) (such as a domestic bank, trust company, building and loan or savings and loan association).
- A credit union.
- Any of the following, its successor, or subunit of one of the following: Federal Deposit Insurance Corporation, National Credit Union Administration, any federal executive agency, including government corporations, any military department, U.S. Postal Service or Postal Rate Commission,
- a corporation that is a subsidiary of a financial institution or credit union,
- a federal government agency (including: department, agency, court or court administrative office, or an instrumentality in the judicial or legislative branch of the government), and
- an organization whose significant trade or business is the lending of money.

A debt is deemed canceled on the date an identifiable event occurs or, if earlier, the date of the actual discharge if you choose to file Form 1099-C for the year of cancellation. An identifiable event is:

- A discharge in bankruptcy under Title 11 of the U.S. Code for business or investment debt.
- A cancellation or extinguishment making the debt unenforceable in receivership or foreclosure.
- A cancellation or extinguishment when the statute of limitations of collecting the debt expires.
- A cancellation or extinguishment when the creditor elects foreclosure remedies that by law end or bar the creditor's rights to collect the debt.
- A cancellation or extinguishment due to probate or similar proceeding.
- A discharge of indebtedness under an agreement between the creditor and the debtor.
- A discharge of indebtedness because of a decision or a defined policy of the creditor to discontinue collection activity and cancel the debt.
- And the expiration of nonpayment testing period.

FORM 1099-B

A broker or barter exchange must file Form 1099-B for each person for whom the broker has:

- Sold (including short sales) stocks, bonds commodities, regulated futures contracts, foreign currency contracts, forward contracts, debt instruments, options, securities futures contracts, etc. for cash,
- Received cash, stock or other property from a corporation that the broker knows or has reason to know has had stock acquired in an acquisition of control or had a substantial change in capital structure reportable on Form 8806, or
- Exchanged property or services through a barter exchange.

A broker is any person who, in the ordinary course of a trade or business, stands ready to effect sales to be made by others, including an obligor that regularly issues and retires its own debt obligations, or a corporation that redeems its own stock. The reporting requirement for Form 1099-B has expanded greatly in recent years, including acquisition dates and cost basis reporting beginning in 2011. The IRS instructions should be reviewed for detailed information.

FORM 1099-K

A payment settlement entity (PSE) must file Form 1099-K, Payment Card and Third-Party Network Transactions, for payments made in settlement of reportable payment transactions for each calendar year. A PSE makes a payment in settlement of a reportable payment transaction if the PSE submits the instruction to transfer funds to the account of the participating payee to settle the reportable payment transaction. Every PSE, which in any calendar year makes one or more payments in settlement of reportable payment transactions, must file a Form 1099-K reporting monthly transaction totals with respect to each participating payee for that calendar year.

FORM 1099-Q

File Form 1099-Q, Payments From Qualified Education Programs (under Sections 529 and 530), if you (a) are an officer or an employee having control of a program established by a state or eligible educational institution; and (b) made a distribution from a qualified tuition program (QTP). A trustee of a Coverdell education savings account (ESA) must file Form 1099-Q to report distributions made from Coverdell ESAs.

III. TOOLKIT

POINTS TO REMEMBER

- ☐ Furnish (postmark) statements to recipients by January 31, 2019 (February 15 for Forms 1099-B, 1099-S and 1099-MISC if amounts are reported in Boxes 8 or 14), including the Fair Market Value of an IRA or contributions to an education IRA.
- ☐ File (postmark) Forms 1099-MISC which include reporting in Box 7 with the IRS by January 31, 2019. Other Forms 1098, 1099, 3921, 3922, W-2G can be filed with the IRS by February 28, 2019 or electronically by April 1, 2019.
- ☐ File (postmark) Form 5498, 5498-ESA, or 5498-SA with the IRS and furnish (postmark) IRA contribution information to participants by May 31, 2019.
- ☐ Government approved forms must be used for Copy A paper filed with the Internal Revenue Service. Submit a separate Form 1096 for each type of information return that you file.
- ☐ You may submit originals and corrections together with one Form 1096.
- ☐ Insure that the filer information on Form 1096 is the same as the filer information on Forms 1099, 1098, 3921, 3922 and 5498. Filer information includes name, address, and tax identification number of the person or company filing the 1096.
- ☐ If you are required to submit an information return, you must provide that person's TIN on the return. A penalty will be charged to those who cannot demonstrate that they made a proper attempt to obtain correct numbers. Use Form W-9 to request a TIN from a payee. Proper matching of a TIN and name is important. When using a SSN the individual's name must be reported as the recipient's name, when reporting to a TIN the entities name must be used as the recipient's name to prevent future correspondence from the IRS.
- ☐ Electronic Filing
  a. If you file more than 250 information returns, you must file electronically.
  b. Each information return is viewed as a separate return to determine whether you need to file electronically.
  c. To receive approval to file electronically, complete Form 4419 "Application for Filing Information Returns Electronically (FIRE)", at least 30 days before the due date of the returns. The form only needs to be filed one time for all information returns.
  d. If filing electronically would cause an undue hardship, it is possible to get a waiver. Submit Form 8508 "Request for Waiver from Filing Information Returns Electronically" at least 45 days before the due date of the returns. If approved, it would allow you to file your information returns on paper. You cannot apply for a waiver for more than one year at a time.
- ☐ 1099s required recipients are for the following different types of entities:
  a. Sole Proprietors – Yes
  b. Partnerships – Yes
  c. Corporations – No (except for, but not limited to attorneys' fees and medical and health care payments)
  d. LLP – Yes
  e. LLC – Depends on if the company is filing taxes as a corporation or as a partnership. This information can be obtained from Form W-9.
  f. Tax Exempt Entities – No

WHERE TO FILE:

If the principal business, office, or agency, or legal residence in the case of an individual, is located in:	Use the following address:
Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Kentucky, Maine, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Texas, Vermont, Virginia	Department of the Treasury Internal Revenue Service Center Austin, TX 73301
Alaska, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Washington, Wisconsin, Wyoming	Department of the Treasury Internal Revenue Service Center PO Box 219256 Kansas City, MO 64121-9256
California, Connecticut, District of Columbia, Louisiana, Maryland, Pennsylvania, Rhode Island, West Virginia	Department of the Treasury Internal Revenue Service Center Ogden, UT 84201

RETURNS, PAYMENTS, RECORDS;

COMBINED FEDERAL/STATE FILING PROGRAM FOR INFORMATION RETURNS

Combined Federal/State Filing Program. Through the Combined Federal/State Filing Program (CF/SF), the IRS electronically forwards certain information returns (original or corrected) to participating states' taxing authorities once you are approved. Separate reporting to the states is not required unless amounts were withheld (IRS Publication 1220, 10.).

A test file, properly coded for the program, must be submitted in order to participate in the Combined Federal/State filing program no later than 45 days before the due date of the information return. If the test file is acceptable, an approval letter will be sent. There is no charge to use CF/SF for approved participants.

A test file is only required for the first year a filer participates in the program; however, the IRS recommends a test file be submitted every year. Records in the test and actual file must conform to current procedures.

Within two business days, the result of the electronic transmission will be sent to the email address that was provided on the "Verify Your Filing Information: screen. If using email-filtering software, configure the software to accept email from fire@irs.gov and irs.e-helpmail@irs.gov If the file is bad, the filer must return to https://fire.test.irs.gov and determine what errors are in the file. If the test file was unacceptable, a new test file can be transmitted no later than February 28, 2018.

Some participating states require separate notification that the payer is filing in this manner. The IRS acts as a forwarding agent only. It is the payer's responsibility to contact the appropriate state for further information.

STATE CHART

The following quick reference chart lists participating states and valid state codes. For notification purposes, some states require employers and payers to submit a copy of the IRS approval letter. The approval no longer includes Form 6847, as it is obsolete (Rev Proc 2010-26, 2010-30 IRB).

DETAILS OF THE PROGRAM

Information regarding the program and its specifications can be found in IRS Publication 1220.

States Participating in Combined Program	Code
Alabama	01
Arizona	04
Arkansas	05
California	06
Colorado	07
Connecticut	08
Delaware	10
Georgia	13
Hawaii	15
Idaho	16
Indiana	18
Kansas	20
Louisiana	22
Maine	23
Maryland	24

States Participating in Combined Program	Code
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
New Jersey	34
New Mexico	35
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
South Carolina	45
Wisconsin	55

CORRECTING INFORMATION RETURNS

VOIDING INCORRECT PAPER RETURNS

If an error is made while preparing a return or an error is discovered before the return has been submitted to the IRS or the payee, you can cancel the return by checking the "VOID" box at the top of the form and redoing the return. Do not cut or separate the voided form from others on the same page. The entire page, including the voided form, must be submitted to the IRS.

CORRECTED RETURNS ON PAPER FORMS

If you filed a return with the IRS and later discover you made an error on it, you must correct it as soon as possible and file Copy A and Form 1096 with the IRS. Also furnish statements to recipients showing the correction.

Enter an "X" in the corrected checkbox only when correcting a form previously filed with the IRS or furnished to the recipient. You may enter a date next to the "Corrected" checkbox. This will help the recipient in the case of multiple corrections. Certain errors may require two returns to make the corrections. The General Instructions for Forms 1099, page 8 include detailed correction steps.

REPORTING INCORRECT PAYER NAME AND/OR TIN

If a payer discovers an error in reporting the payer name and/or TIN, write a letter to IRS/ECC-MTB (see below) containing the following information:

1. Name and address of the payer,
2. Type of error (including the incorrect payer name/TIN that was reported),
3. Tax year,
4. Payer TIN,
5. Transmitter Control Code (TCC), if applicable,
6. Type of return,
7. Number of payees, and
8. Filing method (paper or electronic)
9. Was federal income tax withheld?

FILING CORRECTIONS ELECTRONICALLY

If you have 250 or more corrected returns of a single type to file, you must file them electronically. Electronic filing is required only for that individual type of form for which there are at least 250 corrections. For example, if you must file 250 (or more) corrected Forms 1099-MISC plus 150 corrected Forms 1099-DIV, only the 1099-MISC must be filed electronically. If you have 175 Forms 1098, 200 Forms 1099-MISC, and 150 Forms 1099-INT to correct, you are not required to file any of the corrections electronically. Similarly, the 250 threshold applies separately to corrections and originals; even if 250 or more originals of a single type of return were filed, electronic filing of corrections is not required unless there are 250 or more corrected forms to be sent.

SEND LETTER TO:

Internal Revenue Service
Information Returns Branch
230 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

If the payer realizes duplicate reporting or a large percentage of incorrect information has been filed, contact the information reporting customer service site at 1-866-455-7438 for further instructions.

BUSINESS OUTSOURCING & STRATEGY

TAKE **CHARGE** AND **TAKE PRESSURE** OFF THE DAY-TO-DAY

Take charge of your business and get back to why you got into business in the first place. Our services are meant to relieve the stress of critical business functions that you don't want to do or don't have the deep expertise on staff to complete successfully.

That includes:

- CFO Services
- Controller Services
- Bookkeeping Services
- Payroll
- Accounting Coach
- Management Advisory

W-2
YEAR-END PLANNING

TABLE OF CONTENTS

I. INDEPENDENT CONTRACTOR OR EMPLOYEE?

INDEPENDENT CONTRACTOR OR EMPLOYEE?

Do you really have employees? Or are they independent contractors? The business relationship between the organization (you) and the person performing the services is an incredibly important one to define. Only once these roles are defined will you know how payments should be treated.

FOUR TYPES OF WORKERS

There are four ways the person who performs the services for your organization can be classified: common law employee, statutory employee, statutory non-employee or an independent contractor.

COMMON LAW EMPLOYEE

The key to common-law rules is control. If the organization can control what will be done (the results of the work) and how it will be done (the method by which the work is performed), then the person performing the services is the organization's employee.

It doesn't matter under common-law rules what your title is or how your workers are classified. Managers, support staff, supervisory personnel ... they're all employees. Partners, however, are not employees.

STATUTORY EMPLOYEE

Common-law employees are not the only type of employees. Independent contractors can still be considered employees by statute if they fall under any of the following four categories:

- A driver who distributes beverages (other than milk) or food (meat, vegetable, fruit or bakery products) or who delivers dry cleaning if the driver is the organization's agent or paid on commission.
- A full-time life insurance sales agent who sells primarily for one life insurance company.
- Someone who works at home on materials for an organization. The organization supplies the materials and materials must be returned to the organization if the organization furnishes specifics for the work to be done.
- A full-time salesperson who works on behalf of an organization.

STATUTORY NON-EMPLOYEE

These individuals fall into three categories: direct sellers, licenses real estate agents and certain companion sitters.

INDEPENDENT CONTRACTOR

An individual who provides services to another individual or business. This individual is a separate business entity doing work on behalf of an organization. nization with wholesalers, retailers, contractors or hotel operators, etc. as their primary business activity.

SO HOW DO I TELL WHICH I HAVE?

An employer-employee relationship is most often determined by the "common-law" test. As noted above, the common-law test focuses on control, specifically related to two elements:

- What must be done (the results of the work)
- How it must be done (the way the work is performed)

An individual is considered an employee if the employer can control both aspects of the test. In other words, you have the right to control the results of the work and how the work is performed.

A worker is considered an independent contractor if the employer can only control the result of the work. Simply put, if the individual can dictate how the work is performed, that person is considered an independent contractor.

WHY DOES THIS MATTER?

If an individual is considered an employee, you as the business owner are required to withhold payroll tax. If they're an independent contractor, you're not. And when it comes to year-end planning/tax time, employees receive Form W-2, while independent contractors receive Form 1099-MISC.

ANYTHING ELSE I NEED TO KNOW?

An important distinction for independent contractors is that they are, in fact, independent. But how do you really define independence versus control? The IRS uses three categories to help determine employee status:

BEHAVIORAL CONTROL

Here we're talking about the right to direct or control how the worker performs a specific task. Specifically, this category looks at types of instruction given (what tools to use, what workers to hire, when the work is to be performed, etc.), if there's an evaluation system to measure details of performance and if ongoing training is given.

If these items are all present, it generally points toward an employee/employer relationship.

FINANCIAL CONTROL

When looking at financial control, the IRS looks at factors that point to control of the economic aspects of a worker's activities. Things to consider include:

- Significant investment: Has the individual made a significant investment in tools or facilities used to perform the task for your organization?
- Unreimbursed expenses: Has the individual chosen to incur expenses and bear the cost of the services provided for your organization?
- Services available to relevant market: Does the individual make themselves available to other organizations or individuals similar to your organization?

If the answers to the above questions are yes, then you're looking at an independent contractor relationship. Other items to note in this category include method of payment (hourly v. flat fee for services) and opportunity for profit or loss (is the individual free to make business decisions affecting his/her own profit or loss).

RELATIONSHIP OF PARTIES

This category hinges on the question of how the worker and the business perceive each other in terms of intent concerning control.

What does intent concerning control mean? Here are some triggers:

- Intent of parties/written contracts: a written agreement describing the worker as an independent contractor, methods of payment, expenses to be reimbursed, etc.
- Employee benefits: providing a worker with benefits including paid vacation or sick pay, health insurance, life insurance, etc.
- Regular business activity: services performed by the individual are a key aspect of the regular business of the organization

STILL NOT SURE?

No set of factors will give you a definite answer. When the IRS looks at who is an employee and who isn't, they look at all the facts and circumstances within that situation.

If you find yourself second guessing if an individual is an employee or and independent contractor, there's a special form known as Form SS-8. The IRS uses the information on that form, as well as any other information they can obtain from the parties involved, to determine the status of the worker in question.

II. 2018-19 CHANGES

2018 - 2019 CHANGES

There were lots of changes this year to take into account for year-end planning. Here are some of the big ones:

W-2 AND 1099-MISC FILING DATE CHANGED

The due date for filing 2018 Forms W-2 and 1099-MISC, if you are reporting nonemployee compensation in box 7, has changed to January 31, 2019. The date will be the same for electronic or paper filing. In prior years, the date for filing paper copies was the end of February or, if done electronically, March 31 following the reporting year-end.

In addition, the automatic extension of time that was formerly available for filing Form W-2 with the Social Security Administration has now changed. To get an extension, due on or after January 1, 2019, a Form 8809 (Application for Extension of Time to File Information Returns). Check your individual state instructions for any due date changes.

RETURNED WAGE REPORTS

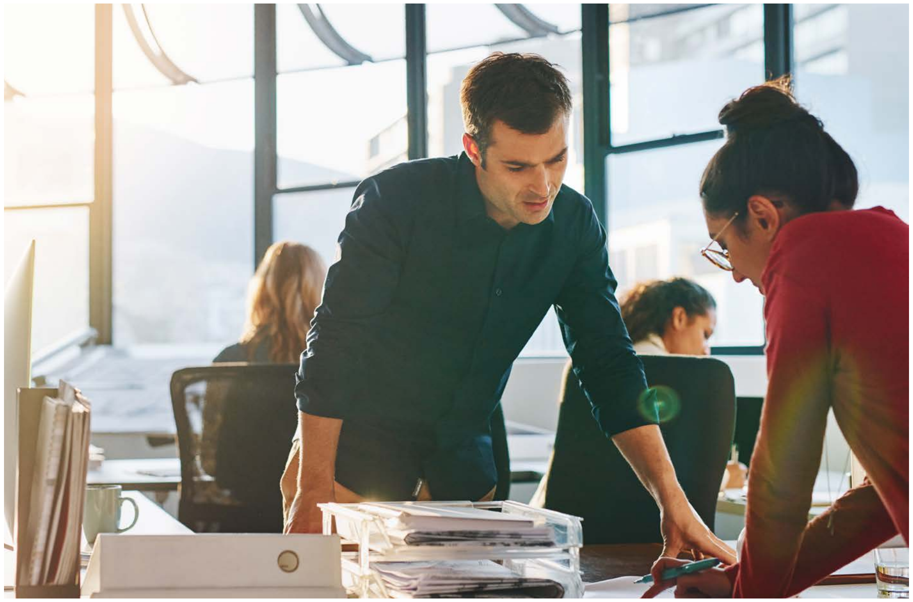
The SSA will be returning W-2 electronic and paper wage reports to filers without processing the reports if the report contains the following errors:

- Medicare wages and tips are less than the sum of Social Security wages and Social Security tips
- Social Security tax is greater than zero; Social Security wages and Social Security tips are equal to zero; and
- Medicare tax is greater than zero; Medicare wages and tips are equal to zero

The preferred method of informing filers that is has rejected a W-2 submission is by e-mail. It will only send a reject notice in the mail if it doesn't have the filer's e-mail address. Reject notices no longer include specific error information; the filer will need to go Business Services Online to find out what is causing the error.

FUTA CREDIT REDUCTIONS BECAUSE OF STATE LOANS

Under the joint federal/state unemployment insurance system, states with a high rate of unemployment and difficulty meeting their benefit obligations can borrow money from the Federal Unemployment Account (FUA) to pay



benefits. If loans taken out for one year are not repaid by the end of the following calendar year, the FUTA credits for employers in those states are reduced, with the extra FUTA taxes paid being applied against each state's loan balance.

A state with an outstanding loan can avoid a credit reduction for its employers by repaying the loan by November 10 of the year the reduction is scheduled to take effect. If the loan is not repaid by that date, a credit reduction of 0.3% goes into effect. Each year a loan remains unpaid, the credit reduction increases by 0.3% although there are limits for states that have made an effort to keep their balances in check.

Even if a state has outstanding loans on November 10, it can avoid a credit reduction by meeting certain criteria regarding the amount it has paid back, whether it can meet upcoming payments without needing any further advances from the federal government, and the size of the net increase in the solvency of the state unemployment compensation system.

Sometime after November 10 of each year, the credit reductions for that year are announced by the IRS and are included on Form 940 so employers in the affected states can figure the amount of their credit reduction.

CREDIT REDUCTION STATES

Updated information on state loans can be accessed at the following web site: http://workforcesecurity.doleta.gov/unemploy/tax.asp. Click on the link "Trust Fund Loans" to get access to FUA state loan balances. The following link, updated monthly, provides the actual date when states began borrowing funds: http://www.ncsl.org/?tabid=13294.

FUTA CREDIT REDUCTION RATES

State	Year State Loan Orig.	Loan Balance as of 11/14/18	2012	2013	2014	2015	2016	2017	2018
AR	2009	$0	0.6%	0.9%	0.0%	0.0%	0.0%	0.0%	0.0%
AZ	2014	$0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CA	2009	$0	0.6%	0.9%	1.2%	1.5**%	1.8%	2.1%	0.0%
CT	2009	$0	0.6%	0.9%	1.7%	2.1%	0.0%	0.0%	0.0%
DE	2010	$0	0.3%	0.6%	0.0%	0.0%	0.0%	0.0%	0.0%
GA	2009	$0	0.6%	0.9%	0.0%	0.0%	0.0%	0.0%	0.0%
IN	2008	$0	0.9%	1.2%	1.5%	0.0%	0.0%	0.0%	0.0%
KY	2009	$0	0.6%	0.9%	1.2%	0.0%	0.0%	0.0%	0.0%
MO	2009	$0	0.6%	0.9%	0.0%	0.0%	0.0%	0.0%	0.0%
NY	2009	$0	0.6%	0.9%	1.2%	0.0%	0.0%	0.0%	0.0%
NC	2009	$0	0.3%	0.6%	1.2%	0.0%	0.0%	0.0%	0.0%
OH	2009	$0	0.6%	0.9%	1.2%	1.5%	0.0%	0.0%	0.0%
RI	2009	$0	0.6%	0.9%	0.0%	0.0%	0.0%	0.0%	0.0%
SC	2008	$0	0.0%	0.0%	0.0%*	0.0%	0.0%	0.0%	0.0%
VI	2009	$68,472,967.02	0.6%	1.2%	1.2%	1.5%	1.8%	2.1%	2.2%
WI	2009	$0	0.6%	0.9%	0.0%	0.0%	0.0%	0.0%	0.0%

These states had Title XII advance balances on January 1 of at least two consecutive years and on November 14, 2018 and did not qualify for credit reduction avoidance.

**After five years, states are also subject to a benefit cost ratio add on (BCR add on), which reduces the FUTA credit further by an additional 1.5%. California and the Virgin Islands applied for, and received, waivers from the BCR add-on credit reduction.

SUSPENSION OF EXCLUSION FOR QUALIFIED MOVING EXPENSE REIMBURSEMENTS

The Tax Cuts and Jobs Act of 2017 suspends the exclusion for qualified moving expenses reimbursement under section 132(a)(6) and (g) from January 1, 2018 to December 31, 2025. This does not apply to members of the Armed Forces of the United States on active duty members who move under a military order to a permanent change of station. See P.L. 115-97, section 11048 and Code P—Excludable moving expense reimbursement paid directly to a member of the U.S. Armed Forces for more information.

LEAVE-BASED DONATION PROGRAMS TO AID VICTIMS OF HURRICANES AND TROPICAL STORMS HARVEY, IRMA, AND MARIA, AND THE 2017 CALIFORNIA WILDFIRES

Employees may donate their vacation, sick, or personal leave in exchange for employer cash payments made before January 1, 2019, to qualified tax-exempt organizations providing relief for the above-mentioned disasters. The donated leave can be excluded from the employees' wages. The employer may deduct the cash payments as business expenses or charitable contributions.

NEW QUALIFIED GRANTS UNDER SECTION 83(I)

The Tax Cuts and Jobs Act added new requirements for reporting "qualified equity grants" on Form W-2.

Employers must report amounts includible in gross income under section 83(i) in box 12 using code GG. Also, employers must report the aggregate amount of income that the employee chooses to defer in box 12 with Code HH. See also P.L. 115-97, Section 13603 for more information.

SUPPLEMENTAL WAGES FEDERAL WITHHOLDING RATE DECREASE EFFECTIVE 01/01/2018

Supplemental wages paid to employees on or after 01/01/ 2018 that are less than $1 million federal withholding rate decreased from 25% to 22%. Employee's that receive supplemental wages in excess of $1 million paid to any one employee within the year; the excess of $1 million are subject to federal withholding 37% (or the highest rate of income tax for the year). See Publication 15, Circular E, Employers Guide, Supplemental Wages for more information.

PATIENT PROTECTION AND AFFORDABLE CARE ACT & HEALTH CARE AND EDUCATION RECONCILIATION ACT

Many more changes are coming from these acts, automatic health insurance enrollment, penalties to large employers for not offering essential coverage, and excise tax on high-cost health coverage. Please be aware of these upcoming changes and look for more information on them as they become effective.

PUBLICATION 1542 – PER DIEM RATE TABLES – NO LONGER UPDATED

Effective for 2012 and later, the IRS will no longer be updated Publication 1542. Instead, current per diem rates may be found on the U.S. General Services Administration (GSA) website. http://www.gsa.gov/portal/category/21287 Other information regarding per diem rates, such as substantiation methods and transition rules, may be found in Publication 463, Travel, Entertainment, Gift, and Car Expenses.

AUTO AND TRUCK FAIR MARKET VALUE LIMITATION ARE CALCULATED FOR 2018

Cents-per-mile method – Based on the October 2016 CPI, it has been determined that for employer-provided vehicles first made available to employees for personal use in 2016, the cents-per-mile method cannot be used if the value of a passenger automobile exceeds $15,600 (down from 15,900 in 2017) and the value of a truck or van exceeds $17,600 (down from $17,800 in 2017).

The IRS usually does not announce these limitations until after the New Year. Based on the October 2017 CPI, the 2018 values are expected to decrease.

2019 PENSION PLAN LIMITS

The pension plan limitations for various plans, including 401(k), 403(b) and SEPS for 2019 is $19,000 (2018 $18,500). The limitation on the annual benefit under a defined benefit plan will increase from $220,000 to $225,000. The limitation on total annual contributions to defined contribution plans will increase from $55,000 to $56,000. The maximum amount of annual compensation will increase from $275,000 to $280,000. Catch up contributions to an applicable deferred plan (other than SIMPLE plans) will remain at $6,000. The maximum amount of compensation that may be elected to defer to a SIMPLE plan is $13,000 and catch up contributions are $3,000.

IRS PROVIDES NEW DE MINIMIS SAFE HARBOR FROM INFORMATION REPORTING PENALTIES

Section 202 of the PATH Act amended Code Sec. 6721 and Code Sec. 6722 to establish a safe harbor from penalties for failure to file correct information returns and failure to furnish correct payee statements for certain de minimis errors. The penalties apply when a person is required to file an information return, or furnish a payee statement, but the person: (1) fails to do so on or before the prescribed date, (2) fails to include all of the information required to be shown, or (3) includes incorrect information. Under the safe harbor, an error on an information return or payee statement is not required to be corrected, and no penalty is imposed, if the error relates to an incorrect dollar amount and the error differs from the correct amount by no more than $100 ($25 in the case of an error with respect to an amount of tax withheld). The safe harbor does not apply in the case of an intentional error, or if the payor fails to file an information return or furnish a payee statement even if the payee statement or information return would total $100 or less (or $25 or less with respect to any amount of tax withheld).

The safe harbor will not apply if the payee elects to have the employer issue a corrected return. A payor may prescribe any reasonable manner to the payee for making the election, including in writing, on-line (electronic), or by telephone. See IRS Notice 2017-09 for more information.

MAXIMUM INFORMATION REPORTING PENALTIES INCREASING ON LATE FILED 2018 RETURNS

The IRS has announced the penalty amounts for failure to file correct 2018 information returns and failure to furnish correct 2018 payee statement in 2019.

The maximum penalty amount is lower if the taxpayer is a small business. A small business has an average annual gross receipts for the most recent three tax years of $5 million or less. The amount of the penalty depends on when the return or statement is corrected.

The penalty on 2018 information returns filed in 2019 that are corrected within 30 days, is $50 per return, up to a maximum penalty of $545,500 ($191,000 for small businesses). The maximum penalty is $536,000 on 2017 information returns ($187,500 for small businesses).

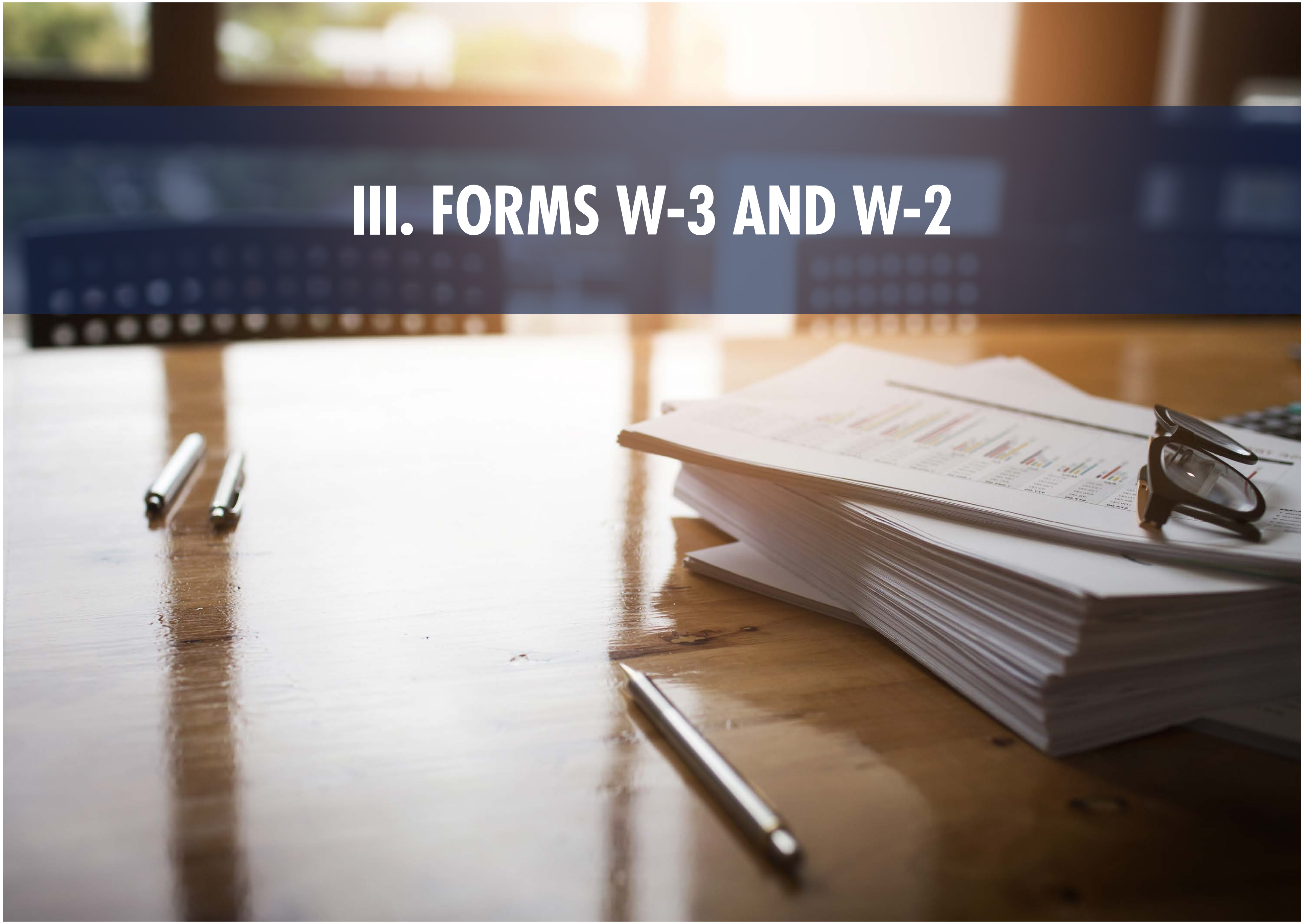
The penalty for corrected returns later than 30 days after the due date but before August 1st, is $100 per return, up to a maximum penalty of $1,637,500 ($547,000 for small businesses). The maximum penalty is $1,609,000 on 2017 returns ($536,000 for small businesses).

The penalty for corrected returns that are not corrected by August 1 (or if no return is filed at all) is $270 per return up to a maximum penalty of $3,275,500 ($1,091,500 for small businesses). The maximum penalty is $3,218,500 on 2017 returns ($1,072,500 for small businesses).

LIMIT ON HEALTH FLEXIBLE SPENDING ARRANGEMENT (FSA)

For 2018, cafeteria plan may not allow an employee to request salary reduction contribution for a health FSA to exceed $2,650. The Salary reduction contribution limitation of $2,650 does not include any amount (up to $500.00) carry over. For more information see https://www.irs.gov/pub/irs-pdf/iw2w3.pdf, section Health flexible spending arrangement(FSA).

III. FORMS W-3 AND W-2



FORM W-2

WHO MUST FILE FORM W-2:

Every employer engaged in a trade or business that pays remuneration for services performed by an employee, including noncash payments of $600 or more (all amounts if any income, social security, or Medicare tax was withheld), must furnish a Form W-2 to each employee even if the employee is related to the employer.

Employers must file Form W-2 for wages paid to each employee from whom:

- Income, social security, or Medicare taxes were withheld or
- Income tax would have been withheld if the employee had claimed no more than one withholding allowance or had not claimed exemption from withholding on Form W-4,
- Employee's Withholding Allowance Certificate.
- You paid $600 or more in wages even if you did not withhold any income, social security or Medicare tax.

WHEN TO FILE:

If you file using paper forms, you must file Copy A of Form W-2 with Form W-3 by January 31, 2019. If you e-file, the due date is January 31, 2019. You may owe a penalty for each Form W-2 that you file late.

EXTENSION TO FILE:

Extensions of time to file Form W-2 with the SSA are no longer automatic. You may request one 30-day extension to file Form W-2 by submitting a complete application on Form 8809, Application for Extension of Time to File Information Returns, including a detailed explanation of why you need additional time and signed under penalties of perjury. The IRS will only grant the extension in extraordinary circumstances or catastrophe.

WHERE TO FILE PAPER FORMS W-2 AND W-3:

File Copy A of Form W-2 with Form W-3 at the following address.

Social Security Administration
Direct Operations Center
Wilkes-Barre, PA 18769-0001

If you use "Certified mail" to file, change the ZIP code to "18769-0002"

HOW TO COMPLETE FORM W-2:

Form W-2 is a multi-part form. Ensure all copies are legible. Send Copy A to the SSA; Copy 1, if required, to your state, city, or local tax department; and Copies B, C, and 2 to your employee. Keep Copy D, and a copy of Form W-3, with your records for 4 years.

Enter the information on Form W-2 using black ink in 12-point Courier font. Copy A is read by machine and must be typed clearly with no corrections made to the entries and with no entries exceeding the size of the boxes. Entries completed by hand, in script or italic fonts, or in colors other than black cannot be read by the machines. Make all dollar entries on Copy A without the dollar sign and comma but with the decimal point (00000.00). Show the cents portion of the money amounts. If a box does not apply, leave it blank.

Send the whole Copy A page of Form W-2 with Form W-3 to the SSA even if one of the Forms W-2 on the page is blank or void. Do not staple Forms W-2 together or to Form W-3. File Forms W-2 either alphabetically by employees' last names or numerically by employees' SSNs.

CALENDAR YEAR BASIS

The entries on Form W-2 must be based on wages paid during the calendar year. Use Form W-2 for the correct tax year. For example, if an employee worked from December 22, 2018, through January 9, 2019, and the wages were paid on January 10, 2019, include those wages on the 2019 Form W-2.

FILING INSTRUCTIONS FOR PREPARING W-2 FORMS

Box a – Employee's social security number: Enter the number shown on the employee's social security card. If the employee does not have a card, he or she should apply for one by completing Form SS-5.

If the employee has applied but does not have a number in time for filing, enter "Applied For" in box a on paper Forms W-2 with the SSA. If e-filing, enter zero (000-00-0000 if creating forms online or 000000000 if uploading a file).

Ask the employee to inform you of the number and name as they are shown on the social security card when it is received. Then correct your previous report by filing Form W-2c showing the employee's SSN.

ITINs for aliens. Do not accept an ITIN in place of an SSN for employee identification or for work. An ITIN is only available to resident and nonresident aliens who are not eligible for U.S. employment and need identification for other tax purposes. You can identify an ITIN because it is a 9-digit number, formatted like an SSN beginning with the number "9" and with a number in one of the following ranges in the fourth and fifth digit: 50-65, 70-88, 90-92 and 94-99 (for example, 9NN-70-NNNN). An individual with an ITIN who later becomes eligible to work in the United States must obtain an SSN.

Do not auto-populate an ITIN into box a

Box b – Employer Identification Number (EIN): Show the employer identification number EIN assigned by the IRS. (00-0000000). This should be the same number that is used on the federal employment tax returns (941, 941-SS 940, 943, 944, CT-1 or Schedule H (Form 1040)). Do not use a prior owner's EIN. If you do not have an EIN when filing Forms W-2, enter "Applied For" in box b, not your SSN.

Box c – Employer's name, address, and ZIP code: This entry should be the same as shown on the Form 941, 941-SS, 943, 944, 940, CT-1 or Schedule H (Form 1040). The U.S. Postal Service recommends that no commas or periods be used in return addresses.

Box d – Control number: This box is used to identify individual Forms W-2. It does not have to be used.

Boxes e and f – Employee's name and address: Enter the name as shown on the employee's social security card (first name, middle initial, last name). If the name does not fit in the space allowed on the form, you may show the first and middle initials and the full last name. It is especially important to report the exact last name of the employee. Generally, do not enter "Jr.," "Sr.," etc. in the "Suff." Box on Copy A unless the suffix appears on the card. However, SSA still prefers that you do not enter the suffix on Copy A. If the employee's name does not fit in the space provided, enter the first initial, middle initial, and last name only. Separate parts of a compound name with either a hyphen or a blank. Do not join them into a single word. If the employee's name has changed during the year but the employee has not yet obtained a new social security card, use the name on the original card. The employee must get a new card from the SSA office with their correct name on it.

Include in the address and number, street, and apartment or suite number (or P.O. box number if mail is not delivered to a street address).

BOX 1 - WAGES, TIPS, OTHER COMPENSATION:

Show the total wages, tips, and other compensation, before any payroll deductions that were paid during the calendar year. Do not include any elective deferrals or pretax deductions.

A. Total wages, bonuses (including signing bonuses), prizes, and awards paid to employees during the year;

B. Total noncash payments, including certain fringe benefits;

C. Total tips reported by the employee to the employer (does not include allocated tips);

D. Certain employee business expense reimbursements;

E. The cost of accident and health insurance premiums for 2% or more shareholder-employees paid by an S corporation;

F. Taxable benefits from a section 125 (cafeteria) plan. (i.e., the employee chooses cash);

G. Employee contributions to an Archer medical savings account (MSA);

H. Employer contributions to an Archer MSA if includible in the income of the employee;

I. Employer contributions for qualified long-term care services to the extent the coverage is provided through a flexible spending or similar arrangement;

J. Taxable cost of group-term life insurance in excess of $50,000;

K. Payments for non-job-related education expenses or for payments under a non-accountable plan, unless excludable under Educational Assistance Programs;

L. The employee's share of taxes paid by the employer;

M. Designate Roth contributions made under a section 401(k) plan, a section 403(b) salary reduction agreement, or a governmental section 457(b) plan.

N. Distributions to an employee or former employee from a NQDC plan (including a rabbi trust) or a nongovernmental section 456(b) plan.

O. Amounts includible in income under section 457(f) because the amounts are no longer subject to a substantial risk of forfeiture;

P. Payments to statutory employees that are subject to social security and Medicare taxes but not subject to federal income tax withholding must be shown in box 1 as other compensation;

Q. Cost of current insurance protection under a compensatory split-dollar life insurance arrangement;

R. Employee contributions to a Health Savings Account;

S. Employer contributions to a Health Savings Account if includible in the income of the employee;

T. Amounts includible in income under a nonqualified deferred compensation plan because of section 409A;

U. Payments made to former employees while they are on active duty in the Armed Forces or other uniformed services;

V. All other compensation, including certain scholarship and fellowship grants. Other compensation includes taxable amounts that you paid to your employee from which federal income tax was not withheld. You may show other compensation on a separate Form W-2.

Wages include all cash or non-cash payments for services an employee performed for his employer, unless specifically exempted. This includes wages, salary, fees, vacation allowance, commissions, draws or bonuses, and all wage types that are included in federal taxable wages. The employee share of Social Security tax and Medicare tax paid by the employer must also be included.

NON-CASH PAYMENTS (INCLUDING TAXABLE FRINGE BENEFITS):

A. The value of non-cash items such as personal use of company vehicle and most awards

B. Cost of group term life insurance that exceeds $50,000 of coverage. Also, this amount is reported in Boxes 1, 3, and 5.

C. Tips reported by employee. Do not include the amount calculated in Box 8 for allocated tips.

D. Reporting employee business expense. The amounts paid to employees under a non-accountable plan must be reported. Also, an advance to an employee where the employee does not return the advance and does not account for the expenses is includible in income. If you provide a per diem, mileage or other allowance amount, you must include amounts that exceed the IRS specified rates.

BOX 2 - FEDERAL INCOME TAX WITHHELD: Report the total Federal income tax withheld from the employee's wages for the calendar year. Also include the 20% excise tax withheld on excess golden parachute payments.

BOX 3 - SOCIAL SECURITY WAGES: Show the total wages paid (before payroll deductions) subject to employee social security tax, but not including social security tips and allocated tips. Wages reported in box 3 also include:

A. Business expense reimbursements reported in box 1;
B. Elective deferrals to certain qualified cash or deferred compensation arrangements and to retirement plans described in box 12, Codes D, E, F, G, and S (even though not included in box 1);
C. Designated Roth contributions made to a section 401(k) plan or under a section 403(b) salary reduction agreement described in box 12, Codes AA, BB and EE;
D. The value of group-term life insurance in excess of $50,000 included in box 1;
E. Company paid employee's share of social security and Medicare taxes;
F. Employee contributions to a SIMPLE retirement account.
G. Amounts deferred (plus earnings or less losses) under a nonqualified or section 457(b) plan must be included in boxes 3 and/or 5 as social security and/or Medicare wages as of the later of when the services giving rise to the deferral are performed or when there is no substantial risk of forfeiture of the rights to the deferred amount. Include both elective and non-elective deferrals for purposes of section 457(b) plans;
H. Signing bonuses an employer pays for signing or ratifying an employment contract;
I. Cost of accident and health insurance premiums for 2% or more shareholder-employees paid by an S corporation, but only if not excludable under section 3121(a)(2)(B);
J. Employee and non-excludable employer contributions to a MSA or HSA. However, do not include employee contributions to an HSA that were made through a cafeteria plan.
K. Adoption Benefits

The total of boxes 3 and 7 cannot exceed $128,400. (2018 maximum social security wage base).

BOX 4 – SOCIAL SECURITY TAX WITHHELD: The total employee social security tax withheld or paid by the employer for the employee is reported here. For 2018 the amount should not exceed $7,960.80 ($128,400 x 6.2%). The amount entered in Box 4 should equal the total of Box 3 and Box 7 multiplied by 6.2% less any amounts entered in Box 12 with codes A and M.

BOX 5 – MEDICARE WAGES AND TIPS: The wages and tips subject to Medicare tax are the same as those subject to social security tax (boxes 3 and 7) except that there is no wage base limit for Medicare tax. Enter the total Medicare wages and tips in box 5. Be sure to enter tips that the employee reported even if you did not have enough employee funds to collect the Medicare tax for those tips.

BOX 6 – MEDICARE TAX WITHHELD: The total employee Medicare tax withheld (including any additional Medicare tax) or paid by the employer for the employee is reported here. If the employer is a government (public sector) employer with employees paying only the Medicare tax and not social security, enter the Medicare tax in this box. This amount includes the 1.45% Medicare Tax withheld on all Medicare wages and tips in Box 5, as well as the 0.9% Additional Medicare Tax on any of those Medicare Tax on any of those Medicare wages and tips above $200,000.

BOX 7 – SOCIAL SECURITY TIPS: Enter here the amount of tips reported by the employee to the employer during the year even if employee funds were insufficient to collect social security tax on the tips. The total of Boxes 3 and 7 should not exceed $128,400 for 2018.

BOX 8 - ALLOCATED TIPS: Tips must be allocated for any large food and beverage establishment where there are more than ten employees on a typical business day during the preceding calendar year. Form 8027 should be filed in relation to tip allocation. The amount is not included in Boxes 1, 3, 5, or 7.

BOX 9: If you are participating in the W-2 Verification Code pilot, enter the appropriate verification code box 9 on Copies B and C. Otherwise, leave Box 9 blank.

BOX 10 – DEPENDENT CARE BENEFITS: The total amount of dependent care benefits paid by the employer including, the fair market value of employer-provided or sponsored day care facilities, amounts paid directly to a day care facility on behalf of the employee or reimbursed to the employee, or benefits from the pre-tax contributions made by the employee to a section 125 dependent care flexible spending account. Include any amounts over $5,000 in Boxes 1, 3, and 5. If an employee participates in a Section 125 Dependent care flexible spending account, forfeitures need not be considered when completing Box 10. (i.e. An employee contributes $5,000 to their pretax dependent care flexible spending account during the plan year but only has $4,000 reimbursed will have $5,000 reported in Box 10 of their Form W-2.)

BOX 11 – NONQUALIFIED PLANS: Report the amount of deferrals, including any accumulated interest, that became taxable for social security and Medicare taxes during the year (but were for prior year services) because the deferred amounts were no longer subject to a substantial risk of forfeiture. *Do not include in box 11 deferrals that are included in boxes 3 and/or 5 and that are for current year services.*

Show distributions to an employee from a nonqualified plan or a nongovernmental section 457(b) plan. Also report these distributions in box 1. Make only one entry in this box. Distributions from governmental section 457(b) plans must be reported on Form 1099-R, not in box 1 of Form W-2.

BOX 12 – CODES: Complete and code this box for all items described below. Report in box 12 any items that are listed as codes A – HH. Do not report in box 12 section 414(h)(2) contributions (relating to certain state or local government plans). Instead, use box 14 for these items and any other information you wish to give your employees. For example, union dues and uniform payments may be reported in box 14.

Code	Description
A	Uncollected Social Security or Railroad Retirement Tax Act (RRTA) tax on tips
B	Uncollected Medicare tax on tips (but not Additional Medicare Tax)
C	Taxable cost of group-term life insurance over $50,000
D	Elective deferrals under a Section 401(k) cash or deferred arrangement plan (including a SIMPLE 401 (k) arrangement) also including "catch-up" contributions made by employees 50 years of age and older during the plan year
E	Elective deferrals under a section 403(b) salary reduction agreement
F	Elective deferrals under a section 408(k)(6) salary reduction SEP
G	Elective deferrals and employer contributions (including non-elective deferrals) to a Section 457(b) deferred compensation plan
H	Elective deferrals to a section 501(c)(18)(D) tax-exempt organization plan including "catch-up" contributions made by employees 50 years of age and older during the plan year
J	Nontaxable sick pay
K	20% excise tax on excess golden parachute payments
L	Report amount of employee business expenses when using a per diem or mileage allowance and the amount that you reimbursed exceeds the amount treated as substantiated under the IRS rules. *See Employee business expense reimbursements*. Report in Box 12 only the amount treated as substantiated (such as the nontaxable part). Include in boxes 1, 3 (up to the social security wage base), and 5 the part of the reimbursement that is more than the amount treated as substantiated. Report the unsubstantiated amounts in box 14 if you are a railroad employer. If reimbursements do not exceed IRS allowed rates, nothing needs to be reported.
M	Uncollected Social Security or RRTA tax on taxable cost of group-term life insurance over $50,000 (former employees only).
N	Uncollected Medicare tax on taxable cost of group-term life insurance over $50,000 (but not Additional Medicare Tax) (former employees only).
P	Excludable moving expense reimbursements paid directly to members of the Armed Forces

Code	Description
Q	Nontaxable combat pay
R	Employer contributions to an Archer medical savings account (MSA)
S	Employee salary reduction contributions under a section 408(p) SIMPLE plan including "catch-up" contributions made by employees 50 years of age or older during the plan year
T	Employer-provided Adoption benefits including the pre-tax contributions made by the employee to a §125 adoption plan account. Report all amounts including those in excess of the $ 13,810 exclusion.
V	Income from the exercise of non-statutory stock option(s)
W	Employer contributions (including employee contributions through a cafeteria plan) to an employee's Health Savings Account (HSA).
Y	Deferrals under a section 409A nonqualified deferred compensation plan
Z	Income under a nonqualified deferred compensation plan that fails to satisfy section 409A
AA	Designated Roth contributions to a section 401(k) plan including "catch-up" contributions made by employees 50 years of age or older during the plan year
BB	Designated Roth contributions under a section 403(b) salary reduction agreement plan including "catch-up" contributions made by employees 50 years of age or older during the plan year
DD	Cost of employer-sponsored health coverage
EE	Designated Roth contributions under a governmental section 457(b) plan plan including "catch-up" contributions made by employees 50 years of age or older during the plan year
FF	Permitted benefits under a qualified small employer health reimbursement arrangement The maximum reimbursement for an eligible employee under a QSEHRA for 2018 is $5,050 ($10,250 if it also provides reimbursements for family members).
GG	Income from qualified equity grants under section 83(i)
HH	Aggregate deferrals under section 83(i) elections as of the close of the calendar year

BOX 13 - STATUTORY EMPLOYEE: Check this box for employees whose earnings are subject to Social Security and Medicare tax, but not subject to federal income tax withholding (such as life insurance agents).

BOX 13 - RETIREMENT PLAN: Check this box if the employee was an active participant in a retirement plan or participated in a collectively bargained plan. **DO NOT** check this box if you are reporting contributions made to a non-qualified pension plan or Section 457(b) plan. (Section 457 plans are certain plans of governmental units and tax exempt organizations). This includes any of the following plans:

- A qualified pension, profit sharing, or stock-bonus plan described in section 401(a) (including a 401(k) plan).
- An annuity plan described in section 403(a).
- An annuity contract or custodial account described in section 403(b).
- A simplified employee pension (SEP) plan described in section 408(k).
- A SIMPLE retirement account described in section 408(p).
- A trust described in section 501(c)(18).
- A plan for federal, state, or local government employees or by an agency or instrumentality thereof (other than a section 457(b) plan).

(An employee is an active participant if covered by (a) a defined benefit plan for any tax year that he or she is eligible to participate or (b) a defined contribution plan for any tax year that employer or employee contributions (or forfeitures) are added to his or her account.)

Type of Plan	Conditions	Retirement Box Checked?
Defined Benefit Plan (i.e., a traditional pension plan)	Employee qualifies for employer funding into the plan, due to age/years of service – even though the employee may not be vested or ever collect benefits.	YES
Defined Contribution Plan (i.e., 401(k) or 403(b), but not a 457 plan)	Employee is eligible to contribute but does not elect to contribute any money in this tax year.	NO
Defined Contribution Plan (i.e.,401(k), 403(b), Roth 401(k), or Roth 403(b), but not a 457 plan)	Employee is eligible to contribute and elects to contribute money in this tax year.	YES
Defined Contribution Plan (i.e.,401(k), 403(b), Roth 401(k), or Roth 403(b), but not a 457 plan)	Employee is eligible to contribute but does not elect to contribute any money in this tax year, but the employer does contribute funds.	YES
Defined Contribution Plan (i.e.,401(k), 403(b), Roth 401(k), or Roth 403(b), but not a 457 plan	Employee contributed in past years but not during the current tax year under report	No (even if the account value grows due to gains in the investments)
Profit Sharing Plan	Plan includes a grace period after the close of the plan year when profit sharing can be added to the participant's account	YES

BOX 13 - THIRD-PARTY SICK PAY: Check this box if you are a third party sick pay payer filing a Form W-2 for an insured's employee or an employer reporting sick pay payments made by a third party to an employee.

BOX 14 – OTHER: The lease value of a vehicle provided to your employee and included in Box 1 must be reported here. Use to report other information that you want to give the employee. For example, contributions to an employee pension plan, union dues, deductions for health insurance premiums, payroll savings, life insurance, etc. You may use this box for information needed for state reporting, but not required by IRS. Each item should be labeled.

BOXES 15 THROUGH 20: Information for state and local wages and withholding.

REMINDERS:

1. Type in all data - no handwriting is allowed.
2. Do not cut or separate top form (Copy A).
3. No photocopies of any forms should be mailed to the Social Security Administration.
4. Do not staple, tear, or tape any of the forms.
5. Do not change the title of any box on the form.
6. Do not insert data in the untitled shaded areas.
7. Do not submit any copy other than Copy A to the Social Security Administration.
8. Print money amounts without dollar signs or commas. Use decimal points to indicate cents. If a box does not apply, leave it blank.
9. File electronically if 250 or more W-2s are to be filed.
    a. Due dates: W-2 is due to the employee January 31, 2019, and W-3 is due January 31, 2019, whether filing paper or electronic returns.
10. Void-make sure this box is marked on any W-2 with an error and is not included in W-3 amounts.
11. Do not use titles such as Mr., Ms., Dr., etc.
12. Do not use a period after the middle initial.
13. Any employee (recipient) copies of Form W-2 that were attempted to be delivered but could not, should be kept for a period of 4 years.
14. If an employee does not have a social security number at the time the W-2 forms are being prepared, enter "applied for" in Box A if filing paper forms or "000-00-0000" if filing electronically.

COMMON W-2 REPORTING ERRORS

DO NOT:

- Download Copy A of Forms W-2, W-2AS, W-2GU, W-2VI, W-3SS or Form W-3 from IRS.gov and file with Social Security Administration (SSA).
- Omit the decimal point and cents from entries.
- Make entries using ink that is too light – use only black ink.
- Make entries that are too small or too large (Use 12-point Courier font, if possible).
- Add dollar signs to the money amount boxes. They have been removed from copy A and are not required.
- Inappropriately check the “Retirement plan” checkbox in box 13. See Retirement plan.
- Misformat the employee’s name in box e. Enter the employee’s first name and middle initial in the first box, his or her surname in the second box, and his or her suffix (such as “Jr.”) in the third box (optional).
- Enter the incorrect employer identification number (EIN) or the employee’s SSN for the EIN.
- Cut, fold, or staple Copy A paper forms mailed to SSA.
- Mail any other copy other than Copy A of Form W-2 to the SSA.

ERRORS RESULTING IN OUT-OF-BALANCE REPORTS:

- Use of maximum social security or Medicare wage amounts for a prior year - instead of for the tax year being reported.
- Use of social security maximum yearly wage amount for Medicare wages.
- Decimal mistakes in money fields; i.e. “4800” which is treated by SSA as $48.00 - instead of $4800.00.
- Tips included in the social security wage field as well as in the social security tip field.
- Omitted wage or tax fields on wage reports.

ERRORS COMMON TO PAPER FORM W-2 REPORTS:

- Prior tax year form used.
- Unscannable reports
- Failure to file Copy A of Form W-2 with SSA
- “Void” indicator on Form W-2 checked in error
- Failure to complete the pension plan block in Box 15 of Form W-2

CHARGING FEES FOR DUPLICATE COPIES

According to the IRS, employers may not collect a fee for supplying original and corrected W-2 and 1099 forms, but that a fee may be charged for supplying duplicate copies.

Duplicate W-2 and 1099 forms are often issued to employees and other payers who have lost or destroyed their copy of the form. The IRS stated that a fee may be charged for furnishing additional copies of the forms because once an employer has timely furnished correct W-2 and 1099 forms it has met its statutory obligations. Moreover, there are no penalties under the Internal Revenue Code for refusing to satisfy a request for another copy of an information return.

Consider using the following W-2 Request Form to authorize such a payroll deduction.

FORM W-3

WHO MUST FILE FORM W-3

Anyone required to file Form W-2 must file Form W-3 to transmit Copy A of Forms W-2. Make a copy of Form W-3; keep it and Copy D (For Employer) of Forms W-2 with your records for 4 years. Be sure to use Form W-3 for the correct year.

Even employers with only one household employee must file Form W-3 to transmit Copy A of Form W-2. On Form W-3, check the “Hshld emp” checkbox in box b.

FILING INSTRUCTIONS FOR PREPARING FORM W-3

- Box A - control number (optional).
- Box B - kind of payer. Check one box. If more than one type of W-2, send each type with a separate Form W-3.
- Box C - total number of statements. The number of completed statements does not include voided or subtotal statements.
- Box D - establishment number (optional)
- Box E - federal ID number. If you do not have an EIN number when filing, enter “Applied For”. Do not use a social security number.
- Box F - employer’s name
- Box G - employer’s address and zip code
- Box H - other EIN used this year
- Boxes 1 through 8 - enter the totals reported in boxes 1 through 8 on Forms W-2 being transmitted.
- Box 9 – do not enter an amount
- Box 10 – dependent care benefits reported in box 10 on W-2
- Box 11 - nonqualified plans. Report the total amount of distributions from nonqualified and Section 457 plans as reported in Box 11 of Forms W-2.
- Box 12a - deferred compensation. Enter the total of the amounts with codes D-H, S, Y, AA, BB and EE reported in box 12 of Forms W-2. Do not enter a code.
- Box 13 – for third party sick pay use only
- Box 14 - income tax withheld by third-party sick pay payer
- Box 15 – State/Employer’s state ID number
- Box 16 – 19 – State/local wages and income tax from W-2

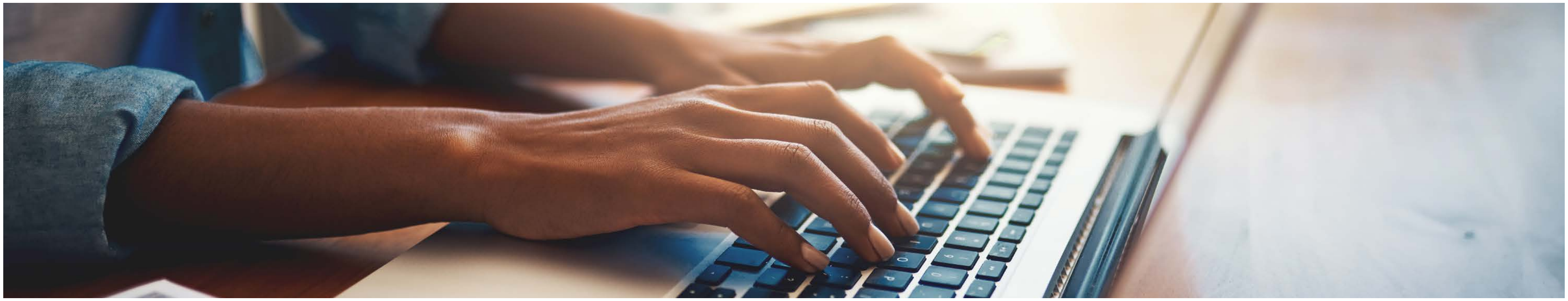
WHO MAY SIGN FORM W-3

A transmitter or sender (including a service bureau, reporting agent, paying agent, or disbursing agent) may sign form W-3 (or use its PIN to e-file) for the employer or payer only if the sender is authorized to sign under state law, and writes “For (name of taxpayer) next to the signature (paper Form of W-3 only).

WHEN TO FILE

Mail or electronically file Copy A of Form(s) W-2 and W-3 with the SSA by January 31, 2019.

If you need an extension to file form W-2, you must send Form 8809, Application for Extension of Time to File Information Returns, to the address shown on the 8809 form. The extension must be requested before the due date of the W-2 form. After the 8809 form has been submitted and approved, you will have an additional 30 days to file. Please keep in mind that you still need to furnish a W-2 to your employees by January 31st, 2019.



ELECTRONIC FILING

Filing of Forms W-2 can now be done over the internet. The Business Services Online program (BSO) lets you upload wage-data files over the Internet. Uploaded data files must conform to the SSA's specifications. Except for Internet service and long-distance charges, the BSO is free.

In addition to uploading wage-data files, you can also use the BSO to:

- Check the status of wage-data submissions after a pre-processing period of one to six weeks.
- Send e-mail to SSA.
- Browse the online handbook.
- Verify social security numbers.
- View file errors.

SSA's "Create Forms W-2 Online" option allows you to create "fill-in" versions of Forms W-2 for filing with the SSA and to print out copies of the forms for filing with state or local governments, distribute to employees, and for your files. Form W-3 will be automatically created based on your Forms W-2.

Visit SSA's website at https://www.ssa.gov/employer and select "Business Services Online" (BSO).

PAPER FILING

If the paper filing method is preferred, please File Copy A of Form W-2 with W-3 to:

Social Security Administration
Direct Operations Center
Wilkes-Barre, PA 18769-0001

REMINDERS

- Use black ink on all forms
- Do not staple or tape any forms to each other
- Be sure that the amounts on Form W-3 are the total amounts from Forms W-2
- Be sure to look over each amount in each box carefully
- Reconcile W-3 with your four quarterly forms (941, or 943, etc) by comparing the amounts reported for income tax withholding, Social security wages, Medicare wages/tips and social security wages/tips.
- Social security and Medicare taxes (the amounts shown on the 941, 943, etc) including current year adjustments, should be approximately twice the amounts shown on W-3.
- If amounts do not match due to valid reasons, you should determine that the reasons are valid. Retain your reconciliation information in case you receive inquiries from the IRS or SSA.

CORRECTING FORMS W-2/W-3

Use the current version for Form W-2c to correct errors (such as incorrect name, SSN, or amount) on a previously filed Form W-2 or Form W-2c.

File Form W-3c, Transmittal of Corrected Wage and Tax Statements, whenever you file a Form W-2c with the Social Security Administration, even if the only thing being corrected is an employee's name or social security number.

CORRECTING AN ERROR AFTER ISSUING EMPLOYEE'S COPY BUT BEFORE TRANSMITTING TO SSA

If an error is discovered on Form W-2 after issuing it to the employee but before it is sent to the Social Security Administration, check the "Void" box at the top of the incorrect W-2 form on Copy A. Prepare a new Form W-2 with correct information and send Copy A to the SSA. Write "Corrected" on the employee's new copies (B, C, and 2), and furnish them to the employee.

If the "Void" Form W-2 is on a page with a correct Form W-2, send the entire page to the SSA. The "Void" form will not be processed. Do not write "CORRECTED" on Copy A for Form W-2.

If you are making a correction for previously filed Forms 941, 941-SS, 943, 944, or CT-1, use the corresponding "X" forms (941-X, 943-X, 944-X, or CT-1X) for the return period in which you found the error. See section 13 of Pub. 15 (Circular E) and the Instructions for CT-1X for more details. If you are making corrections to a previously filed Schedule H (Form 1040), see Pub. 926. Issue the employee a Form W-2c if the error discovered was for the prior year and Form W-2 was filed with the SSA.

CORRECTING AN EMPLOYEE'S NAME AND/OR SSN ONLY

If you are correcting only an employee's name and/or SSN, complete Form W-2c, boxes d through i. Do not complete boxes 1 through 20. Employee should be advised to correct the SSN and/or name on his or her original W-2 form.

CORRECTING AN EMPLOYEE'S NAME AND SSN IF THE SSN WAS REPORTED AS BLANKS OR ZEROS AND THE EMPLOYEE NAME WAS REPORTED AS BLANKS

If an employee's name was reported as blanks and the SSN was reported as blanks or zeros, do not use for W-2c to report the corrections. You must contact the SSA at 1-800-772-6270 for instructions.

CORRECTING AN INCORRECT TAX YEAR AND/OR EIN:

To correct an incorrect tax year and/or EIN on a previously submitted Form W-2 or W-3, you must prepare two sets of Forms W-2c and W-3c.

a. Prepare one Form W-3c along with form W-2c for each affected employee. On the Form W-3c, enter the incorrect tax year in box a, and the incorrect EIN originally reported in box h. Enter in the "Previously reported" boxes the money amounts that were on the original Form W-2. In the "Correct information" boxes, enter zeros.

b. Prepare a second Form W-3c along with a second Form W-2c for each affected employee. On the Form W-3c, enter the correct tax year in box a and/or the correct EIN in box e. Enter zeros in the "Previously reported" boxes, and enter the correct money amounts in the "Correct information" boxes.

CORRECTING MORE THAN ONE FORM W-2 FOR AN EMPLOYEE

You can correct Form W-2 in two ways for an employee for whom more than one Form W-2 was filed under the same EIN for the tax year.

1. Consider all the Forms W-2 when determining the amounts to enter on Form W-2c
2. File a single Form W-2c to correct only the incorrect Form W-2

CORRECTING MORE THAN ONE KIND OF FORM

You must use a separate Form W-3c for each type of Form W-2 (Forms W-2, W-2AS, W-2CM, W-2GU, W-2VI, or W-2c) being corrected. You also must use a separate Form W-3c for each kind of payer/employer combination in box c. If you are correcting more than one kind of form, group forms of the same kind of payer/employer combination, and send them in separate groups.

INCORRECT ADDRESS ON EMPLOYEE'S FORM W-2

If Form W-2 was filed with an incorrect employee address but all other information was correct, do not file a Form W-2c with SSA merely to correct the address.

However, if the address was incorrect on Form W-2 furnished to the employee, either:

1. Issue a new, corrected Form W-2 to the employee, including the new address. Indicate "REISSUED STATEMENT" on the new copies. Do not send Copy A to the SSA, or
2. Issue a Form W-2c to the employee showing the correct address in box i and all other correct information. Do not send Copy A to the SSA, or
3. Mail the Form W-2, with the incorrect address to the employee in an envelope showing the correct address or otherwise deliver it to the employee.

PENALTIES

The following penalties apply to the person or employer required to file Form W-2. The penalties apply to both paper filers and e-filers.

FAILURE TO FILE A CORRECT W-2 BY THE DUE DATE

If you fail to file a correct Form W-2 by the due date and cannot show reasonable cause, you may be subject to a penalty if you a) fail to file timely, b) fail to include all information required, c) include incorrect information, d) file on paper forms when required to e-file, e) report an incorrect TIN, e) fail to report a TIN, or f) file to file paper forms that are machine readable. The amount of the penalty is based on when you file the correct Form W-2. Penalties are indexed for inflation.

- $ 50 per Form W-2 if you correctly file within 30 days of the due date; the maximum penalty is $545,500 per year ($191,000 for small businesses) (See note below)
- $100 per Form W-2 if you correctly file more than 30 days after the due date but by August 1; the maximum penalty is $1,637,500 per year ($545,500 for small businesses). (See note below)
- $270 per Form W-2 if you file after August 1, do not file corrections, or do not filed required Forms W-2; the maximum penalty is $3,275,500 per year ($1,091,500 for small businesses).
- If you do not file corrections and you do not meet any of the exceptions to the penalty, the penalty is $270 per information return. The maximum penalty is $3,275,500 per year ($1,091,500 for small businesses). (See note below)

SMALL BUSINESSES

For purposes of the lower maximum penalties shown, you are a small business if your average annual gross receipts for the 3 most recent tax years (or for the period that you were in existence, if shorter) ending before the calendar year in which the Forms W-2 were due are $5 million or less.

EXCEPTIONS TO THE PENALTY

1. The penalty will not apply to any failure that you can show was due to **reasonable cause** and not willful neglect. In general, you must be able to show that your failure to file was due to an event beyond your control or due to significant mitigating factors. You must also be able to show that you acted in a responsible manner and took steps to avoid the failure.
2. An **inconsequential error or omission** is not considered a failure to include correct information. An inconsequential error or omission does not prevent or hinder the SSA/IRS from processing the Form W-2, from correlating the information required to be shown on the form with the information shown on the payee's tax return, or from otherwise putting the form to its intended use. Errors and omissions that are never inconsequential are those relating to a TIN, a payee's surname, and any money amounts.
3. De minimis rule for corrections. Even though you cannot show reasonable cause, the penalty for failure to file correct Forms W-2 will not apply to a certain number of returns if you: a) filed those Forms W-2 on or before the required filing date. b) either failed to include all the information required on the form or included incorrect information and c) filed corrections of these forms by August 1. If you meet all of the de minimis rule conditions, the penalty for filing incorrect information returns (including Form W-2) will not apply to the greater of 10 information returns (including Form W-2) or one-half of 1% of the total number of information returns (including Form W-2) that you are required to file for the calendar year.
4. Forms W-2 issued with incorrect dollar amounts may fall under a safe harbor for certain de minimis errors. The safe harbor generally applies if no single amount in error differs from the correct amount by more than $100 and no single amount reported for tax withheld differs from the correct amount by more than $25.

If the safe harbor applies, you will not have to correct the Form W-2 to avoid penalties. However, if the payee elects for the safe harbor not to apply, you may have to issue a corrected return to avoid penalties.

FAILURE TO FURNISH CORRECT PAYEE STATEMENTS

If you fail to provide correct Forms W-2 to your employees and cannot show reasonable cause, you may be subject to a penalty. The penalty applies if you fail to provide the statement by January 31, 2019, if you fail to include all the information required, or if you include incorrect information. The amount of the penalty is based on when you provide the correct statement. This penalty is an additional penalty and is applied in the same manner and with the same amounts as listed previously for failure to file by the due date.

EXCEPTIONS TO THE PENALTY

An inconsequential error or omission is not considered a failure to include correct information. An inconsequential error or omission cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her income tax return or from otherwise putting the statement to its intended use. Errors and omissions that are never inconsequential are those relating to a dollar amount, a significant item in the payee's address, and the appropriate form for the information provided, such as whether the form is an acceptable substitute for the official IRS form.

INTENTIONAL DISREGARD OF PAYEE STATEMENT REQUIREMENTS

If any failure to provide a correct or timely Form W-2 to an employee is due to intentional disregard of the requirements, the penalty is $540 per Form W-2 with no maximum penalty.

If you file a fraudulent Form W-2 for payments you claim you made to another person, that person may be able to sue you for damages. If you are found liable, you may have to pay $5,000 or more in damages. You may also be subject to criminal sanctions.

FRINGE BENEFITS AND SPECIAL REPORTING ISSUES

The IRS defines gross income as “all income from whatever source derived, including (but not limited to) compensation for services, including fees, commissions, fringe benefits, and similar items” under IRC section 61.

IRS Regulation section 1.61-1 further explains that “gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, stock, or other property, as well as cash.”

These definitions mean that all employee compensation, provided in whatever form, is taxable unless another section of the IRC states the compensation in not taxable.

TAXABLE FRINGE BENEFITS

In general, the amount you must include in the employee’s gross income is the amount by which the fair market value of the benefit exceeds the amount the employee paid after taxes for the benefit, less any amount the law excludes.

The employer must determine the value of fringe benefits provided to the employee no later than January 31 of the following year in order to report the taxable value on the employee’s Form W-2. However, waiting until January to value the benefits may require the employer to pay the employee’s taxes and may subject the employer to a deposit penalty if the taxes are not deposited timely based on the benefits being deemed paid on December 31.

WHEN FRINGE BENEFITS ARE CONSIDERED PAID

Employer provided non-cash taxable fringe benefits are subject to federal income, social security, Medicare, and unemployment tax rules. To determine the amount to be withheld and when to deposit taxes withheld for non-cash fringe benefits, the fringe benefits may be reported as paid by the pay period, monthly, quarterly, or on any other basis, so long as the benefits are reported as being paid at least annually. This choice can be varied among employees and benefits. The employer is not required to notify the employee or IRS of the date selected. Employers may change methods at any time, as long as all benefits provided in a calendar year are treated as paid by December 31 of the calendar year.

The employer has the option to consider a single fringe benefit to be paid on one or more dates in the same calendar year, even if the employee acquires the entire benefit at one time. When employers select the payment dates, they must report the taxes on their return in the same tax period in which they treated them as paid. This election does not apply to a fringe benefit where real property or investment personal property is transferred.

Any fringe benefit paid in cash must be included in income subject to withholding, depositing, and reporting when paid.

Nonqualified moving expense reimbursements are not “non-cash fringe benefits” and must be included in income and taxed when constructively received.

SPECIAL ACCOUNTING RULE

The employer may elect to treat the value of taxable noncash fringe benefits provided in November and December, or any other shorter period during that time, as paid in the subsequent year. This applies only to the benefits actually provided during November and December, not to benefits that were provided earlier in the year but are treated as being paid during those months. The special accounting rule is limited to noncash fringe benefits.

When using the special accounting rule, employers are required to notify the affected employees of the period for which they used it. Notify the employees of the applicable benefits between the last payday of the calendar year and at or near the time the employer provides the employees with their Form W-2. If the rule is used for a benefit, it must be used for all employees that receive the benefit.

This rule cannot be used for a fringe benefit where the employer transfers real property or investment personal property to the employee. The value of group-term life insurance and nonqualified moving expense reimbursements are not considered noncash fringe benefits by the IRS and cannot be reported under the special accounting rule.

DEPOSITING TAXES ON FRINGE BENEFITS

Federal taxes must be deposited for the same semiweekly or monthly deposit period that the employer deems the fringe benefit paid. Deposit the taxes using the deposit rules for that tax period.

If the employer underestimates the fringe benefit amount when calculating taxes, or for some other reason does not withhold and deposit enough taxes, it must pay the employee's share of social security and Medicare taxes. It can collect the tax from the employee at a future date by deducting it from the employee's after-tax wages, but it must recover the income taxes before April 1 of the following year.

WITHHOLDING ON FRINGE BENEFITS

The employer has two options in determining how to withhold federal income taxes from fringe benefits:

1. Imputing – add the value of the benefit to the employee's regular wages for a payroll period and calculate the taxes to be withheld on the total wages, or
2. Withhold federal income tax on the value of the benefit at the optional flat tax rate. If the annual supplemental wages for an employee are less than $1 million, the optional flat tax rate is only available if federal income tax was withheld from the employee's payment of regular wages during the current or preceding calendar year.

SUPPLEMENTAL WAGE PAYMENTS

Supplemental wages include any wages paid by an employer that are not regular wages. The IRS defines regular wages as amounts paid by an employer for a payroll period either at a regular hourly rate or in a predetermined fixed amount. Wages that vary from payroll period to payroll period based on factors other than the amount of time worked are supplemental wages, if they are paid in addition to regular wages.

Payments that satisfy the basic definition of supplemental wages (i.e., all wage payments other than regular wage payments) are supplemental wages regardless of whether the employee has received any regular wages in his or her working career with the employer.

EXAMPLES OF SUPPLEMENTAL WAGE PAYMENTS INCLUDE BUT ARE NOT LIMITED TO:

- Reported tips;
- Overtime pay;
- Bonuses;
- Awards and prizes;
- Back pay;
- Severance pay;
- Accumulated sick leave;
- Commissions;
- Retroactive pay increases;
- Non-deductible moving expenses;
- Expense allowances paid under a nonaccountable plan;
- Distributions of nonqualified deferred compensation;
- Taxable noncash fringe benefits;
- Sick pay paid by a third party as an agent of the employer;
- Amounts includible in gross income under IRC §409A and reported in Box 12, code Z;
- Income recognized on the exercise of a non-statutory stock option;
- Imputed income for health coverage for a non-dependent; and
- Income recognized on the lapse of a restriction on restricted property transferred from an employer to an employee.

How you withhold on supplemental wages depends on whether the supplemental payment is identified as a separate payment from regular wages and if an employee receives more than $1 million of supplemental wages during the calendar year.

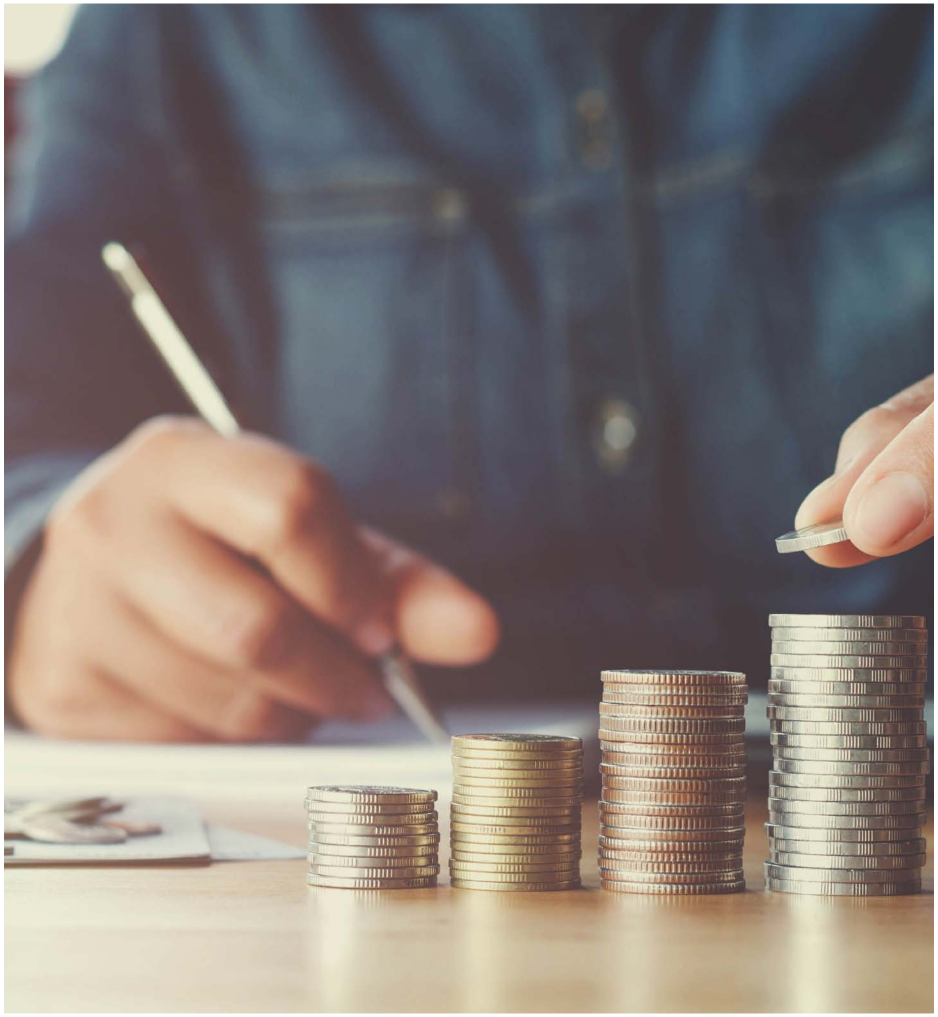
Withholding on supplemental wages when an employee receives more than $1,000,000 of supplemental wages during the calendar year: If a supplemental wage payment, together with other supplemental wage payments made to the employee during the calendar year exceed $1,000,000, the excess is subject to withholding at 37% (or the highest rate of income tax for the year). Withhold using the 37% rate without regard to the employee's Form W-4.

Withholding on supplemental wage payments to an employee who does not receive $1,000,000 of supplemental wages during the calendar year: If the supplemental wages paid to the employee during the calendar year are less than or equal to $1,000,000, the following rules apply in determining the amount of income tax to be withheld.

- Supplemental wages combined with regular wages: If the supplemental wages are combined with regular wages but do not specify the amount of each, withhold federal income tax as if the total were a single payment for a regular payroll period.
- Supplemental wages identified separately from regular wages: If the supplemental wages are paid separately (or combined in a single payment with each amount specified), the federal income tax withholding method depends partly on whether income tax was withheld from the employee's regular wages.
    1. If income tax was withheld from an employee's regular wages in the current or immediately preceding calendar year, one of the following methods can be used:
        a. Withhold a flat 22% (no other percentage is allowed).
        b. If the supplemental wages are paid concurrently with regular wages, add the supplemental wages to the regular wages and calculate the tax on the total based on the employee's Form W-4. If there are no concurrently paid regular wages, add the supplemental wages to either the regular wages paid or to be paid for the current payroll period or the regular wages paid for the preceding payroll period. Calculate the income tax withholding as if the total of the regular wages and the supplemental wages is a single payment. Subtract the tax withheld from the regular. Withhold the remaining tax from the supplemental wages.
    2. If income tax was not withheld from the employee's regular wages in the current or immediately preceding calendar year, use method 1-b above.

Tips treated as supplemental wages: Withhold income tax on tips from wages earned by the employee or from other funds the employee makes available. If an employee receives regular wages and reports tips, figure income tax withholding as if the tips were supplemental wages. If income tax has not been withheld from regular wages, the tips should be added to the regular wages and income tax withholding calculated on the total. If income tax has been withheld from the regular wages, income tax withholding on the tips can be calculated by method 1-a or 1-b above.

See chart in appendix for a list of state supplemental rates.



EMPLOYER-PAID TAXES

Frequently an employer will pay the applicable income and employment taxes on behalf of the employee on the taxable value of a noncash fringe benefit. This also applies if they under withheld taxes, such as federal income, Social Security, and Medicare taxes and pays them on the employee's behalf. The amount paid by the employer is to be treated as taxable income, subject to federal income tax and employment taxes in the year paid. If in 2018, you paid an employee's taxes due in April 2018 for the employee's 2017 tax liability, the amount paid in 2018 is part of the employee's 2018 wages and is subject to 2018 income, social security, and Medicare taxes.

The employer may request reimbursement from the employee for the taxes paid, either through an authorized payroll deduction or by a personal check. Any amount of federal income tax not reimbursed to the employer by April 1 of the following year becomes taxable income to the employee for the prior year. The employer issues a Form W-2c to report this additional income and would deposit any applicable taxes associated with the gross-up.

Taxable employer-paid taxes are reported in boxes 1, 3, and 5 of Form W-2 as well as state wages, if applicable. They are also reported as federal and state unemployment wages.

When an employer pays taxes on behalf of the employee, this is referred to as "gross-up" and the taxes paid become wages. To determine an employee's gross-up, use the following formula:

AMOUNT OF PAYMENT
100% - % OF EMPLOYEE TAX DUE = TAXABLE INCOME

The following formula should be used if the employee's wages are near the social security wage base:

SOCIAL SECURITY TAX BALANCE + AMOUNT OF PAYMENT
100% - % OF EMPLOYEE TAX DUE (less social security tax rate) **= TAXABLE INCOME**

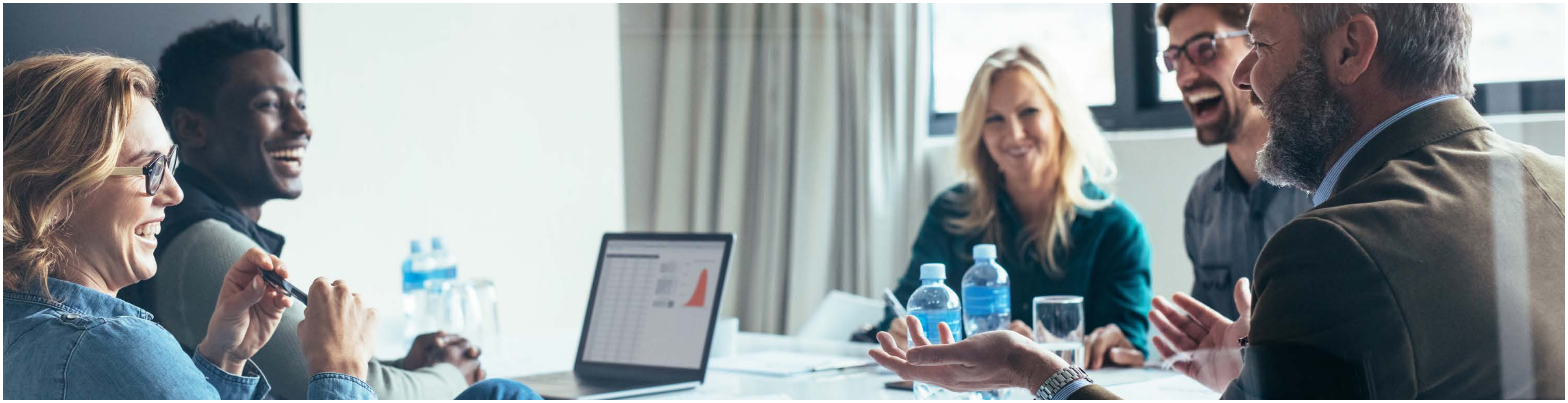
Also watch if the employee must pay the additional Medicare tax on wages over $200,000.

CAFETERIA PLANS AND FLEXIBLE BENEFIT PLANS

The terms "cafeteria plans" and "flexible benefit plans" or "flex plans" are used interchangeably today to refer to an approach used to provide employees with a "menu" from which they may select various benefit options. In August 2007, the IRS issued comprehensive new proposed regulations on cafeteria plans that replace proposed regulations issued in 1984, 1989, 1997, and 2000. In addition, temporary regulations issued in 1986 are removed.

QUALIFIED AND NONQUALIFIED BENEFITS: The new proposed regulations clarify that when employees may elect between taxable and nontaxable benefits, this ability to elect results in gross income to the employees unless a specific Internal Revenue Code section (e.g., §125 or §132(f)(4)) provides an exception. In addition, the regulations provide that unless a plan satisfies the requirements of IRC §125 and the regulations, the plan is not a cafeteria plan. Reasons that a plan would fail to satisfy the §125 requirements include:

- Offering nonqualified benefits;
- Not offering an election between at least one permitted taxable benefit and at least one qualified benefit;
- Deferring compensation;
- Failing to comply with the uniform coverage rule or use-or-lose rule;
- Allowing employees to revoke elections or make new elections during a plan year, except as provided in the regulations;
- Failing to comply with substantiation requirements;
- Paying or reimbursing expenses incurred for qualified benefits before the effective date of the cafeteria plan or before a period of coverage;
- Allocating experience gains (forfeitures) other than as expressly allowed in the regulations; and
- Failing to comply with grace period rules.



DEFINITION OF A CAFETERIA PLAN: The new proposed regulations provide that a cafeteria plan is a separate written plan that complies with the requirements of §125 and the regulations, that is maintained by an employer for employees, and that is operated in compliance with the requirements of §125 and the regulations. Participants in cafeteria plans must be permitted to choose among at least one permitted taxable benefit (e.g., cash, including salary reduction) and at least one qualified (nontaxable) benefit. Finally, a cafeteria plan must not provide for deferral of compensation, except as specifically permitted under the regulations.

WRITTEN PLAN: A cafeteria plan must be in writing, and must be operated in accordance with the written plan terms. The new proposed regulations require that the written plan:

- Specifically describe all benefits,
- Set forth the rules for eligibility to participate and the procedure for making elections,
- Provide that all elections are irrevocable (except that a plan may include certain optional change-in-status rules), and
- State how employer contributions may be made under the plan (e.g., salary reductions or non-elective employer contributions), the maximum amount of elective contributions, and the plan year.

If the plan includes a flexible spending arrangement (FSA), the written plan must include provisions complying with the uniform coverage rule and the use-or-lose rule.

The new proposed regulations require that the written cafeteria plan specify that only employees may participate in the plan, and that all provisions of the written plan apply uniformly to all participants.

WHO MAY PARTICIPATE IN A CAFETERIA PLAN: All participants in a cafeteria plan must be employees. The new proposed regulations provide that employees include common law employees, leased employees, and full-time insurance salesmen. Former employees (including laid-off employees and retired employees) may also participate in a plan, but a plan may not be maintained predominantly for former employees. Note that all employees who are treated as employed by a single employer under IRC §414 are treated as employed by a single employer for purposes of §125.

A participant's spouse or dependents may receive benefits through a cafeteria plan, although they cannot participate in the plan.

Self-employed individuals are not treated as employees for purposes of §125. Accordingly, sole proprietors, partners, and directors of corporations may not participate in a cafeteria plan because they are not employees. A self-employed individual may, however, sponsor a cafeteria plan for his or her employees.

The new proposed regulations clarify that 2% shareholders of an S corporation are not employees for purposes of §125.

Finally, the new proposed regulations provide rules for dual status individuals moving between employee and non-employee status.

QUALIFIED BENEFITS: In general, in order for a benefit to be a qualified benefit for purposes of §125, the benefit must be excludable from employees' gross income under a specific provision of the IRC and must not defer compensation, except as specifically allowed. Examples of qualified benefits include:

- Group-term life insurance on the life of an employee;
- Employer-provided accident and health plans, including health flexible spending arrangements and accidental death and dismemberment policies;
- A dependent care assistance program;
- An adoption assistance program;
- Contributions to a §401(k) plan;
- Contributions to certain plans maintained by educational organizations;
- Contributions to Health Savings Accounts; and
- Long-term and short-term disability coverage.

NO DEFERRAL OF COMPENSATION: Qualified benefits must be current benefits. In general, a cafeteria plan may not offer benefits that defer compensation or operate to defer compensation. This means that plan benefits may not be carried over to a later plan year or used in one plan year to purchase benefits to be provided in a later plan year. For example, life insurance with a cash value build-up or group-term life insurance with a permanent benefit defers the receipt of compensation and thus is not a qualified benefit.

The new proposed regulations clarify whether certain benefits and plan administration practices defer compensation. For example, the regulations permit an accident and health insurance policy to provide certain benefit features that apply for more than one plan year, such as reasonable lifetime limits on benefits, level premiums, premium waiver during disability, guaranteed renewability of coverage for specified accidental injury or specific diseases, and the payment of a fixed amount per day for hospitalization. But these insurance policies must not provide an investment fund or cash value to pay premiums, and no part of the premium may be held in a separate account for any beneficiary.

The new proposed regulations also provide that the following benefits and practices do not defer compensation:

- A long-term disability policy paying benefits over more than one plan year;
- Reasonable premium rebates or policy dividends;
- Certain two-year lock-in vision and dental policies;
- Certain advance payments for orthodontia;
- Salary reduction contributions in the last month of a plan year used to pay accident and health insurance premiums for the first month of the following plan year;
- Reimbursement of §213(d) expenses for durable medical equipment; and
- Allocation of experience gains (forfeitures) among participants.

GRACE PERIODS: The new proposed regulations allow a written cafeteria plan to provide an optional grace period immediately following the end of each plan year, extending the period for incurring expenses for qualified benefits. A grace period may apply to one or more qualified benefits (e.g., health FSA or dependent care assistance program) but in no event does it apply to paid time off or contributions to §401(k) plans. Unused benefits or contributions for one qualified benefit may only be used to reimburse expenses incurred during the grace period for that same qualified benefit.

The amount of unused benefits and contributions available during the grace period may be limited by the employer. A grace period may extend to the fifteenth day of the third month after the end of the plan year (but may be for a shorter period). Benefits or contributions not used as of the end of the grace period are forfeited under the use-or-lose rule.

NONQUALIFIED BENEFITS:

A cafeteria plan must not offer any of the following benefits:

- Archer MSAs
- Athletic facilities
- De minimis benefits
- Educational assistance
- Employee discounts
- Lodging on the business premises
- Meals
- Moving expense reimbursements
- No-additional-cost services
- Transportation benefits
- Tuition reduction
- Working condition benefits

AFTER-TAX EMPLOYEE CONTRIBUTIONS: The new proposed regulations allow a cafeteria plan to offer after-tax employee contributions for qualified benefits or paid time off. A cafeteria plan may only offer the taxable benefits specifically permitted. Nonqualified benefits may not be offered through a cafeteria plan, even if paid with after-tax employee contributions.

EMPLOYER CONTRIBUTIONS THROUGH SALARY REDUCTION: Employees electing a qualified benefit through salary reduction are electing to forego salary and instead to receive a benefit which is excludible from gross income because it is provided by employer contributions. The employee is treated as receiving the qualified benefit from the employer in lieu of the taxable benefit.

A cafeteria plan may also impose reasonable plan administration fees that may be paid through salary reduction. A cafeteria plan is not required to allow employees to pay for any qualified benefit with after-tax employee contributions.

MAKING, REVOKING, AND CHANGING ELECTIONS: Generally, a cafeteria plan must require employees to elect annually between taxable benefits and qualified benefits. Elections must be made before the earlier of the first day of the period of coverage or when benefits are first currently available. Note that the determination of whether a taxable benefit is currently available does not depend on whether it has been constructively received by the employee.

Annual elections generally must be irrevocable and may not be changed during the plan year. However, a cafeteria plan may allow for changes in elections based on certain changes in status.

If Health Savings Account contributions are made through salary reduction under a cafeteria plan, employees may prospectively elect, revoke, or change salary reduction elections for HSA contributions at any time during the plan year with respect to salary that has not become currently available at the time of the election.

A cafeteria plan is permitted to include an automatic election for new employees or current employees. A new rule also permits a cafeteria plan to provide an optional election for new employees between cash and qualified benefits. New employees avoid gross income inclusion if they make an election within 30 days after the date of hire even if benefits provided pursuant to the election relate back to the date of hire. However, salary reduction amounts used to pay for such an election must be from compensation not yet currently available on the date of the election. Also, this special election rule for new employees does not apply to any employee who terminates

employment and is rehired within 30 days after terminating employment (or who returns to employment following an unpaid leave of absence of less than 30 days).

New elections and permissible revocations or changes in elections can be made electronically.

Only an employee can make an election or revoke or change his or her election. An employee's spouse or dependent may not make an election under a cafeteria plan and may not revoke or change an employee's election.

NONDISCRIMINATION RULES: Discriminatory benefits provided to highly compensated cafeteria plan participants are included in these employees' gross income. The new proposed regulations provide guidance on the cafeteria plan nondiscrimination rules, including definitions of key terms (e.g., highly compensated individual or participant, officer, 5% shareholder, key employee, compensation).

The regulations also provide an objective test to determine when the actual election of benefits is discriminatory. Specifically, the regulations provide that a cafeteria plan must give each similarly situated participant a uniform opportunity to elect qualified benefits, and that highly compensated participants must not actually disproportionately elect qualified benefits.

Finally, the new rules provided guidance on the safe harbor for cafeteria plans providing health benefits and create a safe harbor for premium-only plans that satisfy certain requirements.

ADDITIONAL INFORMATION ON CAFETERIA PLANS

SOCIAL SECURITY AND MEDICARE TAX: The definition of wages for social security and Medicare exclude any payment to, or on behalf of, an employee or beneficiary under a cafeteria plan. This exclusion does not apply to 401(k) deferrals.

FEDERAL UNEMPLOYMENT TAX (FUTA): Payments under a cafeteria plan are excluded from federal unemployment tax. This exclusion does not apply to 401(k) deferrals.

REPORTING REQUIREMENTS IN CONNECTION WITH CAFETERIA PLAN GRACE PERIOD: IRS guidance clarifies the Form W-2 reporting requirements when an employer has amended a cafeteria plan document to provide a grace period for qualified dependent care assistance immediately following the end of a cafeteria plan year.

Under existing reporting rules for dependent care assistance, the amount reported on Form W-2 is the total amount of cash reimbursement furnished to the employee during the calendar year. However, if the employer does not know the actual total amount of cash reimbursement at the time the Form W-2 is prepared, then the employer may report a reasonable estimate of the total amount. The amount an employee elects to contribute for the year (plus any employer matching contributions) will be considered a reasonable estimate.

The IRS has clarified that an employer that amends its cafeteria plan to provide a grace period for dependent care assistance may continue to rely on these rules by reporting in Box 10 of Form W-2 the salary reduction amount elected by the employee for the year for dependent care assistance (plus employer matching contributions).

For the 2018 calendar year, the employer should report in Box 10 of Form W-2 the $5,000 of salary reduction amount elected by the employee for 2018. Similarly, for the 2019 calendar year, the employer should report in Box 10 of Form W-2 the $5,000 salary reduction amount elected by the employee for 2019.

EFFECT OF THE FAMILY AND MEDICAL LEAVE ACT

RESPONSIBILITIES FOR PREMIUM PAYMENTS: An employee making premium payments under a cafeteria plan that chooses to continue group health plan coverage (including a medical FSA) while on FMLA leave is responsible for the share of group health premiums that the employee was paying while working, such as amounts pursuant to a salary reduction agreement. The employer must continue to contribute the share of the cost of the employee's coverage that the employer was paying before the employee commenced FMLA leave.

PAYMENT OPTIONS: A cafeteria plan may, on a nondiscriminatory basis, offer one or more of the following three payment options to an employee who continues group health plan coverage (including medical FSA) while on unpaid FMLA leave.

- Pre-pay option: A cafeteria plan may permit an employee to pay, prior to commencement of the FMLA leave period, the amounts due for the FMLA leave period even though the amount may be a prepayment to a future plan year. The employer may not mandate the pre-pay option. Contributions may be made on a pretax salary reduction basis from any taxable compensation (including the cashing out of unused sick or vacation days), or on an after-tax basis. However, a payment for coverage in a future plan year cannot be a pretax salary reduction; it must be an after-tax deduction.
- Pay-as-you-go option: Employees may pay their share of the premium payments on the same schedule as payment would be made if the employee were not on leave or under any other payment schedule permitted by the Labor Department regulations. Contributions under this option are generally made by the employee on an after-tax basis. However, they may be made on a pretax basis to the extent that the contributions are made from taxable compensation (e.g., cashing out of unused sick or vacation days) that is due the employee during the leave period, and provided that all cafeteria plan requirements are satisfied.

An employer is not required to continue the health coverage of an employee who fails to make required premium payments while on FMLA leave. However, if the employer chooses to continue the health coverage of an employee who fails to make required premium payments while on FMLA leave the employer is entitled to recoup those payments as noted below.

- Catch-up option: the employer and the employee must agree in advance of the coverage period that: the employee elects to continue health coverage while on unpaid FMLA leave; the employer will assume responsibility for advancing payments of the premiums on the employee's behalf during the FMLA leave; and these advance amounts must be paid by the employee when the employee returns from FMLA leave. Contributions may be made on a pretax salary reduction basis when the employee returns from FMLA leave from any available taxable compensation (including the cashing out of unused sick and vacation days), or on an after-tax basis. However, a payment for coverage in a previous plan year cannot be a pretax salary reduction; it must be an after-tax deduction.

EXCEPTIONS:

- The pre-pay option cannot be the sole option offered to employees on FMLA leave. However, this option may be offered, even if the option is not offered to employees on non-FMLA leave-without-pay.
- The catch-up option can be the sole option offered to employees on FMLA leave only if the catch-up option is the sole option offered to employees on non-FMLA leave-without-pay.
- A cafeteria plan cannot offer employees on FMLA leave a choice of either the pre-pay option or the catch-up option without also offering the pay-as-you-go option, if the pay-as-you-go option is offered to employees on non-FMLA leave-without pay.

FLEXIBLE SPENDING ARRANGEMENTS (FSAS)

In general, an FSA is a benefit designed to reimburse employees for expenses incurred for certain qualified benefits, up to a maximum amount not substantially in excess of the salary reduction and employer flex-credits allocated to the benefit. The maximum amount of reimbursement reasonably available must be less than five times the value of the coverage. Employer flex-credits are non-elective employer contributions that an employer makes available for every employee eligible to participate in the cafeteria plan, to be used at the employee's election only for one or more qualified benefits (but not as cash or other taxable benefits).

The three types of FSAs are dependent care assistance, adoption assistance, and medical care reimbursements (health FSA).

UNIFORM COVERAGE RULE: The new proposed regulations retain the rule that the maximum amount of reimbursement from a health FSA must be available at all times during the period of coverage (properly reduced as of any particular time for prior reimbursements). The uniform coverage rule does not apply to FSAs for dependent care assistance or adoption assistance.

USE-OR-LOSE RULE: An FSA must satisfy all the requirements of §125, including the prohibition against deferring compensation. In general, this means that all benefits and contributions must be used by the end of the plan year (or grace period, if applicable), or they are forfeited. The new proposed regulations continue the use-or-lose rule.

PERIOD OF COVERAGE: The required period of coverage for all FSAs continues to be 12 months, with an exception for short plan years that satisfy certain conditions. Note that the period of coverage and the plan year need not be the same.

The new proposed regulations clarify that FSAs for different qualified benefits need not have the same coverage period. The regulations also continue to provide that expenses are incurred when services are provided. In addition, expenses incurred before or after the period of coverage may not be reimbursed.

HEALTH FSA: A health FSA may only reimburse certain substantiated §213(d) medical care expenses incurred by the employee or the employee's spouse or dependents. It may be limited to a subset of permitted §213(d) expenses (e.g., it may exclude reimbursement of certain over-the-counter drugs). Under the Patient Protection and Affordable Care Act of 2010, beginning in 2011, only the cost of medicine prescribed by a doctor and insulin can be reimbursed through a health FSA.

Similarly, a health FSA may be an HSA-compatible limited-purpose health FSA or post-deductible health FSA. However, a health FSA may not reimburse premiums for accident and health insurance or long-term care insurance.

A cafeteria plan may limit enrollment in a health FSA to those employees who participate in the employer's accident and health plan.

DEPENDENT CARE ASSISTANCE AFTER TERMINATION: A new optional rule permits an employer to reimburse a terminated employee's qualified dependent care expenses incurred after termination through a dependent care FSA if all §129 requirements are otherwise satisfied.

EXPERIENCE GAINS: If an employee fails to use all contributions and benefits for a plan year before the end of the plan year (and the grace period, if applicable), those unused contributions and benefits are forfeited under the use-or-lose rule. Unused amounts are also known as experience gains.

The new proposed regulations clarify that the employer sponsoring the cafeteria plan may retain forfeitures, use forfeitures to defray expenses of administering the plan, or allocate forfeitures among employees contributing through salary reduction on a reasonable and uniform basis.

Also, any amounts reimbursed over and above what the employee had funded at the time the valid claim was submitted and not subsequently recovered from the employee is non-taxable to the employee and is not recoverable by the employer.

SUBSTANTIATION OF EXPENSES

Incurring and reimbursing expenses – The new proposed regulations provide that only expenses for qualified benefits incurred after the later of the effective date or the adoption date of the cafeteria plan are permitted to be reimbursed under the cafeteria plan. If a plan amendment adds a new qualified benefit, only expenses incurred after the later of the effective date or the adoption date are eligible for reimbursement. This rule applies to all qualified benefits.

A cafeteria plan may pay or reimburse only expenses for qualified benefits incurred during a participant's period of coverage.

Substantiation and reimbursement – After an employee incurs an expense for a qualified benefit during the coverage period, the expense must first be substantiated before the expense may be paid or reimbursed. All expenses must be substantiated. Substantiating only a limited number of total claims, or not substantiating claims below a certain dollar amount, does not satisfy the requirements in the new proposed regulations.

Note that FSAs for dependent care assistance and adoption assistance must follow the substantiation procedures applicable to health FSAs.

Debit Cards – The new proposed regulations incorporate previously issued guidance on substantiating, paying, and reimbursing §213(d) medical care expenses using debit cards. Among the permissible substantiation methods are copayment matches, recurring expenses, and real-time substantiation.

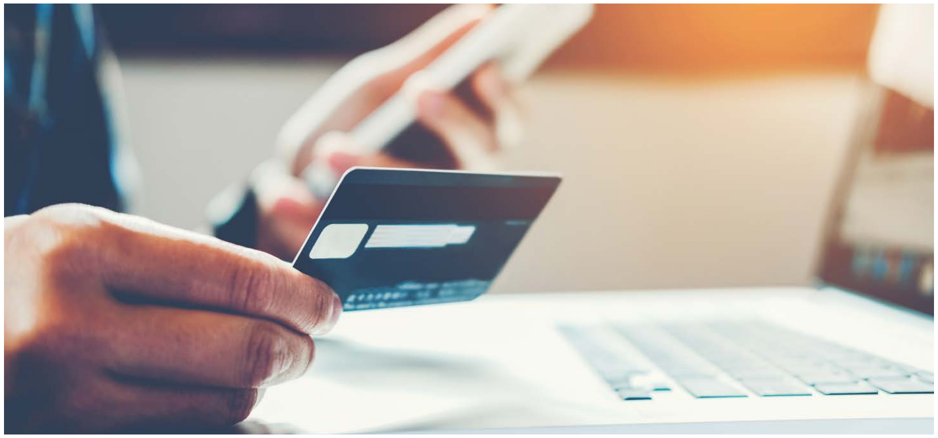
The new proposed regulations also allow point-of-sale substantiation through matching inventory information with a list of medical expenses. The employer is responsible for ensuring that the inventory information approval system complies with the new regulations and with recordkeeping requirements.

The new proposed regulations also provide rules under which an FSA may pay or reimburse dependent care expenses using debit cards.

Note: Under the Health Care legislation, reimbursements for non-prescription medicines will NOT be permitted. The IRS has provided guidance on the effective date and implications of the new restriction on health plan reimbursement of non-prescription medicines (IRS Notes 2010-59).

An individual may be reimbursed for over-the-counter drugs if the individual has a prescription. A prescription is a written or electronic order that meets the legal requirements of a prescription in the state in which the expense is incurred. The prescription must be issued by an individual legally authorized to do so in that state. Items that are not medicine or drugs, such as crutches, diagnostic devices such as blood sugar test kits, and bandages, may qualify as reimbursable medical expenses.

Debit cards may no longer be used for health FSA and HRA purchases of non-prescription medicines.



DEPENDENT CARE BENEFITS

Employers can provide dependent care assistance to their employees that may be excluded, within limits, from their income, if, at the time of the payment or service, it is reasonable to believe that the employee will be able to exclude the payment under IRC §129. The annual exclusion for dependent care assistance on the employee's income tax return is limited to the lesser of:

- $5,000 or $2,500 if married, filing a married-separate return, or
- the exclusion cannot exceed the employee's earned income or the earned income of the employee's spouse, whichever is less.

As employers do not know if the employee is filing married-separate or the spouse's earned income, employer-provided plans limit the amount excluded from income to the lesser of $5,000 or the employee's earned income. Employers are only required to monitor the $5,000 and employee earned income exclusions.

DEPENDENT CARE ASSISTANCE CAN:

- be provided in-kind (i.e., on-site facility);
- be employer-paid or subsidized; or
- take the form of a Section 125 flexible spending account.

Unlike other fringe benefits, dependent care assistance is treated as received during the year in which the services were provided, rather than when the employee was reimbursed.

Individuals for whom dependent care assistance can be provided include the following:

- a dependent child under the age of 13; or
- a spouse or dependents of the employee who are not physically or mentally able to care for themselves and lived with you for more than half the year.

The care provider used by the employee may not be the employee's child who will be under the age of 19 at the end of the calendar year, or any individual claimed as a dependent by the employee.

To provide a qualified dependent care assistance program the employer is required to have a separate written plan designed for the exclusive benefit of its employees. The plan does not need to be funded by the employer but the following requirements must be met:

- The plan must benefit employees who qualify under a classification set up by the employer, and the plan must not discriminate in favor of the officers, owners, or highly compensated employees (or their dependents).

Exception: Employees may be excluded from the plan if they are covered by a collective-bargaining agreement and the plan was subject to good faith bargaining between the employees' representative and the employer.

- The employer must provide reasonable notification of the availability and terms of the plan to eligible employees.
- The plan must provide a written statement to each employee, on or before January 31 of each year, indicating the amount of dependent care assistance provided by the employer during the previous calendar year. *This reporting requirement is satisfied by reporting 100% of the cash paid or, if other than cash, the fair market value, or pretax amount in Box 10 of Form W-2.*

NOTE: If the employer has an onsite dependent care facility, more than $5,000 may be reported in Box 10. The first $5,000 is excluded in income and any amounts in excess of that must also be reported in Boxes 1, 3, and 5.

- The employer must report the fair market value (not the cost to the employer) of the benefit received if the employer is directly providing the benefit or use the IRS-approved formula:
    - (125% of direct costs ÷ number of days available ÷ maximum capacity) x days used by the employee
- When reporting values for "flexible spending account" plans report either:
    1. The amount reimbursed for benefits received during the calendar year, or
    2. The amount set aside on a pretax basis by the employee in the calendar year.

The maximum exclusion on an individual's personal income tax return for qualified adoption expenses in 2018 in $13,810 per eligible child.

ADOPTION ASSISTANCE

IRC §23 allows individuals to take an income tax credit for qualified adoption expenses. IRC §137 excludes from an employee's income employer-provided adoption assistance that is furnished under an adoption assistance program in connection with the employee's adoption of an eligible child.

QUALIFYING EXPENSES: Qualifying adoption expenses are:

- Reasonable and necessary adoption fees
- Court costs
- Attorney fees
- Agency fees
- Travel expenses (including amounts spent for meals and lodging) while away from home
- Other expenses directly related to, and whose principal purpose is for, the legal adoption of an eligible child
- Expenses paid by a registered domestic partner who lives in a state that allows same-sex second parent or co-parent to adopt his or her partner's child

NON-QUALIFYING EXPENSES: Non-qualifying adoption expenses are:

- Expenses that violate state or federal law
- For carrying out any surrogate parenting arrangement
- For the adoption of a spouse's child
- Paid using funds received from any federal, state or local program
- Allowed as a credit or deduction under any other federal income tax rule
- Paid or reimbursed by the employer or otherwise (except that amounts paid or reimbursed under an adoption assistance program may be qualifying expenses for the exclusion)

ADOPTION ASSISTANCE PROGRAM REQUIREMENTS:

There are several requirements that an adoption assistance program must meet before employer-provided adoption assistance can be excluded from an employee's income.

- The adoption assistance program must be a separate written plan established for the exclusive benefit of the employer's employees, although it may be a part of an employer's comprehensive employee benefit plan.
- The program may not discriminate in favor of highly compensated employees or their dependents. For 2018, a highly compensated employee is defined as (1) an employee who was a 5% owner at any time during the current or preceding year OR (2) an employee who received more than $120,000 in pay for the preceding year. Test 2 may be ignored if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.
- No more than 5% of the adoption assistance provided in any year may go to shareholders or owners owning more than 5% of the stock, capital, or profits interest of the employer on any day during the year.
- The program is not required to be funded.
- Employers must provide reasonable notification of the availability and terms of the program to eligible employees.
- An adoption assistance program that meets the requirements of IRC §137 may be offered as a qualified benefit through an employer's IRC §125 cafeteria plan.

WITHHOLDING AND REPORTING OBLIGATIONS: The dollar limit on adoption assistance does not apply to the exclusion from federal income tax withholding. The exclusion applies to all of the employer-provided adoption assistance, regardless of the number of children adopted or whether the adoptions are successful, as long as the assistance is for substantiated and qualified expenses for qualified children. However, all of the payments are subject to social security, Medicare, and FUTA taxes.

If the assistance is provided through employee contributions to a cafeteria plan or FSA:

- Decrease federal, social security, Medicare, and FUTA wages
- Withdrawals from the set aside funds increase social security, Medicare, and FUTA wages (i.e., reimbursements)
- Amounts deducted from pay must be used for adoption expenses incurred and claimed during the program's fiscal year, or the funds will be forfeited.

In either situation, qualified adoption assistance must be reported on Form W-2 in Box 12 using Code T, unless the assistance consists of employee deductions that are forfeited under "use or lose." The assistance is not reported in Box 1, regardless of the amount reimbursed. This includes amounts in excess of the maximum exclusion amount, as well as adoption benefits paid or reimbursed from an employee's pretax contributions to a cafeteria plan. The dollar limit does apply, however, on a per child basis, when it comes to the Form 1040 personal income tax return, and the exclusion is phased out based on how much an individual's modified adjusted gross income exceeds the maximum exclusion.

HEALTH SAVINGS ACCOUNTS

A Health Savings Account (HSA) is an account owned by a qualified individual who is generally an employee or former employee. Any contributions made to an HSA by the employer become the employee's property and cannot be withdrawn by the employer. Contributions to the account are used to pay current or future medical expenses of the account owner, his or her spouse, and any qualified dependent. The medical expenses must not be reimbursable by insurance or other sources and their payment from HSA funds (distribution) will not give rise to a medical expense deduction on the individual's federal income tax return.

A qualified individual must be covered by a High Deductible Health Plan (HDHP) and not be covered by other health insurance except for permitted insurance listed under section 223(c)(3) or insurance for accidents, disability, dental care, vision care, or long-term care.

> For calendar year 2018, a qualifying HDHP must have a deductible of at least $1,350 for self-only coverage or $2,700 for family coverage and must limit annual out-of-pocket expenses of the beneficiary to $6,650 for self-only coverage and $13,300 for family coverage.

There are no income limits that restrict an individual's eligibility to contribute to an HSA nor is there a requirement that the account owner have earned income to make a contribution.

EXCEPTIONS: An individual is not a qualified individual if he or she can be claimed as a dependent on another person's tax return. Also, an employee's participation in a health flexible spending arrangement (FSA) or health reimbursement arrangement (HRA) generally disqualifies the individual (and employer) from making contributions to his or her HSA. However, an individual may qualify to participate in an HSA if he or she is participating in only a limited-purpose FSA or HRA or a post-deductible FSA.

EMPLOYER CONTRIBUTIONS: Up to specified dollar limits, cash contributions to the HSA of a qualified individual (determined monthly) are exempt from federal income tax withholding, social security tax, Medicare tax, and FUTA tax. For 2018, you can contribute up to $3,450 for self-only coverage or $6,900 for family coverage to a qualified individual's HSA.

The contribution amounts listed above are increased by $1,000 for a qualified individual who is age 55 or older at any time during the year. For two qualified individuals who are married to each other and who each are age 55 or older at any time during the year, each spouse's contribution limit is increased by $1,000 provided each spouse has a separate HSA. No contributions can be made to an individual's HSA after he or she becomes enrolled in Medicare Part A or Part B.

NONDISCRIMINATION RULES: The employer's contribution to an employee's HSA must be comparable for all employees who have comparable coverage during the same period. Otherwise, there will be an excise tax equal to 35% of the amount contributed to all employees' HSAs.

For guidance on employer comparable contributions to HSAs under section 4980G in instances where an employee has not established an HSA by December 31 and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses, see Treasury Decision 9393, 2008-20 I.R.B. 975, available at www.irs.gov/irb/2008-20_IRB/ar08.html.

PARTNERSHIPS AND S CORPORATIONS: Partners and 2% shareholders of an S corporation are not eligible for salary reduction (pre-tax) contributions to an HSA. Employer contributions to the HSA of a bona fide partner or 2% shareholder are treated as distributions or guaranteed payments as determined by the facts and circumstances.

CAFETERIA PLANS: An employer may contribute to an employee's HSA using a cafeteria plan and the employer's contributions are not subject to the statutory comparability rules. However, cafeteria plan nondiscrimination rules still apply. For example, contributions under a cafeteria plan to employee HSAs cannot be greater for higher-paid employees than they are for lower-paid employees. Contributions that favor lower-paid employees are not prohibited.

REPORTING REQUIREMENTS: Employer contributions to an employee's HSA must be reported on Form W-2 in box 12 using code "W". Employee contributions made through a cafeteria plan are considered to be made by the employer so they are included in box 12 as well. The trustee or custodian of the HSA, generally a bank or insurance company, reports distributions from the HSA using Form 1099-SA, Distributions from the HSA, Archer MSA, or Medicare Advantage MSA.

Health Savings Accounts		
	2018	2019
High Deductible Health Plan Individual Annual Deductible	$1,350	$1,350
High Deductible Health Plan Family Annual Deductible	$2,700	$2,700
High Deductible Health Plan Individual out of pocket expenses limit	$6,650	$6,750
High Deductible Health Plan Family out of pocket expenses limit	$13,300	$13,500
Maximum Annual Contribution – Individual	$3,450	$3,500
Maximum Annual Contribution – Family	$6,900	$7,000
Maximum Annual Catch-up Contribution	$1,000	$1,000

EMPLOYER-PROVIDED ACCIDENT AND HEALTH PLAN

Coverage under an employer-provided accident and health plan that satisfies certain requirements may be provided as a qualified benefit through a cafeteria plan and is excludible from employees' gross income. The new proposed regulations specifically permit a cafeteria plan (but not a health FSA) to pay or reimburse substantiated individual accident and health insurance premiums. In addition, a cafeteria plan may provide for payment of COBRA premiums for an employee.

DOMESTIC PARTNER HEALTH INSURANCE COVERAGE

The IRS has announced that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes. This applies regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriages (Rev. Rul 2013-17, 2013-38 IRB 201). The new ruling applies to all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependency exemptions, taking the standard deduction, employee benefits, contributing to an IRA, and claiming the earned income tax credit or child tax credit.

The ruling does not apply to registered domestic partnerships, civil unions, or similar formal relationships recognized under state law. For federal tax purposes, the term "marriage" does not include registered domestic partnerships, civil unions, or other similar formal relationships recognized under state law that are not denominated as a marriage under state's law.

WHAT ABOUT THE STATES?

Some states have enacted laws allowing same-sex couples to get married or to enter into a "civil union" that provides all the same state benefits that are provided to a married couple. Health insurance premiums paid by an employer to cover an employee's same-sex spouse or civil union partner may not be taxable to the employee for state purposes, but remains subject to federal income, social security, and Medicare taxes.

HEALTH INSURANCE PREMIUMS ON 2% SHAREHOLDERS

Health insurance premiums paid to cover employees normally are not considered taxable wages. However, in the case of health insurance premiums paid to cover employees who are 2% or greater shareholders of an S corporation, the amount of the premiums must be considered wages subject to federal income tax withholding. This amount would be included in box 1 of Form W-2. These premiums are not subject to social security, Medicare, or FUTA taxes. However, health insurance provided solely to 2% or more shareholder-employees of S corporations, not to other employees, does not qualify for the FICA exemption and is subject to social security, Medicare, and FUTA taxes.

ACA W-2 REPORTING REQUIREMENT

The Patient Protection and Affordable Care Act of 2010 requires employers to report the total cost of employer-provided health coverage on employees' Forms W-2.

All employers that provide applicable employer-sponsored coverage during a calendar year are subject to the reporting requirements. This includes federal, state and local government entities, churches and other religious organizations, and employers that are not subject to the COBRA continuation coverage requirements, to the extent such employers provide applicable employer-sponsored coverage under a group health plan but does not include federally recognized Indian tribal governments. Until further guidance is issued, tribally chartered corporations wholly-owned by a federally recognized Indian tribal government are not subject to the reporting requirements.

In the case of 2018 Forms W-2, however, until further guidance is issued, an employer is not subject to the reporting requirement for any calendar year if the employer was required to file fewer than 250 Forms W-2 for the preceding calendar year. Therefore, if an employer filed fewer than 250 2017 Forms W-2, the employer is not subject to the reporting requirement for 2018 Forms W-2.

PREPARATION TIP:
The 2018 Form W-2 indicates that the cost of employer-sponsored health coverage, if optionally entered, is to be placed in Box 12, and designated with Code DD. The instructions for the employee state that "the amount reported with Code DD is not taxable." Do not report a zero amount in Box 12 if no employer-sponsored health coverage.

NOTE: An employer is not required to issue a Form W-2 with the aggregate reportable cost of health insurance to an individual to whom the employer is not otherwise required to issue a Form W-2, such as a retiree or other former employee receiving no compensation. Therefore, an employer that must issue a Form W-2 to a retiree to report payments under a nonqualified deferred compensation plan or uncollected FICA taxes on group-term life insurance would have to report the reportable cost of coverage on that Form W-2.

GROUP - TERM LIFE INSURANCE COVERAGE

Group term life insurance coverage with a value of $50,000 or less is excludable from income if:

- it provides a general death benefit that is not included in income;
- it is provided to a group of employees of more than 10;
- it provides an amount of insurance to each employee based on a formula that prevents individual selection (this formula must use factors such as the employee's age, years of service, pay, or position); and
- it is provided under a policy that the employer either directly or indirectly carries. Even if the employer does not pay any of the policy's cost, the employer is considered to carry it if they arrange for payment of its cost by its employees and charge at least one employee less than, and at least one other employee more than, the cost of his or her insurance.

Group-term life insurance does not include insurance that does not provide general death benefits, such as travel insurance or a policy providing only accidental death benefits, life insurance on the life of the employee's spouse or dependent, or insurance provided under a policy that provides a permanent benefit, unless certain requirements are met.

The value in excess of $50,000, reduced by any employee after-tax payroll deductions, is taxable income. The employer is not required to withhold federal income tax on the taxable group-term life insurance, but the value is subject to federal taxation and must be reported on the employee's Form W-2 as "other compensation" (Box 1 and Box 12 – Code C). Taxable group-term life insurance is subject to social security and Medicare tax withholding and must be reported on Form W-2 in boxes 3 and 5.

Although the value in excess of $50,000 is not taxable for FUTA purposes, it is reportable as total wages on line 1 and as excludable wages on line 2 of Part I of Form 940 (FUTA).

Generally, if the group-term life insurance plan favors key employees as to participation or benefits, the entire cost of the insurance must be included in the key employees' wages. If the policy provides coverage in excess of $50,000, the value of the insurance benefit to be included in the employee's income is calculated using the IRS "Uniform Premium Table I".

Uniform Premiums – Table 1 IRC Section 79 Fair Market Value of Group-term Life Insurance Per $1,000 of Excess Benefit per Month	
Age	Monthly Cost Per $1,000
Under 25	$ .05
25 to 29	.06
30 to 34	.08
35 to 39	.09
40 to 44	.10
45 to 49	.15
50 to 54	.23
55 to 59	.43
60 to 64	.66
65 to 69	1.27
70 and above	2.06

The employee's age on the last day of the calendar year is used when determining the group-term life cost factor before the following formula can be used to calculate the value in excess of $50,000. You must prorate the cost from the table if less than a full month of coverage is involved.

[(Group-term life coverage - $50,000) x .001 x cost factor] – employee after-tax deduction for group-term life insurance = taxable monthly premium value

Report in Boxes 1, 3, 5 and 12 with Code C on Form W-2.

If the employee pays for any part of the cost of the insurance, this payment reduces the amount otherwise included in income. However the employer cannot reduce the amount to include in the employee's income by:

- Payments for coverage in a different tax year, or
- Payments for coverage through a cafeteria plan, unless the payments are after-tax contributions

Group-term life insurance coverage is not taxable to the employee when:

- The beneficiary of the policy is with the company for the entire calendar year,
- The beneficiary of the policy is a charitable organization for the entire calendar year, or
- The employee terminates during the year due to a permanent disability.

DEPENDENT GROUP-TERM LIFE COVERAGE: Under the de minimis fringe benefit rules, an employer may provide tax-free dependent group-term life insurance coverage for the spouse or eligible dependents of an employee with no more than $2,000 of face value coverage. When the coverage exceeds $2,000, the de minimis value no longer exists and the value of the dependents' entire group-term life insurance coverage is calculated using the rates in Table I in the same manner as when calculating for the employee. For the employee's children, either use the rate associated with the dependent's actual age or use the "under age 25" rate if your policy does not permit dependent coverage for any dependent age 25 or older. For the employee's spouse, use the spouse's actual age or the employee's age.

Unlike group-term life insurance on the life of an employee, the value of dependent group-term life insurance included in the employee's income is subject to federal income tax withholding, as well as social security and Medicare taxes. The amount included in the employee's income is not subject to FUTA tax, however.

GROUP-TERM LIFE INSURANCE COVERAGE FOR FORMER EMPLOYEES:

Employers report on the Form W-2 (Box 12) uncollected social security (Code M) and Medicare (Code N) taxes on group-term life insurance coverage over $50,000 for former employees who have continuing group-term life coverage after their termination. This includes any payment for group-term life to the extent "such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer." It only applies to situations where the employer continues to provide group-term life insurance coverage for an individual who is no longer on the employer's payroll, such as a retiree.

This provision does **NOT** apply in situations where the employer failed to withhold social security and Medicare taxes, for group-term life insurance coverage, because the employee terminated before the calculation was made. In these instances, the employer must pay the applicable taxes on behalf of the employees and report them as wages subject to employment and withholding taxes, or request reimbursement from the employees for the social security and Medicare taxes due on the imputed income.

Additionally, IRS Publication 15-B states: "Do not use withheld federal income tax to pay the social security and Medicare taxes due."

WHOLE-LIFE INSURANCE

An employer may purchase individual whole-life or straight-life insurance policies for its employees or pay premiums on policies already owned by its employees. A straight-life policy provides two types of benefits:

1. Death benefit – A benefit payable at the death of the insured employee in an amount equal to the face amount of the policy.
2. Savings – A portion of every premium goes toward the savings segment of the policy. Referred to as the "cash surrender value," as premiums are paid, this value of the policy increases. Another option of the policy may allow the employee to borrow against the cash surrender value or surrender the policy and withdraw it. In addition, the employee usually earns a return from the insurance company, which is reflected as additional increases in the cash surrender value, additional insurance coverage or a payout of cash dividends.

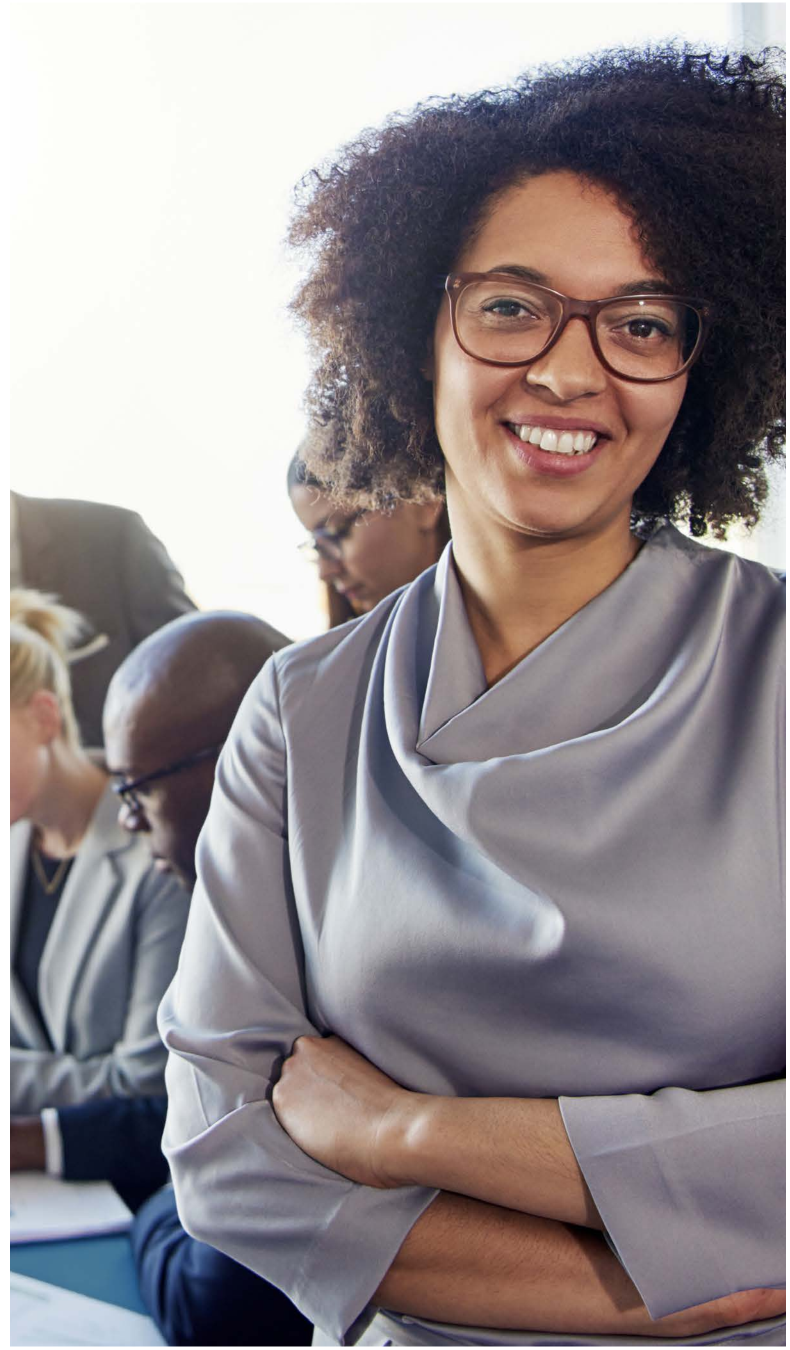
The employer must generally include in the employee's gross income the cost of the straight-life insurance the amount the employer pays in premiums each year if the proceeds of the policy are payable to the employee's designated beneficiaries. The employer must withhold federal income tax, but if the insurance coverage is part of a plan intended to benefit employees or their dependents, social security, Medicare and FUTA taxes do not apply. If the employer is the sole beneficiary of the policy or the employee pays the premiums with after-tax dollars, the value of the policy is not included in income.

If the insurance is being purchased for the employee as part of a qualified retirement plan or if the proceeds of the policy are payable to the employee's beneficiary, the amount to include as income on Form 1099-R is the sum of:

1. the increase in the policy's cash surrender value for the year (provided the employee's right to the cash surrender value is substantially vested), and
2. the "reasonable net premium cost" of the current life insurance protection (equal to the death benefit payable under the policy minus the cash surrender value of the policy at the end of the year).

When purchased as part of a qualified retirement plan, the income is not reported on Form W-2 but is reported in boxes 1 and 2 on Form 1099-R as a distribution from a qualified plan to purchase the insurance and requires code 9 in box 7, to prevent the employee from being subject to early distribution penalties. Since the cash surrender value increases each year, the current insurance component decreases and must be calculated for tax purposes each year.

The following interim IRS table gives the reasonable net premium cost for one year for $1,000 of current straight-life insurance protection, based on the employee's age. Multiply the appropriate factor times the number of thousands of dollars of current protection and add the increase in the cash surrender value for the year to determine the imputed income.



Interim Table of One-Year Term Premiums for $1,000 of Life Insurance Protection							
Attained Age	Section 79 Extended & Interpolated Annual Rates	Attained Age	Section 79 Extended & Interpolated Annual Rates	Attained Age	Section 79 Extended & Interpolated Annual Rates	Attained Age	Section 79 Extended & Interpolated Annual Rates
0	$0.70	25	$0.71	50	$2.30	75	$33.05
1	$0.41	26	$0.73	51	$2.52	76	$36.33
2	$0.27	27	$0.76	52	$2.81	77	$40.17
3	$0.19	28	$0.80	53	$3.20	78	$44.33
4	$0.13	29	$0.83	54	$3.65	79	$49.23
5	$0.13	30	$0.87	55	$4.15	80	$54.56
6	$0.14	31	$0.90	56	$4.68	81	$60.51
7	$0.15	32	$0.93	57	$5.20	82	$66.74
8	$0.16	33	$0.96	58	$5.66	83	$73.07
9	$0.16	34	$0.98	59	$6.06	84	$80.35
10	$0.16	35	$0.99	60	$6.51	85	$88.76
11	$0.19	36	$1.01	61	$7.11	86	$99.16
12	$0.24	37	$1.04	62	$7.96	87	$110.40
13	$0.28	38	$1.06	63	$9.08	88	$121.85
14	$0.33	39	$1.07	64	$10.41	89	$133.40
15	$0.38	40	$1.10	65	$11.90	90	$144.30
16	$0.52	41	$1.13	66	$13.51	91	$155.80
17	$0.57	42	$1.20	67	$15.20	92	$168.75
18	$0.59	43	$1.29	68	$16.92	93	$186.44
19	$0.61	44	$1.40	69	$18.70	94	$206.70
20	$0.62	45	$1.53	70	$20.62	95	$228.35
21	$0.62	46	$1.67	71	$22.72	96	$250.01
22	$0.64	47	$1.83	72	$25.07	97	$265.09
23	$0.66	48	$1.98	73	$27.57	98	$270.11
24	$0.68	49	$2.13	74	$30.18	99	$281.05

DEFERRED COMPENSATION PLANS

QUALIFIED PLANS: Employer contributions to qualified compensation plans (under IRC Section 401(a)) are excluded from federal wages and are not subject to social security, Medicare and FUTA taxes except when the contributions are made under a salary reduction arrangement.

- Section 401(k) Plans: A 401(k) plan is usually made available to employees in the form of a salary reduction agreement. Under this agreement, a participating employee elects to reduce his or her salary or defer future salary increases or bonuses by authorizing the employer to contribute this amount to the plan (subject to percentage requirements).

Under these plans eligible employees may elect to have the employer contribute a portion of their pay to a plan in lieu of receiving that pay in cash. By deferring compensation, the employee decreases taxable income subject to federal income tax withholding and creates a tax savings. The employee is not required to pay federal or, in most cases, state income tax on the money contributed to the plan until the money is withdrawn. In essence, the participant takes taxable compensation and converts it into a before-tax employer contribution. However, amounts deferred by the employee are subject to social security, Medicare, and FUTA taxes. The participant is subject to federal income tax withholding on the deferral when the amount deferred is distributed to the participant.

The employee's salary reduction amount contributed to the plan is fully tax deductible to the company even though it reduces the taxable income of the employee for federal and most state taxes.

DESIGNATED ROTH CONTRIBUTIONS: Designated Roth contributions to 401(k), 403(b), and 457(b) plans are allowed under IRC §402A, if the employer's plan provides for contributions to a Roth plan. Under §402A, a plan may permit an employee who makes elective contributions under a §401(k) plan to designate some or all of those contributions as contributions to a Roth IRA (individual retirement account).

NOTE: Roth IRAs are different from traditional IRAs in that contributions to a Roth IRA are not deductible from income and are includable in boxes 1, 3, and 5 on Form W-2. Distributions are not included in gross income if they meet certain qualifications. Individuals may put up to the maximum deductible amount for a traditional IRA in a Roth IRA in a year, but that amount is reduced by any contributions by the individual or other IRAs for that year.

DESIGNATED ROTH CONTRIBUTIONS DEFINED: Designated Roth contributions are defined as elective contributions under qualified cash or deferred arrangement that is:

- Included by the employer in the employee's income at the time the employee would have received the contribution amounts in cash if the employee had not made the cash or deferred election (i.e., by treating the contributions as wages subject to applicable withholding requirements)
- Reported as income on Form W-2 in Boxes 1, 3, and 5 and in Box 12 with Code AA (401(k) plans), Code BB (403(b) plans), or Code EE (457(b) plans).

DESIGNATED ROTH CONTRIBUTION RULES: Some aspects of designated Roth contributions must be reflected in plan terms. For instance, contributions may be treated as designated Roth contributions only to the extent permitted under a plan. In addition, while a plan is permitted to allow an employee to elect the character of a distribution, the extent to which this is permitted must be set forth in the plan. And the plan must provide that designated Roth contributions may be rolled over only to another plan maintaining a designated Roth contribution account or to a Roth IRA.

- Separate Accounting: The regulations provide that contributions and withdrawals of designated Roth contributions must be credited and debited to a designated Roth contribution account maintained for the employee who made the designation, and the plan must maintain a record of the employee's investment with respect to the employee's designated Roth contribution account. In addition, gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to the designated Roth contribution account and other accounts under the plan. The separate accounting requirement applies at the time the designated Roth contribution is contributed to the plan and continues to apply until the designated Roth contribution account is completely distributed.
- Elections: The rules regarding the frequency of elections to make pre-tax elective contributions apply to elections to make designated Roth contributions. Under the final regulations, a plan that provides for a cash or deferred election under which contributions are made in the absence of an affirmative election and that has both pre-tax elective contributions and designated Roth contributions must set forth the extent to which those default contributions are pre-tax elective contributions or designated Roth contributions. If the default contributions are designated Roth contributions, then an employee who has not made an affirmative election is deemed to have irrevocably designated the contributions as designated Roth contributions.

A direct rollover from a designated Roth account under a qualified cash or deferred arrangement may only be made to another designated Roth account or to a Roth IRA and only to the extent the direct rollover is permitted under §402(c). In addition, a plan is permitted to treat the balance of a participant's designated Roth account and the participant's other accounts under the plan as account held under two separate plans for purposes of applying the special rule. Therefore, if a participant's balance in the designated Roth account is less than $200, then the plan is not required to offer a direct rollover election with respect to that account or to apply the automatic rollover provisions of §401(a)(31)(B) with respect to that account.

- Excess Contributions: Designated Roth contributions are taken into account under the ADP (actual deferral percentage) test applicable to §401(k) plans in the same manner as pre-tax elective contributions. The regulations permit a highly compensated employee with elective contributions for a year that include both pre-tax elective contributions and designated Roth contributions to elect whether excess contributions are to be attributed to pre-tax elective contributions or designated Roth contributions.

A distribution of excess contributions is not includible in gross income to the extent it represents a distribution of designated Roth contributions. However, the income allocable to a corrective distribution in excess contributions that are designated Roth contributions is includible in gross income in the same manner as income allocable to a corrective distribution of excess contributions that are pre-tax elective contributions.

- Reporting in Box 12:
  - 401(k) Code AA
  - 403(b) Code BB
  - 457(b) Code EE

AUTOMATIC 401(K) ENROLLMENT: (CAN BE USED FOR 403(B) AND 457(B) PLANS AS WELL)

- Basic automatic enrollment 401(k) plan: A written plan document must be adopted to establish a basic automatic enrollment 401(k) plan. It must state that employees will be automatically enrolled in the plan unless they elect otherwise and must specify the percentage of an employee's wages that will be automatically deducted from each paycheck for contribution to the plan. The document must also explain that employees have the right to elect not to have salary deferrals withheld or to elect a different percentage to be withheld.
- Eligible automatic contribution arrangement (EACA): An eligible automatic contribution arrangement (EACA) is similar to the basic automatic enrollment plan but has specific notice requirements. In addition, when the participant does not provide direction, the employee salary deferrals must be invested in certain default investments. An EACA can allow automatically enrolled participants to withdraw their contributions during the first 90 days.
- Qualified automatic contribution arrangement (QACA): A qualified automatic contribution arrangement (QACA) is a type of automatic enrollment 401(k) plan that automatically passes certain kinds of annual IRS testing. The plan must include certain required features, such as automatic employee contributions (including annual increases), employer contributions, a special vesting schedule, and specific notice requirements.

Notification must be provided to employees who are eligible to participate in the plan about certain benefits, rights, and features under the plan. Employees must receive an initial notice prior to automatic enrollment in the plan and receive a similar notice each year. The notice should include information about the automatic contribution process, including the opportunity to elect out of the plan. In addition, the notice must describe the default investment the plan is using, the participants' right to change investments, and where to obtain information about other investments offered by the plan.

The participant generally must receive the initial notice at least 30 days, but not more than 90 days, before eligibility to participate in the plan or the first investment. Subject to certain conditions, the notice may be provided, and an employee may be enrolled in the plan, on the first day of work.

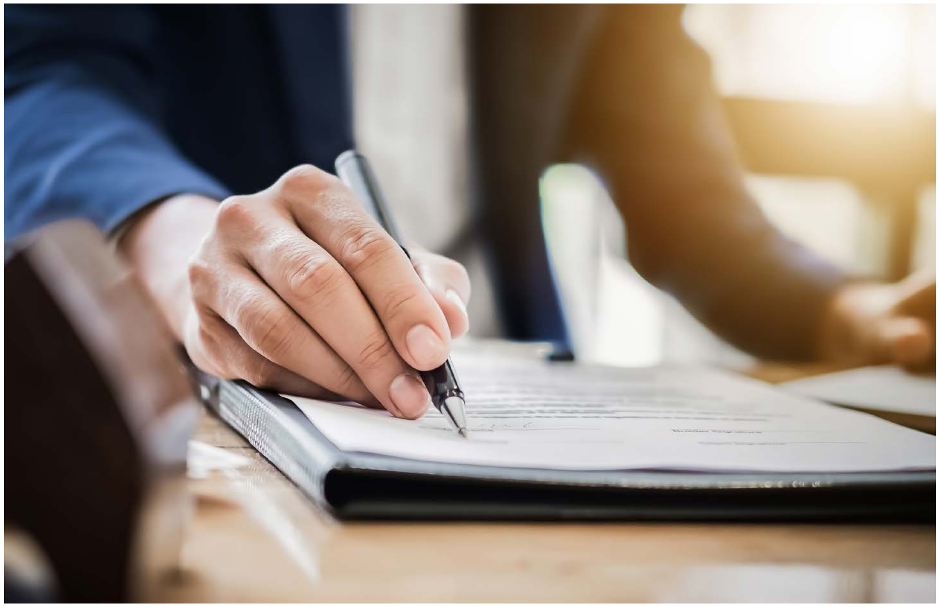
An annual notice must be provided to participants and all eligible employees at least 30 days, but not more than 90 days, prior to the beginning of each subsequent plan year.

If the participant, after receiving the initial or annual notice, does not provide investment direction, the participant is considered to have decided to remain in a default investment.

In addition, a summary plan description (SPD) must be provided to all participants. The SPD is a more comprehensive document that informs participants and beneficiaries about the plan and how it operates. The SPD typically is created with the plan document and must include information about:

- When and how employees become eligible to participate in the 401(k) plan;
- The contributions to the plan;
- How long it takes to become vested;
- When employees are eligible to receive their benefits;
- How to file a claim for those benefits; and
- Basic rights and responsibilities participants have under the Federal retirement law, the Employee Retirement Income Security Act (ERISA).

The SPD must be given to participants when they join the plan and to beneficiaries when they first receive benefits. SPDs must also be redistributed periodically during the life of the plan.



Other notifications that must be given to employees who are eligible to participate in the plan include a summary of material modification, individual benefit statement, and a summary annual report.

- Participation: Employees are automatically enrolled in the plan and a specific percentage will be deducted from each participant's salary unless the participant opts out or chooses a different percentage. However, as with any 401(k) plan, some employees may be excluded if they:
    - Have not attained age 21;
    - Have not completed a year of service; or
    - Are covered by a collective bargaining agreement that does not provide for participation in the plan, if retirement benefits were the subject of good faith bargaining.
- Contributions:
    - Basic and Eligible Automatic Enrollment 401(k) Plans: Employer matching can be elected by matching the amount of the employee's contribution (within the limits of the law) or by contributing a percentage of each employee's compensation (called a non-elective contribution) or by doing both. The amount of matching and non-elective contributions can be changed each year.
    - Qualified Automatic Contribution Arrangements (QACAs): If a plan is set up as a QACA with certain minimum levels of employee and employer contributions, it is exempt from the annual IRS testing requirement that a traditional 401(k) plan must perform. The initial automatic employee contribution must be a least 3 percent of compensation. Contributions may have to automatically increase so that, by the fifth year, the automatic employee contribution is a least 6 percent of compensation.

The automatic employee contributions cannot exceed 10 percent of compensation in any year. The employee is permitted to change the amount of his or her employee contributions or choose not to contribute but must do so by making an affirmative election.

- The employer must make at least either:
    - A matching contribution of 100 percent for salary deferrals up to 1 percent of compensation and a 50 percent match for all salary deferrals above 1 percent but no more than 6 percent of compensation; or
    - A non-elective contribution of 3 percent of compensation to all participants.

In a QACA, the employer may make an additional contribution to each employee's account and have the flexibility to change the amount of these additional contributions each year.

- Contribution Limits: Employer and employee contributions to an automatic enrollment 401(k) plan are subject to an overall annual limitation for each employee. Employer and employee contributions and forfeitures (non-vested employer contributions of terminated participants) may not exceed the lesser of:
    - 100 percent of the employee's compensation; or

Employees can make salary deferrals of up to $18,500 for 2018. This includes both pre-tax employee salary deferrals and after-tax designated Roth contributions (if permitted under the plan). An automatic enrollment 401(k) plan can allow catch-up contributions of $6,000 for 2018 for employees aged 50 and over.

- Transferring or Withdrawing Investments from a Default Investment: Employees may not want to participate in the company retirement plan, or they may decide to direct their plan investments themselves rather than have their contributions invested on their behalf. The plan document must provide for withdrawal of contributions and be set up as an EACA. If participants elect to withdraw their contributions, they must do so within 90 days. Participants whose contributions are automatically deposited in the default investment must be allowed to change their investments to other available plan options as frequently as participants who actively chose the default investment, and at least once every quarter.

If an employee decides to withdraw investments within 90 days of the first contribution or to change investments, a plan cannot impose restrictions, fees, or expenses beyond standard fees for services such as investment management and account maintenance. Further, participants should not be subject to penalties such as surrender charges, liquidation fees, or market value adjustments.

All participants in the plan must be offered an opportunity to diversify their portfolios with a broad range of other options in addition to the default investments.

- Permissible Withdrawals of Automatic Contributions: If an eligible automatic enrollment 401(k) plan (EACA) has opted to allow employees to withdraw their automatic contributions within 90 days of their first contribution, then those amounts, distributed with earnings, are treated as taxable income in the year distributed. They are reported on Form 1099-R and are not subject to the 10 percent additional early withdrawal tax.

NONQUALIFIED DEFERRED COMPENSATION PLANS: Income Tax Reporting and Withholding – Before January 1, 2005: For plans in effect before October 3, 2004, that has not had significant changes to the plan or contributions made after October 3, 2004, withhold income tax on nonqualified plans as follows:

- **Funded plan:** Withhold when the employees' rights to amounts are not subject to substantial risk of forfeiture or are transferable free of such risk. A funded plan is one in which an employer irrevocably contributes the deferred compensation to a separate fund, such as an irrevocable trust.
- **Unfunded plan:** Withhold when you make payments to the employee.

Employment taxes and withheld income tax on these plans must be reported on Forms W-2 and 941.

INCOME TAX REPORTING AND WITHHOLDING – AFTER JANUARY 1, 2005: Effective for amounts deferred in taxable years beginning after December 31, 2004, amounts deferred under a nonqualified deferred compensation plan are currently includible in gross income if they are not subject to a substantial risk of forfeiture and have not previously been included in income, unless certain requirements regarding distributions and the timing of deferral elections are satisfied as defined by IRC §409A. A nonqualified deferred compensation plan is defined as any plan that provides for the deferral of compensation other than a qualified retirement plan, or any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

GUIDANCE ON REPORTING AND WITHHOLDING REQUIREMENTS FOR NONQUALIFIED DEFERRED COMPENSATION: The IRS has issued a notice providing interim guidance to employers and payers on their reporting and wage withholding requirements with respect to deferrals of compensation and amounts includible in gross income under IRC §409A. In addition, the notice provides guidance to service providers on their income tax reporting and tax payment requirements with respect to amounts includible in gross income under §409A [Notice 2008-115, 2008-52 IRB 1367]. The notice generally extends guidance provided in Notice 2006-100 and Notice 2007-89 applicable to calendar years 2005, 2006, and 2007.

The interim guidance provided in Notice 2008-115 is effective for calendar year 2008 and will remain in effect for subsequent calendar years until the IRS issues further guidance. The IRS does not anticipate that further guidance will be issued until the recently proposed regulations addressing the calculation of the amount includible in income under §409A(a) and the calculation of additional taxes are finalized. Further, the IRS anticipates that with respect to annual deferral reporting (Form W-2, Box 12, Code Y; Form 1099-MISC, Box 15a), such guidance will not be made effective before the calendar year beginning after such regulations are finalized.

ANNUAL DEFERRALS – AMOUNTS REPORTABLE ON FORM W-2 OR FORM 1099-MISC: Until the IRS issues further guidance, employers are not required to report amounts deferred during the year under a nonqualified deferred compensation (NQDC) plan subject to §409A on Form W-2 in Box 12 with Code Y (employees) or on Form 1099-MISC in Box 15a (independent contractors).

However, an employer must treat amounts includible in gross income under §409A as wages for income tax withholding purposes and must be reported as wages paid on Line 2 of Form 941 and in Box 1 of Form W-2. An employer must also report such amounts as §409A income in Box 12 of Form W-2 using Code Z.

Amounts includible in gross income under §409A are supplemental wages for purposes of determining how much income tax to withhold regardless of whether the employer has paid the employee any regular wages during the calendar year of the payment. The amount required to be withheld is not increased on account of the additional income taxes imposed under §409A. Employees should thus be aware that estimated tax payments or increased withholding from regular wages may be required to avoid penalties.

CALCULATING AMOUNTS INCLUDIBLE IN INCOME: For purposes of IRS Notice 2008-115, the amount includible in gross income because of a plan failure under §409(a) and required to be reported by the employer or payer equals the portion of the total amount deferred under the plan that, as of December 31 of the applicable calendar year, is not subject to a substantial risk of forfeiture and has not been included in income in the previous year, plus any amounts of deferred compensation paid or made available to the employee or payee under the plan during the applicable calendar year. An employer or payer may treat an amount as previously included in income if it was properly reported by the employer or payer on a Form W-2, Form 1099-MISC, or Form W-2c or corrected Form 1099-MISC. Amounts previously reported and included in income should not be reported again.

Amounts includible in gross income under §409(a) include only amounts deferred that are subject to §409A and not, for example, amounts deferred that were earned and vested prior to January 1, 2005, and that are not otherwise subject to §409A due to the application of the effective date provisions.

WAGE PAYMENT DATE OF INCLUDIBLE AMOUNTS: Amounts includible in gross income under §409A(a) that are either actually or constructively received by an employee during calendar year are considered wages paid when received by the employee for purposes of withholding, depositing, and reporting income tax. Amounts includible in gross income under §409A(a) that are neither actually nor constructively received by the employee during the applicable calendar year are treated as a payment of wages on December 31 of that calendar year, for purposes of withholding, depositing, and reporting income tax.

If, as of December 31 of the applicable calendar year, the employer does not withhold income tax from the employee on such wages, or withholds less than the amount of income tax required to be withheld, the employee will receive credit for that calendar year on his or her personal income tax return if the employer:

- withholds or gets from the employee the amount of the under collection before February 1 of the subsequent year, and reports the wages for the quarter ending December 31 of the applicable calendar year, on Form 941 and in Box 1 of the employee’s Form W-2; or
- pays the income tax withholding liability on behalf of the employee and reports the gross amount of wages and the employer-paid taxes for the quarter ending December 31 of the applicable calendar year, on Form 941 and in Box 1 of the employee’s Form W-2.

For purposes of the employment tax deposit rules, if the income tax withholding liability for wages treated as paid to the IRS by the due date of the Form 941 for the quarter ending on December 31 of the applicable calendar year, on which the wages are reported, then failure-to-deposit penalties will not be imposed.

CALCULATING DEFERRALS: The rules for determining the total deferred under a NQDC plan for purposes of calculating the amount required to be included in income under §409A(a) are similar to the rules for calculating the amount to include in income under a nonqualified deferred compensation plan for purposes of social security and Medicare taxation under IRC §3121(v)(2).

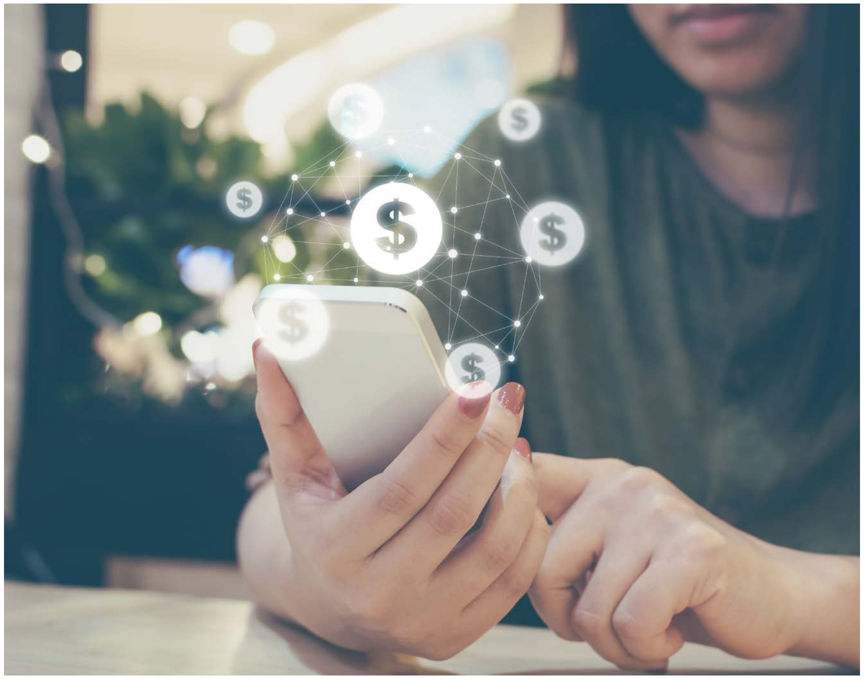
- Account balance plans – For account balance plans, the amount deferred as of December 31 of a calendar year equals the amount that would be treated as an amount deferred on that date if the entire account balance (including all principal amounts, adjusted for income, gain, or loss credited to the employee's account) as of December 31 of the calendar year were treated as a principal amount credited to the employee's account on that date. Note that these same rules apply for purposes of determining the amount reported on Form 1099-MISC with respect to a nonemployee.
- Non-account balance plans – For non-account balance plans, where the amount deferred is reasonably ascertainable, the amount deferred as of December 31 of the calendar year equals the present value of all future payments to which the employee has obtained a legally binding right as of that date, calculated as if the employee had obtained all of such rights on December 31 of that calendar year. An amount deferred is considered reasonably ascertainable on the first date on which the amount, form, and commencement date of the benefit payments attributable to the amount deferred are known, and the only actuarial assumptions needed to determine the amount are interest and mortality. Note that these same rules apply for purposes of determining the amount reported on Form 1099-MISC with respect to a nonemployee.
- Stock rights – For a plan that is a stock right under Proposed Reg. §1.409A-1(1), the amount deferred as of December 31 of a calendar year equals the amount that the service provider would be required to include in income of the stock right were immediately exercisable and exercised on December 31 of that calendar year. In general, this will mean with respect to a stock right outstanding as of December 31 of a calendar year that the amount deferred as of December 31 of that calendar year equals the fair market value of the underlying stock less the sum of the exercise price and any amount paid by the service provider for the stock right.
- Other deferred amounts – For all deferred amounts not addressed by the account balance, non-account balance, and stock right plan rules, the amount deferred as of December 31 of a calendar year must be determined under a reasonable, good faith application of a reasonable, good faith method. This method must reflect reasonable, good faith assumptions with respect to any contingencies as to the timing or amount of any payment. Assumptions that result in the amount deferred being the lowest potential value of the future payment will be presumed not to be reasonable, good faith assumptions unless clear and convincing evidence demonstrates otherwise.

PROTECTION FROM FUTURE REPORTING OR WITHHOLDING:

An employer or payer that complies with Notice 2008-115 regarding computing amounts includible in gross income under §409A and withholding and reporting those amounts for a calendar year will not be liable for additional income tax withholding or penalties, or be required to file any subsequent forms for those amounts as a result of future published guidance with respect to the computation of amounts includible in gross income under §409A.

If it is subsequently determined that the employer did not apply Notice 2008-115 in determining amounts includible in gross income or wages for a calendar year, any recalculation of these amounts may result in additional liability for income tax withholding for these years, plus any applicable penalties. In addition, the employer or payer will be required to file an original or corrected information return and furnish an original or corrected payee statement.

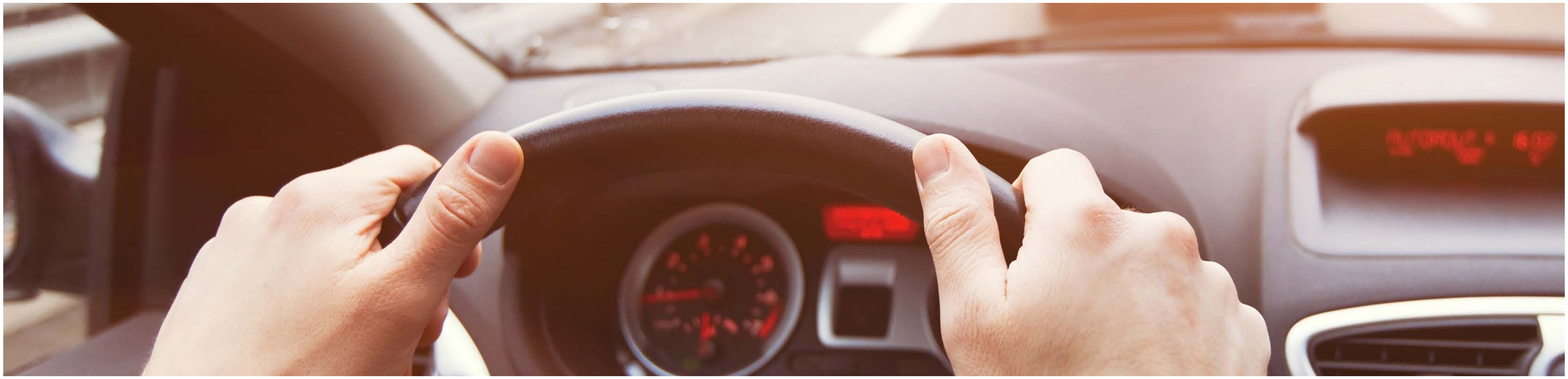
For purposes of determining any amount includible in income under §409A in a subsequent year, an amount will not be treated as previously included in income unless the amount has been reported appropriately on an information return and payee statement, or has been included by the service provider in a previous year.



SOCIAL SECURITY AND MEDICARE TAX WITHHOLDING RULES:

For purposes of withholding and depositing social security, Medicare, and FUTA taxes, an amount deferred is treated as wages paid by the employer and received by the employee at the time it is taken into account. If the employer is unable to calculate the amount deferred for a year by December 31, the employer has two alternative methods it can use, either the estimated or lag method.

- Estimated method – under the estimated method, an employer may treat a reasonably estimated amount as wages paid on the last day of the calendar year (the "first year"). If the employer underestimates the amount deferred that should be taken into account and under deposits social security, Medicare, or FUTA taxes, it can choose to treat the shortfall as wages either in the first year or the first quarter of the next year. The short-fall does not include income credited to the amount deferred after the first year. If the shortfall is treated as wages in the first year but was not included on the employee's Form W-2, the employer must issue a Form W-2c. Also, the employer must correct the information on the Form 941 for the last quarter of the first year. In such a case, the shortfall will not be treated as a late deposit subject to penalty if it is deposited by the employer's first regular deposit date following the first quarter of the next year. Conversely, if the amount deferred is overestimated, the employer can claim a refund or credit.
- Lag method – under the lag method, an employer may calculate the end of the year amount deferred on any date in the first quarter of the next calendar year. The amount deferred will be treated as wages on that date, and the amount deferred that would otherwise have been taken into account on the last day of the first year must be increased by income earned through the date on which the amount is taken into account



PERSONAL USE OF COMPANY VEHICLE

A company-owned vehicle that is used for business purposes (as long as it's documented) is not considered taxable income. However, when your employee uses the vehicle for personal use, it becomes taxable and must be reported on their W-2.

WHAT DO WE MEAN BY PERSONAL USE?

Simply put, any time the company-provided vehicle is being used for non-work-related purposes. We're talking:

- Your employee's commute between home and work, if it's on a regular basis.
- Trips unrelated to your organization's purpose, work, trade, etc.
- Use on a vacation or on the weekend.
- Use by someone other than an employee of your company

WHAT DO I DO IF THERE IS PERSONAL USE OF A COMPANY VEHICLE?

The value of personal use of a company vehicle must be reported as income at least once a year. There are four options for how you report this:

1. General valuation
2. Annual lease value method
3. Cents-per-mile method
4. Commuting value method

GENERAL VALUATION METHOD

The general valuation method is determined by the cost an individual would incur to lease the same vehicle under the same terms in the same geographic area.

ANNUAL LEASE VALUE METHOD

To use this method, multiply the annual lease value of the car (via the IRS Annual Lease Value table) by the percentage of personal miles driven. This will give you the Fair Market Value (FMV) of the employee's personal use of a company-provided vehicle.

As a note, the amount determined from the table includes the value of maintenance and insurance for the vehicle, but not the value of employer-provided fuel. That has to be valued separately.

CENTS-PER-MILE METHOD

Using this method, the FMV is determined by multiplying the IRS standard business mileage rate (54.5 cents per mile as of Jan. 1, 2018) by the number of personal miles driven.

Two conditions must be met in order for you to use this method:

- The vehicle must be driven at least 10,000 miles annually
- FMV of the vehicle when first put into use cannot exceed the luxury car value. The "luxury" car value is $15,900 and "luxury" SUV/Truck value is $17,800.

COMMUTING VALUE METHOD

The value is calculated by multiplying the number of trips by either $1.50 (one way) or $3 (round trip). However, there are a number of conditions that must be met in order to use this method:

- The vehicle is owned or leased by you and provided to your employee for use in conjunction with your business.
- You require your employee to commute to and/or from work.
- You have a written policy prohibiting your employee (and their family) from using the vehicle for personal use other than commuting to and from work. Further, you enforce this policy.
- Your employee is not a control employee. A control employee is someone who:
    - Is a corporate office earning at least $105,000 in 2017
    - Is a director
    - Earned at least $215,000 in 2017
    - Owns 1percent or more equity, capital or profits interest in the business

HOW DO I REPORT THIS?

Personal use of a company vehicle is reported on Form W-2 in boxes 1, 3, 5 and 14 and on Form 941 on line 2, 5a and 5c.

As a friendly reminder, you also need to watch if your state reports these wages in box 16.

ANYTHING ELSE?

Here are a few more helpful tips when you are determining which method to use to calculate the use of a personal vehicle:

- If you use the cents-per-mile or annual lease valuation method, you must use it for all subsequent years you provide a vehicle to an employee.
- The same special valuation method doesn't have to be used for all company-provided vehicles or for all employees.
- If you have one company-provided vehicle that is used by multiple employees, you must use the same valuation method for all employees using that vehicle.

See the appendix for more information on personal use of company vehicle.

QUALIFIED TRANSPORTATION FRINGE BENEFITS

An employer may provide certain transportation fringe benefits to its employees without including the fair market value of the benefits in their income. They include:

- Transportation between the workplace and employee's home in a commuter highway vehicle (van pool) provided by the employer, if:
    - The vehicle seats at least 6 adults not including the driver;
    - At least 80% of the vehicle's mileage can be expected to be for commuting; and
    - At least one-half of the vehicle's seating capacity (excluding the driver) is used by employees.
- Transit pass – A transit pass is any pass, token, farecard, voucher, or similar item entitling a person to ride, free of charge or at a reduced rate, on mass transit or in a vehicle that seats at least 6 adults (not including the driver) if a person in the business of transporting persons for pay or hire operates it. Mass transit may include bus, rail, or ferry.
- Parking provided on or near the employer's premises or at a "park and ride" facility from which the employee uses mass transportation, a vanpool, or a carpool or any other means to get to work. Parking "on or near the employer's premises" includes parking on or near a work location where the employee works for the employer, but not if the value of parking provided by the employer or reimbursement for the employee's parking cost is otherwise excluded from income as a working condition fringe benefit or an employee's business expense reimbursed under an accountable plan.

EXCLUSION LIMITS - Up to $260 per month in 2018, is excluded from income for qualified parking provided by the employer and combined commuter highway vehicle transportation and transit passes.

TRANSPORTATION FRINGE BENEFITS EXTENDED TO BICYCLE COMMUTERS: (SUSPENDED)

Qualified bicycle commuting reimbursement suspended per Section 11047 of P.L. 115-97. An employee can no longer have an exclusion of qualified bicycle commuting reimbursement from taxable income. This is for any tax year beginning after December 31, 2017 and before January 1, 2026.

EMPLOYEE RELOCATION EXPENSE REIMBURSEMENTS

The Tax Cuts and Jobs Act of 2017 states for 2018 through 2025, employers must include moving expense reimbursements in employees' wages, with the exception of individuals in military.

Members of the U.S. Armed Forces can still exclude qualified moving expense reimbursement from their income if:

- They are on active duty
- They move pursuant to a military order and incident to a permanent change of station
- The move expenses would qualify as a deduction if the employee didn't get a reimbursement

Per a transition rule in The Tax Cuts and Jobs Act of 2017, reimbursements an employer pays to an employee in 2018 for qualified expenses incurred in a prior year and that otherwise satisfy the requirement under section 132(g)(1), such amount will be qualified moving expense reimbursement are excludable and will not be subject to federal income or employment taxes. The same is true if the employer pays a moving company in 2018 for qualified moving services provide to an employee prior to 2018.

- Reimbursements or payments must be for work-related moving expenses that would have been deductible by the employee if the employee had directly paid them before January 1, 2018
- The employee must not have deducted them in 2017

DE MINIMIS FRINGE BENEFITS

The value of a de minimis benefit provided to employees can be excluded from wages. A de minimis benefit is any property or service provided to an employee that has so little value (taking into account how frequently you provide similar benefits to your employees) that accounting for it would be unreasonable or administratively impracticable. Cash and cash equivalents (gift card, charge card, or credit card) no matter how little, is never excludable as a de minimis benefit, except for the occasional meal money or transportation fare. Such "perks" are tax-free only if they meet the definition and requirements that apply to "de minimis" fringe benefits.

SPECIFICALLY, A GIFT/AWARD IS DE MINIMIS IF:

- The value is nominal;
- Accounting for the item would be administratively impracticable;
- It is provided infrequently; and
- It is furnished for the purpose of promoting health, good will, contentment, or the efficiency of employees.

WHAT IS NOMINAL? Many employers maintain written policies that specify a dollar limit for tax-free gifts/awards, generally $25. Recognized as the threshold for tax-free gifts and awards for so long, it is assumed by many to be a rule established by the IRS. The fact is that neither the $25 rule nor the more recent transition by some to the $75 rule can be found in any IRS guidance. According to the IRS, it purposely does not specify a dollar amount at which a gift/award is de minimis because to do so would undermine the very reason that de minimis gifts are tax-free - that is, they are so small that accounting for them would be unreasonable or administratively impracticable.

ADMINISTRATIVELY IMPRACTICABLE TO ACCOUNT FOR:

The primary characteristic of a de minimis fringe benefit is the administrative impracticality of determining its value and/or the amount allocable to individual employees. For instance, a holiday party, the total cost of which is easily determinable, generally is a good example of this concept. Although it may be easy to ascertain which employees attended the function, it would be administratively difficult to determine how much food or drink was consumed by each guest. Employer-sponsored raffles are another example. Although the employer likely knows how much it spent on raffle prizes, keeping track of who won the raffled items could be burdensome, particularly if employees made contributions toward the purchase of raffle tickets. This is not to say that all items won in a raffle are tax-free. For example, a television won in a raffle is not tax-free to the employee winning it because its value exceeds what would be nominal. Additionally, it is not difficult to keep an account of the employees winning the most valuable items.

FREQUENCY: A fringe benefit is de minimis only if it is provided infrequently to employees. The regulations explain that generally, the frequency with which similar fringes are provided by the employer to its employees is determined by reference to the frequency with which the employer provided the fringes to each individual employee. Where it would be administratively difficult to determine frequency with respect to individual employees, the frequency with which similar fringes are provided by the employer to its employees is determined by reference to the frequency with which the employer provides the fringes to the work force as a whole. Therefore, under this rule, the frequency with which any individual employee receives such a fringe benefit is not relevant and, in some circumstances, the de minimis fringe exclusion may apply with respect to a benefit even though a particular employee receives the benefit frequently. For example, if an employer exercises sufficient control and imposes significant restrictions on the personal use of a company copying machine so that at least 85% of the use of the machine is for business purposes, any personal use of the copying machine by particular employees is considered to be a de minimis fringe.

PROMOTING HEALTH, GOOD WILL, CONTENTMENT, OR THE EFFICIENCY OF EMPLOYEES: The IRS has clarified that to be de minimis, the benefit must be provided for the purpose of creating an atmosphere that encourages productivity. The tax-free status of fringe benefits is jeopardized if they are provided to reward or compensate for productivity (however, such gifts are considered tax-free if provided infrequently for outstanding performance). For instance, flowers given to employees for an illness are expressly identified as an example of a de minimis fringe benefit. On the other hand, the routine and expected distribution of free theater tickets each time employees meet certain sales quotas would be considered a bonus and must be treated a taxable compensation. The IRS states:

"Amounts paid to employees for outstanding work, such as bonuses or awards, are income and should be shown on Form W-2. These include prizes such as vacation trips for meeting sales goals. If a prize or award is provided in the form of goods or services, the employer must include the fair market value of the goods or services in the employee's income."

EXCEPTIONS APPLY TO LENGTH-OF-SERVICE AND SAFETY ACHIEVEMENT AWARDS:

Awards of a specified amount given to certain employees for length-of-service or safety achievement are tax-free as long as they meet the following limits:

- Nonqualified: Total deductible awards (both safety and length of service awards) for any one person cannot exceed a noncash value of $400 in a calendar year.
- Qualified Plan: Total deductible awards (both safety and length of service awards) for any one person (including nonqualified) cannot exceed a noncash value of $1,600 in a calendar year. The average cost or fair market value of all individual achievement awards cannot exceed a noncash value of $400 each.

A plan is qualified if it does not discriminate in favor of highly compensated employees and it is a written plan that has been put in place by the employer on a regular basis. If a qualified plan award exceeds $1,600, the amount includable in the employee's income and subject to federal income and employment taxes is the difference between the cost of the item and the employer's deductible amount of $1,600.

- To be excluded, the award must be tangible property (does not include cash, cash equivalents, gift cards, gift coupons, gift certificates (unless for a specific tangible property item), stocks, bonds, other securities, tickets for sporting events or the theater, vacations, meals, lodging, etc.)
- The award must be presented in a meaningful ceremonious presentation.

In most cases, the cost of the award is used in the determination of the $400 or $1,600 limit. However, where the cost of an employee achievement award to the employer is so disproportionate to the award's fair market value that there is a significant likelihood that the award was given as disguised compensation, no portion of the award will qualify as an employee achievement award excludable under section 274(j) (Proposed Reg. §1.74-2).

EMPLOYEE: For purposes of determining the taxability of an achievement award, treat the following individuals as employees:

- A current employee.
- A former common-law employee you maintain coverage for in consideration of or based on an agreement relating to prior service as an employee.
- A leased employee who has provided services to you on a substantially full-time bases for at least a year if the services are performed under your primary direction or control.

SAFETY AWARDS: To qualify as a safety award, the following criteria must be met:

- Excluding de minimis fringe awards, not more than 10% of all employees may be entitled to this safety award.
- Managers, professional, administrative, and clerical employees are not eligible for safety awards.
- The employee must work full-time with at least one year of service.

LENGTH-OF-SERVICE AWARDS: To qualify for exclusion from income the award must not have been:

- Received during the employee's first five years of employment for the employer making the award, or
- Provided to an employee who received a previous award during that year or any of the preceding four years, excluding awards categorized under de minimis benefits.

GIFT CARDS OR COUPONS: Because cash and cash equivalent fringe benefits like gift certificates have a readily ascertainable value, they do not constitute de minimis fringe benefits because these items are not unreasonable or administratively impracticable to account for. In fact, accounting for cash or cash equivalent fringe benefits such as gift cards is never considered administratively impracticable under IRC §132.

According to an IRS technical advice memorandum, an employer-provided holiday gift coupon with a face value of $35 that was redeemable at several local grocery stores was not excludable from gross income and wages as a de minimis fringe benefit under IRC §132(a)(4) [TAM 200437030, 4-30-04].

Under an earlier program, an employer provided its employees with a ham, turkey, or gift basket as an annual holiday gift. Then the employer changed its program and instead provided its employees with a gift coupon with a face value of $35. The employer intended that the gift coupons would be approximately equal in value to the annual holiday gifts previously provided. The employer did not withhold or pay any employment taxes on any portion of the $35 gift coupons provided to employees.

Coupons were shaped like bank checks and included the words "endorse here" next to a signature line in the bottom right corner. Printed on the front of each coupon were the employer's name and address, the $35 face value, and the words "gift coupon." Printed on the back of each coupon were the employee's name and address and a number that identified the employee's department.

In the first year, the gift coupon listed four food stores where it was redeemable (some with multiple locations). The next year, the coupon listed 23 food stores where it was redeemable (some with multiple locations) but was otherwise unchanged. The coupons included the following restrictions:

- Good toward the purchase of any grocery product excluding tobacco, alcohol, or pharmacy goods;
- Store may reserve the right not to accept it;
- Can only be used once and any unused portion is forfeited; and
- Redeemable between November 15 and January 31 of the following year.

Here, the IRS said that the employer-provided “gift coupon” operated in essentially the same way as a cash equivalent fringe benefit such as a gift certificate. As with gift certificates, it was not administratively impracticable to account for the coupons; they had a face value of $35.

The IRS rejected the employer’s argument that because the gift coupons were not redeemable for cash they should not be included in the employees’ gross income or subject to employment taxes. Neither the statute nor the regulations pertaining to de minimis fringe benefits define a cash equivalent fringe benefit as one that can be readily converted to cash. Instead, the question (Under IRC §132(e)) is whether it was administratively impracticable to account for the gift coupons in this case.

The IRS also rejected the employer’s attempt to apply the substantiation threshold used in connection with deductible length of service and achievement awards (IRS Regulation §1.274-3(b)(iv)) or substantiated business expenses (IRS Regulation §1.274-5(c)(2)(iii)(A)(2)) to de minimis fringe benefits. The argument that “it would seem that items of less than $75 in value would be considered de minimis” is inconsistent with IRC §132(e), which requires “a determination of value relative to the frequency with which a particular benefit is provided.”

IRS EXAMPLES OF DE MINIMIS FRINGE BENEFITS:

- Occasional personal use of an employer’s copying machine, provided that the employer exercises sufficient control and imposes significant restrictions on the personal use of the machine so that 85% of the use of the machine is for business purposes.
- Occasional cocktail parties, group meals, or picnics for employees and their guests.
- Traditional birthday or holiday gifts of property (not cash) with a low fair market value.
- Occasional theater or sporting event tickets.
- Coffee, doughnuts, and soft drinks.
- Local telephone calls.
- Flowers, fruit, books, or similar property provided to employees under special circumstances (e.g., on account of illness, outstanding performance, or family crisis).

EMPLOYER-PROVIDED CELL PHONES

The value of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee’s income as a working condition fringe benefit. Employee’s personal use of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee’s income as a de minimis fringe benefit.

An employer will be considered to have provided an employee with a cell phone primarily for noncompensatory business purposes if there are substantial reasons relating to the employer’s business, other than providing compensation to the employee, for providing the employee with a cell phone. Examples of substantial noncompensatory business reasons are:

- The employer needs to contact the employee at all times for work-related emergencies
- The employer requires the employee to be available to speak with clients at times when the employee is away from the office
- The employee needs to speak with clients located in other time zones at times outside the employee’s normal work day.

A cell phone provided to promote the morale or good will of an employee, to attract a prospective employee or as a means of furnishing additional compensation to an employee is not provided primarily for noncompensatory business purposes.

EDUCATIONAL ASSISTANCE

One of the most popular benefits provided by employers is employer-paid educational assistance, where the employer pays for or reimburses the cost of educational courses attended by an employee. Different taxation rules apply depending on whether or not the courses are job-related.

JOB-RELATED: Educational assistance can be excluded from the employee's income, with no dollar limit, as a working condition fringe benefit under §132, if the education could be deducted on the employee's individual income tax return using the definition found in IRS Regulation 1.162-5 if the employee paid for the education. If the employer pays for the educational assistance and the employee meets the requirements to deduct the education, the exclusion applies if the education can be defined as job-related. In order for the educational assistance to qualify as job-related, three conditions must be met:

1. The course must not be necessary to meet the minimum education requirements of the job.
2. The course must not be taken to qualify the employee for a promotion or transfer to a different type of work.
3. The course must be related to the employee's current job and must help maintain or improve the knowledge or skills required for that job. If the job requirements change while the employee is working, employer-provided education designed to meet the changing requirements is considered job-related.

NON-JOB-RELATED: §127 of the IRC allows the exclusion from income of up to $5,250 per year of employer-provided non-job-related educational assistance if the employer sponsored program meets the following requirements:

1. The Educational Assistance Program is found in a separate written plan of an employer for the exclusive benefit of its employees.
2. The program shall benefit employees who qualify under a classification set up by the employer.

The program is not discriminatory in favor of employees who are highly compensated employees or their dependents. For purposes of nondiscrimination testing of pension plans and other benefits, the definition of a highly compensated employee includes:

- Any employee who was a 5% owner of the employer during the current or preceding year: or
- Any employee who received more than $120,000 in compensation from the employer during the preceding year.

If the employer wishes, it can limit the employees fitting under the second definition to those in the top-paid 20% of employees.

3. Not more than 5% of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5% of the stock or of the capital or profits interest in the employer.
4. A program must not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income.
5. The program is not required to be funded.
6. Reasonable notification of the availability and terms of the program must be provided to eligible employees.

The IRS has generally taken the position that courses leading to a graduate-level degree such as an MBA are non job-related.

DEFINITIONS AND SPECIAL RULES: The term "educational assistance" means:

- The payment, by an employer, of expenses incurred by or on behalf of an employee for education of the employee (including, but not limited to, tuition, fees, and similar payments, books, supplies, and equipment), and
- The provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment).

However, "educational assistance" does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation. The term "educational assistance" also does not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies, unless the education:

- Has a reasonable relationship to your business, or
- Is required as part of a degree program.

For purposes of this exclusion, the term "employee" includes:

- A current employee.
- A former employee who retired, left on disability, or was laid off.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- Yourself (if you are a sole proprietor).
- A partner who performs services for a partnership.

The term "employer" includes any individual who owns the entire interest in an unincorporated trade or business. A partnership shall be treated as the employer of each partner who is an employee.

In summary, employer-paid education that is related to an employee's current job is excluded from income as a working condition fringe benefit under the conditions given above, with no dollar limit. On the other hand, employer-paid education that is non-job-related is excluded from income under §127 of the IRC only up to $5,250 a year, if the above requirements are met. §127, which originally was set to expire at the end of 2010, was extended for an additional two years under the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010. The income exclusion under IRC §127 has become permanent and will no longer be subject to expiration as it has been since 1978.

DIFFERENTIAL MILITARY PAY

Many employers are faced with decisions on how to tax and report any pay they provide to reservists who are called to military service. Compensation paid to an employee while on military duty that represents the difference between the employee's regular pay and the pay provided by the state or federal government is referred to as differential military pay. The tax treatment of differential military pay is governed by the circumstances of the employee's military service.

If such payments are made to employees who are called to military service for 30 days or less, they are treated as wages subject to federal income tax withholding and social security, Medicare, and FUTA taxes.

In 2009, the IRS issued guidance on the tax treatment of differential wage payments made by employers to their employees on active duty in the uniformed services for more than 30 days [Rev. Rul. 2009-11, 4-16-09]. The guidance is based on a scenario where an employer has employees who are called or voluntarily enlist for active military service in the U.S. armed forces for periods exceeding 30 days. The employer continues making payments to the individuals in an amount equal to the difference between the compensation they receive for their military service and the wages they would have received from the employer if they were performing services for the employer.

IRC §3401(H) HEROES EARNINGS ASSISTANCE AND RELIEF TAX (HEART) ACT

added new IRC section 3401(h), which provides that, for purposes of income tax withholding, any differential wage payment is to be treated as a payment of wages by the employer to the employee. The term "differential wage payment" is defined as any payment that:

1. Is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services while on active duty for more than 30 days, and
2. Represents all or a portion of the wages that the individual would have received from the employer if the individual were performing services for the employer.

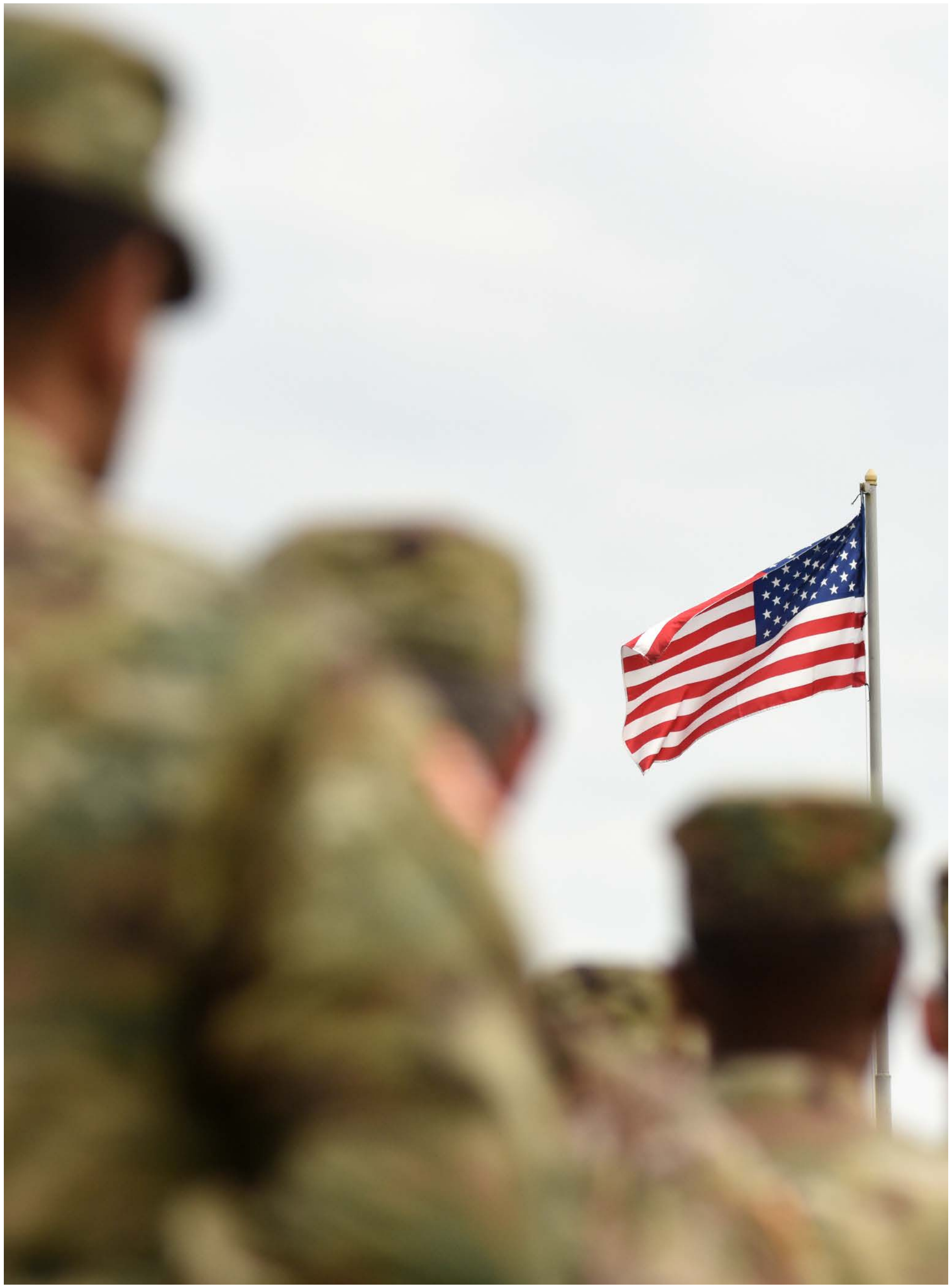
IRC §3401(h) applies to differential wage payments paid after December 31, 2008.

It also requires that an individual receiving a differential wage payment be treated as an employee of the employer making the payment, and differential wage payments be treated as compensation for retirement plan purposes. For example, for purposes of the limitation on contributions to an IRA, the term "compensation" would be amended to include differential wage payments.

TAX TREATMENT OF DIFFERENTIAL WAGE PAYMENTS TO EMPLOYEES ON ACTIVE MILITARY DUTY

Here, the payments made by the employer meet the definition of "differential wage payments" under §3401(h). These payments are therefore treated as wages for income tax withholding purposes, and the employer must withhold income taxes on the differential wage payments.

However, because the individuals are scheduled to be on active military duty for an extended period of time, rather than being temporarily absent, the differential wage payments are not wages for purposes of FICA and FUTA taxes. Section 3401(h) does not address the FICA and FUTA treatment of differential wage payments and therefore does not affect existing guidance that differential wage payments do not constitute wages subject to FICA or FUTA taxes. That guidance, which dated from the late 1960s, provided that IRS considers the employment relationship to be severed during the extended period of military service.



Differential wage payments are supplemental wages because they are not a payment for services for the non-military employer in the current payroll period. Therefore, if the amount of the differential pay, when added to all other supplemental wages paid by the same employer to the employee during the calendar year does not exceed $1 million, the employer may use either the aggregate method or optional flat rate withholding (if federal income tax has been withheld from regular wages paid to the employee in the current or preceding calendar year) to calculate the amount of income taxes to be withheld from the differential wage payments.

Because differential payments are treated as wages subject to income tax withholding, the employer must report the payments on each employee's Form W-2 in Box 1, with the amount withheld reported in Box 2. The amounts are not reported in Boxes 3 and 5 because they are not subject to social security or Medicare tax.

DEFERRALS FROM DIFFERENTIAL MILITARY PAY TO QUALIFIED RETIREMENT PLANS: IRS regulations under IRC §415 on the limitations on benefits and contributions under qualified plans affect administrators of, participants in, and beneficiaries of qualified employer plans and other retirement plans.

The regulations provide that amounts received following severance from employment are generally not considered compensation for §415 purposes.

Corresponding changes took affect for the regulations under §401(k), §403(b), or §457(b), so that amounts receivable following severance from employment can only be deferred if those amounts meet the conditions in the regulations.

However, the rule pursuant to which compensation received after severance from employment is not considered compensation for §415 purposes generally does not apply to payments to an individual in qualified military service up to the amount the individual would have received if he or she was still working for the employer. In other words, employees may continue to contribute to their employer's retirement plans while performing qualified military service.

LOANS TO EMPLOYEES

Loans made to employees by their employers at interest rates below the applicable federal interest rate are below-market, compensation-related loans. The amount representing the difference between the interest charged to the employee and the applicable federal interest rate must be included in the income of the employee on any day in which the combined amount of all outstanding loans between the employer and the employee is more than $10,000.

The taxable amount is not subject to federal income tax withholding, but must be reported in box 1 on the employee's Form W-2. The taxable amount is subject to social security, Medicare, and FUTA taxes.

If the employer forgives the debt, or for any other reason the employee is not expected to repay the loan, the entire balance of the loan becomes income subject to federal income tax withholding and social security, Medicare and FUTA taxes in the year the debt is forgiven.

DRAWS AGAINST COMMISSIONS: Salespeople often receive compensation in the form of advances that are later subtracted from (or drawn against) earned compensation. Such amounts are not loans and are supplemental wages subject to federal income tax withholding and employment taxes at the time of payment if the employee is not legally obligated to repay them under an agreement with the employer. If, however, the employee signs an agreement acknowledging the indebtedness and the loan otherwise qualifies under the rules for compensation-related loans to employees, the advance is not wages and is not subject to federal income tax withholding or social security, Medicare, or FUTA taxes.

QUESTIONS TO ASK

- Did the principal on all loans provided to an employee exceed $10,000 at any time during the year?
- What interest rate is the employee paying with the loan repayment?
- Have any employee loans been forgiven?

EMPLOYEE DISCOUNTS

This exclusion applies to a price reduction given to an employee on property or services offered to customers in the ordinary course of the line of business in which the employee performs substantial services. However, it does not apply to discounts on real property or discounts on personal property of a kind commonly held for investment, such as stocks or bonds.

The value of an employee discount can generally be excluded from the employee's wages up to the following limits:

- For a discount on services, 20% of the price charged to non-employee customers for the service.
- For a discount on merchandise or other property, the gross profit percentage of the price charged to non-employee customers for the property.

This exclusion does not apply to highly compensated employees if the same discount is not available to one of the following groups:

- All of your employees.
- A group of employees defined under a reasonable classification you set up that does not favor highly compensated employees.

THIRD-PARTY SICK PAY

Third Party sick pay is paid to an employee by a third party under an insurance arrangement. These payments are wage replacement income for an employee who is absent from work for more than a few days due to illness or injury but are expected to return to work at some point. These payments are through the employer's sick pay plan in the form of short-term or long-term disability payments and may be made by the employer, an agent of the employer, or a third party insurance company (requiring special treatment at year-end because the IRS reconciles an entity's social security and Medicare wages reported quarterly on Forms 941 with the same wages reported annually on Forms W-2 and W-3).

Taxability of the payments is determined by how the plan benefits are funded. Benefits attributable to employee post-tax contributions from wages are not taxable income. However, benefits that are attributable to employer contributions or to employee pre-tax contributions through a cafeteria plan are taxable income to the employee and may be subject to federal income tax withholding and social security, Medicare and FUTA taxes. If both the employer and the employee contribute to the premiums for the plan, the taxable portion of benefits received is the amount attributable to the employer-funded portions of the premiums. Special rules apply for determining the amount of benefits included in the employee's income where the employer and employee both contribute to a group insurance policy. If the employer knows the net premiums paid for at least 3 policy years, the formula for calculating the employee's taxable amount is as follows:

$$\text{Employee's sick pay} \times \frac{\text{Employer-paid premiums for last 3 years}}{\text{Total premiums for last 3 years}}$$

Once it is determined that payments under a sick pay or disability plan are taxable income in whole or in part to an employee, the next step is to determine the federal income tax withholding and social security, Medicare, and FUTA tax responsibilities related to the taxable portion of the payments.

Sick payments made to an employee after the employee has been absent from work for six calendar months are excluded from wages subject to social security, Medicare, and FUTA tax.

PAYMENTS MADE BY A THIRD PARTY WHO IS NOT AN AGENT:

The third-party insurer assumes more tax responsibility when it bears the risk of insuring the employees through premium payments either by the employer and/or the employees. The third party must withhold federal income taxes (if requested by the employee) and the employee's share of social security and Medicare taxes from each sick pay payment. The third party is also responsible for the employer's share of social security and Medicare, as well as FUTA, unless it transfers the liability for these taxes back to the employer. This liability is transferred if the third party takes the following steps:

1. Withholds the **employee** social security and Medicare taxes from the sick pay payments,
2. Makes timely deposits of the **employee** social security and Medicare taxes, and
3. Notifies the employer for whom the employee normally works of the payments on which employee taxes were withheld and deposited. The third party must notify the employer within the time required for the third party's deposit of the employee part of the social security and Medicare taxes. For instance, if the third party is a monthly schedule depositor, it must notify the employer by the 15th day of the month following the month in which the sick pay payment is made because that is the day by which the deposit is required to be made. The third party should notify the employer as soon as information on payments is available so that an employer required to make electronic deposits can make them timely.

When the third-party insurer makes the payments and transfers the employer's share of social security, Medicare, and FUTA taxes back to the employer, the employer is liable for the employment taxes when it is notified by the third party as to the amount of the payments made and employee taxes withheld and deposited.

The third party is not required to withhold federal income tax from payments made to a disabled employee unless the employee requests a certain amount be withheld by furnishing the third party with Form W-4S. If the employee provides Form W-4S, the third party must begin withholding with the first payment made at least 8 days after the form is provided. The third party may, at its option, withhold federal income tax before 8 days have passed. Through Form W-4S, the employee may request that a minimum of $4 per day, $20 per week, or $88 per month is withheld from each paycheck. No matter which withholding method is used, if the amount requested to be withheld reduces the net sick payment to below $10, no federal income tax should be withheld from that payment.

If the third party does not transfer social security and Medicare tax liability to the employer, it becomes liable for depositing those taxes (along with the employee's share of social security and Medicare and any withheld federal income taxes) when payment is made to the employee. The third party should make the deposit using its own name and employer identification number, not the employer's.

If the third party properly transfers the responsibility for the employer's share of social security, Medicare, and FUTA taxes to the employer, it must deposit only the employee's share of social security, Medicare, and withheld income taxes, using its own name and EIN.

REPORTING PROCESS

Reporting for third-party payments is unique because both the third-party administrator and the employer report an employee's social security and Medicare wages on their respective Forms 941;

- The third-party administrator reports the employee social security and Medicare wages subject to employee taxes, and
- The employer reports the employee social security and Medicare wages subject to the employer taxes.

In addition, both are required to report the equivalent wages on their respective Forms W-2 and W-3 in order to reconcile to their 941 Forms. Therefore, the IRS has provided specific instructions to assist in the reporting requirements for employers and third-party administrators.

- If the third-party administrator does not provide to the employer information about the sick pay payments made during the year by January 15th or if individual payments are not reported in order for the employer to make timely deposits of the employer taxes, the third-party administrator prepares Forms W-2 and W-3 for the employee.
- If the third-party administrator timely notifies the employer about the sick pay payments, then the following instructions apply: to Employers: If an employee receives sick pay in the current calendar year from an insurance company or other third-party administrator in an insurance arrangement, report the following on the employee's W-2 Form if the third party administrator provides the information by January 15th:

Box 1 – Amount of sick pay the employee must include in income; also report on line 2 of Form 941

Box 2 – Income tax withheld from the sick pay by the third party administrator; do NOT include on line 3 of Form 941

Box 3 – Amount of sick pay that is subject to employee social security tax

Box 4 – Employee social security tax withheld by the third party administrator

Box 5 – Sick pay subject to employee Medicare tax

Box 6 – Employee Medicare tax withheld by the third party administrator

Box 12 – Amount of any sick pay not included in income reported in box 1 because the employee contributed to the sick pay plan. Use Code J.

Box 13 – Check the Third-Party Sick Pay box as an employer reporting sick pay payments made by a third-party.

Either include these amounts on the Form W-2 you issue to the employee showing wages, or give the employee a separate Form W-2 stating that the amounts are for third-party sick pay. In either case, **place in box 14 of Form W-3 the total amount of income tax withheld by the third-party administrator, even though the amounts are included in box 2.** In addition, on Form W-3 you will check the Third Party Sick Pay check box when reporting sick pay payments made by a third party.

- **Third Party Administrator:** Because the third party administrator withheld social security and Medicare tax (and perhaps federal income tax) from persons for whom they do not file Forms W-2, the third party administrator must file a separate "Third-Party Sick Pay Recap" of Form 8922.
- Form 8922 must be filed with the IRS by February 28, 2019.
    - **Filer's name** - If employer box is checked, enter the employer EIN. If Insurer/Agent box is checked, enter insurer or agent EIN
    - **Filer's EIN** – same as above
    - **Other party's name and EIN** – If the employer box is checked, employer will provide this information. A separate form 8922 must be filed for each separate insurer or agent. If the Insurer/Agent box is checked, the insurer or agency may, but is not required to, provide the name and EIN of the employer.
    - **Box 1** – Total taxable sick pay subject to federal income tax.
    - **Box 2** – Total income tax withheld, if any, from the sick pay.
    - **Box 3** – Total sick pay subject to employee social security tax.
    - **Box 4** – Total amount of social security tax withheld from the sick pay.
    - **Box 5** – Total sick pay subject to Medicare tax.
    - **Box 6** – Total amount of the Medicare tax withheld from sick pay.
    - **Box 13** – Third party checks the "Third Party sick pay" box.
    - **Box b** – Third party's EIN.
    - **Box c** – Third party's name and address.
    - **Box e** – The words "Third Party sick pay recap" in place of the employee's name.

PREPARING FORM 941:

Line 2 – Include taxable sick pay if you get timely notice from your insurance carrier concerning the amount of third-party sick pay it paid your employee.

Line 3 – DO NOT include here any federal income tax withheld from sick pay by a third party as doing so will cause an out of balance between Forms 941 and Forms W-2. Federal income tax withheld from sick pay by a third party is reported on the third-party administrator's Form 941. The IRS will reconcile this amount with the "Third Party Sick Pay Recap" filed by the third-party administrator.

Line 5a – Include any taxable sick pay paid by a third party administrator to your employees.

Line 5c – Include any taxable sick pay paid by a third party administrator to your employees.

Line 8 – Enter here as a negative number the total of the employee's share of social security and Medicare tax withheld and paid by the third party administrator.

Schedule B – Enter in the appropriate box, the total liability of the employer's share of any social security and Medicare taxes paid on third party sick pay.

PREPARING FORM 940:

Line 3 – Include total amount of any sick pay paid to your employees by a third party administrator.

Line 4 – Include any non-taxable amounts of any sick pay paid to your employees by a third party administrator.

THIRD PARTY SICK PAY – NOT AS AN AGENT AND LIABILITY TRANSFERRED TO EMPLOYER		
	Employer Responsibilities	Third Party Responsibilities
Withhold Employee Taxes Income Social Security Medicare	 No No No	 Yes if W-4S is filed Yes Yes
Deposit Employee Taxes Income Social Security Medicare	 No No No	 Yes—using Third Party EIN Yes—using Third Party EIN Yes—using Third Party EIN
Deposit Employer Taxes Social Security Medicare FUTA	 Yes—using Third Party EIN Yes—using Third Party EIN Yes—using Third Party EIN	 No No No
Report Employee Wage and Taxes on Form 941 Income Social Security Medicare	 Report Taxable Wages *Report Taxable Wages *Report Taxable Wages *Adjustment on Line 8 for employee taxes deposited by third party.	 Report Taxable Withheld *Report Taxable Wages *Report Taxable Wages *Adjustment on Line 8 for employer taxes deposited by employer.
Report Employee Wage and Taxes on Form W-2* Income Social Security Medicare	 Yes Yes Yes	 No—File Form 8922 No—File Form 8922 No—File Form 8922

*See the instructions earlier if operating under the Optional rule for Form W-2 .

EMPLOYEE BUSINESS EXPENSE REIMBURSEMENT

Reimbursement for business travel expenses for temporary travel is excluded from the employee's income and is not subject to federal income tax withholding or social security, Medicare or FUTA taxes if made under an accountable plan. If the reimbursement is made for indefinite travel under a nonaccountable plan or exceeds the amount substantiated by the employee, the reimbursement or the excess amount is included in income and is subject to federal income tax withholding and social security, Medicare and FUTA taxes, when paid.

Employer reimbursements of employee travel expenses can be excluded from income only if the expenses are incurred while the employee is temporarily away from home on the employer's business. To qualify as "away from home", the employee must be away from the general area of their tax home substantially longer than an ordinary day's work, and they need to sleep or rest to meet the demands of work while away from home.

To qualify as temporary travel away from home, the employee must realistically be expected to be away from home for no more than one year, and must in fact only be gone for one year or less. An indefinite assignment is an assignment or job in a single location that is realistically expected to last for more than one year, whether or not is actually lasts for more than one year. The IRS has adopted a realistic expectation test that focuses on whether employment in a single location is realistically expected to last for more or less than one year, rather than on the actual length of employment at a temporary location:

- If employment away from home in a single location is realistically expected to last (and does in fact last) for one year or less, the employment will be treated as temporary in the absence of facts and circumstances indicating otherwise;
- If employment away from home is expected to last for more than one year or there is no realistic expectation that the employment will last for one year or less, the employment will be treated as indefinite, regardless of whether it actually exceeds one year; and
- If employment away from home is realistically expected not to exceed one year, the employment will be treated as temporary (in absence of facts and circumstances indicating otherwise) until the date the taxpayer's realistic expectation changes.

ACCOUNTABLE PLANS

Reimbursements or other expense allowances made under an accountable plan are not required to be reported on Form W-2, and they are generally tax-free to the employee. An accountable plan must meet the following three requirements:

1. Business Connection: Expenses must be business-related and have been paid or incurred while performing services as an employee of your employer.
2. Substantiation: The employee must substantiate, "within a reasonable period of time," the expenses with a detailed record of the expense including a statement of expense, an account book or similar record in which each expense is entered at or near the time it occurred, along with documentary evidence (such as receipts) of the travel, mileage, and other business expenses. One can substantiate expenses either through documenting actual expenses or a per diem arrangement.
3. Return of Unsubstantiated Amounts: The employee must return, within a "reasonable period of time," any advances that exceed the employee's substantiated expenses. If the employee does not return or substantiate the expenses, the unproved amount will be considered paid under a nonaccountable plan.

REASONABLE PERIOD OF TIME:

Actions that take place within the times specified below will be treated as taking place within a reasonable period of time:

- An advance is received within 30 days of the time you have an expense.
- Expenses are adequately accounted for within 60 days after they were paid or incurred.
- Excess reimbursements are returned within 120 days after the expense was paid or incurred.
- A periodic statement is provided at least quarterly that asks you to either return or adequately account for outstanding advances and you comply within 120 days of the receiving the statement.

NON-ACCOUNTABLE PLANS

Any business expense reimbursement plan, advance or specific reimbursement which does not meet the three qualifications of an accountable plan is considered a non-accountable plan. These reimbursements must be treated as taxable wages either when paid or, if they fail one of the safe harbors, in the first pay period after the failure. They are subject to federal income tax, social security tax, Medicare tax, and FUTA employer tax. They must also be reported on the employee's Form W-2.

Reimbursing an employee at a higher amount than the standard IRS mileage rate would result in the excess of 54.5₵ in 2018 being classified as provided under a non-accountable plan. Reimbursing employees at a rate greater than allowed without including the excess in wages or withholding on the excess may cause the entire plan to be classified as non-accountable. Amounts which are reimbursed as nontaxable (i.e. up to the IRS limit) are reported in Box 12, code L.

PER DIEMS AND MILEAGE ALLOWANCES

Reimbursing an employee at the standard IRS mileage rates of $0.545 in 2018, or less, allows a mileage reimbursement plan to be classified as an accountable plan.

Meals and incidental expense per diems or mileage allowances paid to employees which are less than or equal to the applicable rates set for federal employees are "deemed substantiated" without the employee having to provide a detailed record of expenses. The employees need only account for the time, place, and business purpose of their expenses.

If the per diem or mileage rates paid to an employee under an accountable plan exceeds the expenses that are deemed substantiated, the amount exceeding the substantiated expenses must be treated as paid under a non-accountable plan. Likewise, the excess portion is subject to withholding and employment taxes.

Employers have a choice of reimbursing actual expenses of business travel away from home, or reimbursing employees at a per diem rate to cover lodging, meals, and incidental expenses. If a per diem rate is paid, any additional payment with respect to these expenses is treated as paid under a nonaccountable plan, resulting in compensation to the employee.

All payments through a business expense reimbursement plan are treated as paid under a non-accountable plan if the arrangement shows a "pattern of abuse" of the expense reimbursement rules.

OTHER RULES AND PROVISIONS:

Under the following conditions a reimbursement arrangement which is in part accountable and part non-accountable must be treated as both an accountable and a non-accountable plan:

- The plan must provide payments for "deductible" employee business expenses as well as payments for other "bona fide" expenses related to the employer's business which are nondeductible.
- Reimbursements do not satisfy the "business connection" requirement if they are nondeductible (i.e., overnight travel expenses are deductible but expenses for business travel completed without an overnight stay are not deductible, even though they may be "bona fide" expenses related to the employer's business).
- The portion of a reimbursement arrangement which pays the nondeductible expenses is treated as a non-accountable plan, while the part paying the deductible expenses is treated as an accountable plan, providing that it also satisfies the "substantiation" and "return of excess" requirements.

WAGES PAID AFTER DEATH

If an employee dies during the year, accrued wages, vacation pay, and other compensation paid after the date of death must be reported. Following is an explanation of the tax and reporting requirements that currently apply to wages paid after death.

- Wages paid after death but in the same calendar year as the employee's death:

  Wages paid after death but in the year of death are considered wages for FICA, Medicare, and federal unemployment tax purposes but not federal income tax withholding for reporting purposes. Under IRS regulations, employers are required to report wages received after death on Form W-2 (Boxes 3 and 5), with corresponding FICA and Medicare taxes withheld in boxes 4 & 6. The federal taxable amount is reported on Form 1099-MISC, Box 3 (in the name of beneficiary). The federal taxable amount is not reported on Form W-2, Box 1.

- Wages paid after death and in the calendar year after the employee's death:

  Wages paid after death and in the calendar year after death are exempt from FITW, FICA, Medicare, and FUTA. Form W-2 is not completed. Instead, the entire payment is reported on a Form 1099-MISC (Box 3) to the estate or beneficiary of the employee.

IV. APPENDIX—MISC CONTACT INFORMATION, FORMS, & CHARTS

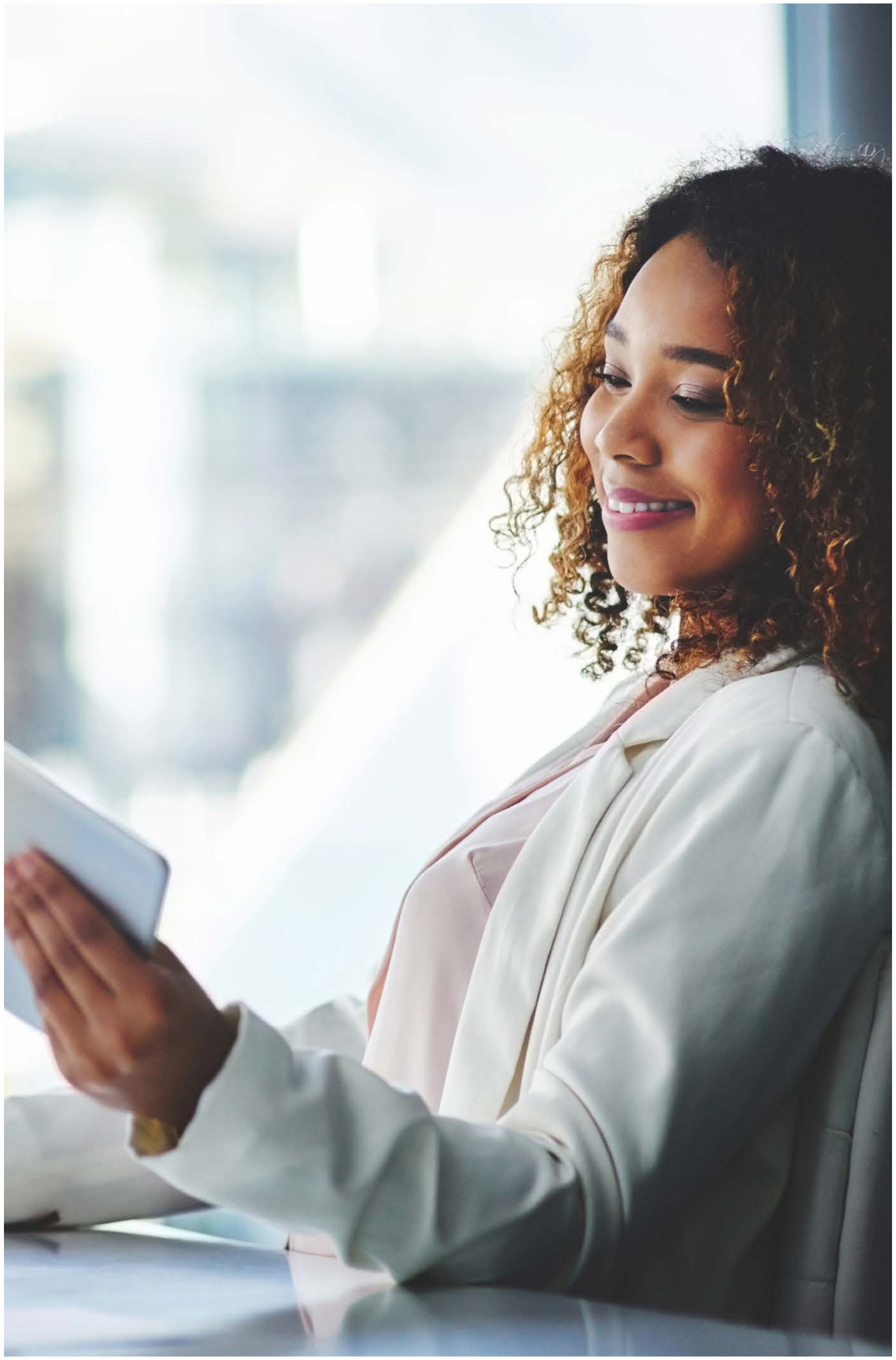
2018/2019 RATE CHART

Social Security and Medicare	2018	2019
Social Security Wage Base	$128.400	$132,900
Maximum Employer Social Security Tax	$7,960.80	$8,239.80
Maximum Employee Social Security Tax	$7,960.80	$8,239.80
Employer Social Security Tax Rate	6.2%	6.2%
Employee Social Security Tax Rate	6.2%	6.2%
Medicare Wage Base	None	None
Maximum Medicare Tax	None	None
Medicare Tax Rate	1.45%	1.45%
Additional Medicare Tax on wages > $200,000	0.9%	0.9%
Social Security Earnings Limit (under full retirement age)	$17,040	$17,640
Social Security Earnings Limit (reach full retirement age in current year) – for earnings before the month they reach full retirement age	$45,360	$46,920
Threshold for Election Worker Coverage	$2,100	$2,100
Threshold for Domestic Employee Coverage	$1,800	$1,800
Pension Plan Adjustments	**2018**	**2019**
Maximum Limitation for annual benefit under §415(b)(1)(A) for defined benefit plans	$220,000	$225,000
Maximum Contribution Limitation for defined contribution plans under §415(c)(1)(A)	$55,000	$56,000
Limitations on exclusions for elective deferrals under:		
§402(g)(1) (applies to §401(k), and §408(k)(6) salary reduction SEPS)	$18,500	$19,000
§403(b); non-profit employers; tax-sheltered annuities	$18,500	$19,000
§457; state & local governments; tax exempts	$18,500	$19,000
§408(p); SIMPLE IRA plans	$12,500	$13,000
Catch-Up Contributions		
§401(k), §403(b), §457, SEP	$6,000	$6,000
SIMPLE	$3,000	$3,000
Limitation used in the definition of highly compensated employee under §414(q)	$120,000	$125,000

Pension Plan Adjustments	2018	2019
Annual compensation limit under §401(a)(17) and §404(1); and under §408(k)(3)(C) pertaining to SEP plans	$275,000	$280,000
Minimum annual compensation amount under §408(k)(2)(C); SEP plans	$600	$600
Annual compensation limitation under §401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation under the plan under §401(a)(17) to be taken into account	$405,000	$415,000
Compensation amounts under reg. §1.61 – 21(f)(5)(i) concerning the definition of "control employee" for fringe benefit valuation purposes (board member or officer)	$110,000	$110,000
Compensation amounts under reg. §1.61 – 21(f)(5)(iii) concerning the definition of "control employee" for fringe benefit valuation purposes (compensation-based)	$220,000	$225,000

2018/2019 RATE CHART

High/Low Per Diem Rates	Effective 10/1/2017	Effective 10/1/2018
High Cost Combined Rate	$284	$287
Low Cost Combined Rate	$191	$195
Standard Deduction – Personal Exemption Values	2018	2019
Married, filing jointly; qualified widow(er)	$24.000	$24,400
Married, filing separately	$12,000	$12,200
Head of Household	$18,000	$18,350
Single	$12,000	$12,000
Annual Personal Exemptions	$4,150	$0
Mileage Rates	2018	2019
Business	$0.545/mi	
Charitable Activities	$0.14/mile	$0.14/mile
Medical Related	$0.18/mi	
Qualified Transportation Rates	2018	2019
Combined Commuter Highway Vehicle and Transit Passes	$260/month	$265/month
Qualified Parking	$260/month	$265/month
Personal Use of Company Vehicle	2018	2019
Cents-Per-Mile	$0.545/mi	
Cents-Per-Mile Maximum Values		
Luxury Car Value	$15,600	
SUV Value	$17,600	
Fleet Value – Luxury Car	$20,600	
Fleet Value – SUV Value	$23,100	



2018 STATE ALL DUE DATES CHANGED ANNUAL RECONCILIATION RETURNS

State	Due Date	Form	Notes
Alabama	Jan 31	A-3	25 or more W-2 Forms and A-3 form must be filed electronically; forms filed on paper should include an adding machine tape or computer totals if a computer listing is submitted
Arizona	Jan 31	A1-R	
Arkansas	Feb 28	AR3MAR	Can be filed electronically
California	Jan 31 (for 4th Qtr return)	DE 9	Employers are not required to submit copies of Forms W-2; Employers will report withholding taxes, unemployment insurance, employer training tax, and state disability insurance quarterly on Form DE 9
Colorado	Jan 31	DR 1093	Reconciliation form required for paper W-2 forms and if amounts appear on line 3A or 3B of Form DR 1093
Connecticut	Jan 31	CT-W3	Due date the same for filing electronically
Delaware	Jan 31	W-3	W-3 automatically generate if Forms W-2 are filed electronically
District of Columbia	Jan 31	FR-900B	
Georgia	Jan 31	G-1003	File Form G-1003 Income Statement Transmittal Form with W-2s (Form G-1003 can be filed online)
Hawaii	Feb 28	HW-3	
Idaho	Jan 31	967	
Illinois		N/A	Electronic W-2 reporting by 1/31/19
Indiana	Jan 31	WH-3	Electronic required for employers with more than 25 W-2 Forms
Iowa	Jan 31	VSP	VSP form is filed through eFile & Pay or by touch-tone telephone; paper forms are not mailed, and W-2 Forms are not required
Kansas	Jan 31	KW-3	Electronic required
Kentucky	Jan 31	K-3 or K-3E	Do not mail W-2 forms with annual reconciliation return
Louisiana	Jan 31	L-3	Paper copies; submit adding machine tape or other W-2 listing
Maine	Feb 28	W-3ME	Electronic required
Maryland	Jan 31	MW508	Form MW508 needed only for paper filers, enclose W-2 forms also
Massachusetts	Jan 31	M-3 or M-3M	Paper W-2 forms with reconciliation form
Michigan	Feb 28	5081	If using magnetic media, submit Form 165 separately from W-2 forms
Minnesota	Jan 31	N/A	Annual reconciliation is part of e-File Minnesota transmission

2018 STATE ALL DUE DATES CHANGED ANNUAL RECONCILIATION RETURNS

State	Due Date	Form	Notes
Mississippi	Jan 31	89-140	Required only if paper Forms W-2 are filed
Missouri	Jan 31	MO W-3	If paper copies, submit adding machine tape or computer printout
Montana	Jan 31	MW-3	
Nebraska	Jan 31	W-3N	
New Jersey	Feb 28	NJ-W-3M	If paper copies, submit an employee summary list with totals
New Mexico		RPD-41072	Annual report should be completed, but filing not required
New York	Jan 31	NYS-45-MN	Deadline for 4th quarter reports; Employers are not required to submit copies of Forms W-2
North Carolina	Jan 31	NC-3	Electronic filing required
North Dakota	Jan 31	307	Reconciliation form only needed for paper W-2 forms. If paper copies, submit adding machine tape or other W-2 listing
Ohio	Jan 31	IT-3	If paper copies, submit adding machine tape or other W-2 listing
Oklahoma		N/A	No paper form, File form W-3 information electronically using OkTAP or file upload
Oregon	Jan 31	WR	Employers do not submit copies of Forms W-2 with Form WR
Pennsylvania	Jan 31	REV-1667	If paper copies, submit adding machine tape or other W-2 listing
Rhode Island	Jan 31	RI-W3	If paper copies, submit adding machine tape or other W-2 listing
South Carolina	Jan 31	WH-1606	
Utah	Jan 31	TC-941R	Electronic filing required for all employers
Vermont	Jan 31	WH-434	
Virginia	Jan 31	VA-6	Electronic filing required for all employers
West Virginia	Jan 31	WV/IT-103	File form electronically if 25 or more employees
Wisconsin	Jan 31	WT-7	Employers and payroll transmitters filing 50 or more W-2 forms must file electronically

2018 STATE SUPPLEMENTAL TAX RATES

State		Tax Rate
Alabama		5.0%
Arkansas		6.9%
California	Regular Supplemental payments	6.6%
	Stock options and bonuses*	10.23%
Colorado		4.63%
Georgia	Annual wages: under $8,000	2.0%
	$8,000 to $10,000	3.0%
	$10,001 to $12,000	4.0%
	$12,001 to $15,000	5.0%
	Over $15,000	6.0%
Idaho		7.4%
Illinois		4.95%
Indiana		3.23%
Iowa	Withhold as for federal; Use 6% if federal flat rate is used	6.0%
Kansas		5.0%
Maine		5.0%
Maryland		5.75% plus county w/h rate
Michigan	Withhold as for federal; Use 4.25% if federal flat rate is used	4.25%
Minnesota		6.25%
Missouri		6.0%
Montana		6.0%
Nebraska	Withhold as for federal; Use 5% if federal flat rate is used	5.0%

State		Tax Rate
New Mexico	Withhold as for federal; Use 4.9% if federal flat rate is used	4.9%
New York		9.62%
NYC Resident		4.25%
Yonkers Resident		1.61135%
Yonkers Non-Resident		0.5%
North Carolina		5.599%
North Dakota		1.84%
Ohio		3.5%
Oklahoma		5.0%
Oregon	Withhold at 9% or use daily or miscellaneous withholding table	9.0%
Pennsylvania		3.07%
Rhode Island		5.99%
South Carolina		7.0%
Vermont		
Virginia		5.75%
West Virginia	Annual wages: under $10,000	3.0%
	$10,000 to $25,000	3.0%
	$25,000 to $40,000	4.5%
	$40,000 to $60,000	6.0%
	Over $60,000	6.5%
Wisconsin	Annual wages: under $10,910	4.0%
	$10,910 to $21,820	5.84%
	$21,820 to $240,190	6.27%
	$240,190 and over	7.65%

*Stock appreciation rights and restricted stock grants are viewed by the California EDD as bonus payments.

Arizona, Connecticut, Delaware, District of Columbia, Hawaii, Kentucky, Louisiana, Massachusetts, Mississippi, New Jersey, and Utah do not use a different rate for state tax withholding on supplemental wages. Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming do not have a state income tax.

2018 STATE RECIPROCITY AGREEMENTS

State	States with Reciprocal Agreements	Exemption Form
Arizona	California, Indiana, Oregon, Virginia	WEC
Arkansas	Texarkana Texas	AR-4EC
District of Columbia	Maryland and Virginia. All non-residents who work in DC can claim exemption from withholding for the DC income tax.	D-4A
Illinois	Iowa, Kentucky, Michigan, Wisconsin	IL-W-5-NR
Indiana	Kentucky, Michigan, Ohio, Pennsylvania, Wisconsin	WH-47
Iowa	Illinois	44-016
Kentucky	Illinois, Indiana, Michigan, Ohio, West Virginia, Wisconsin, Virginia. Residents of Virginia are exempt from Kentucky withholding only if they commute daily to their places of work in Kentucky. Ohio residents are not exempt if they are a shareholder employee who is a 20% or greater direct or indirect equity investor in a S corporation.	42A809
Maryland	District of Columbia, Pennsylvania, Virginia, West Virginia	MW-507
Michigan	Illinois, Indiana, Kentucky, Minnesota, Ohio, Wisconsin – Employers may create their own exemption form or use the line on MI-W4 for claiming exemption from withholding. Employee should write "Reciprocal Agreement" and the state name on that line.	MI-W4

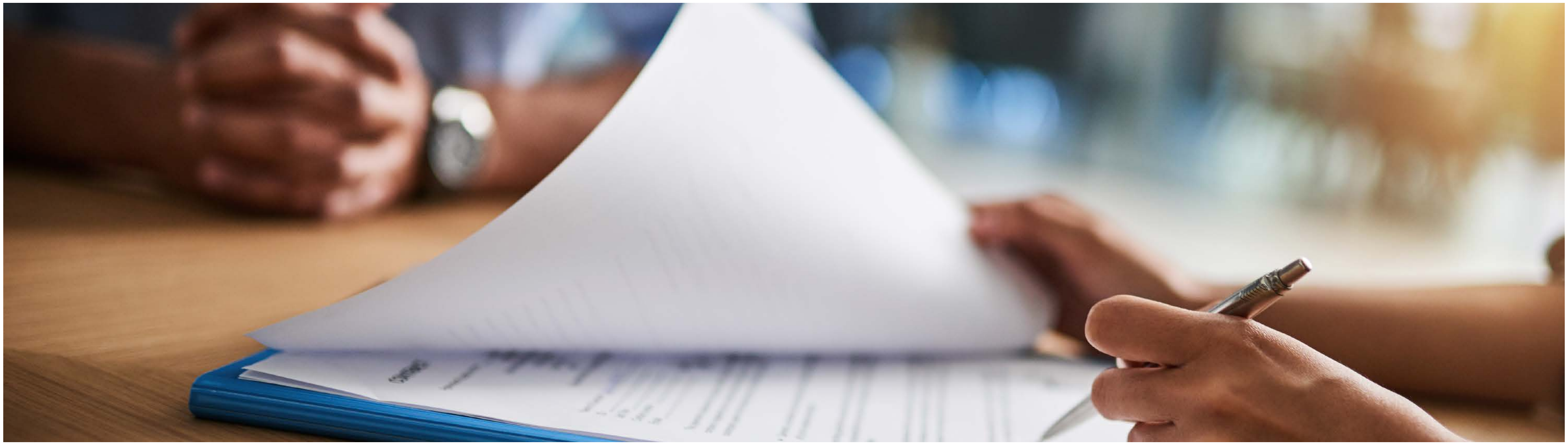
State	States with Reciprocal Agreements	Exemption Form
Minnesota	Michigan, North Dakota	MWR
Montana	North Dakota	MT-R
North Dakota	Minnesota, Montana	NDW-R
Ohio	Indiana, Kentucky, Michigan, Pennsylvania, West Virginia	IT-4NR
Pennsylvania	Indiana, Maryland, New Jersey, Ohio, Virginia, West Virginia	REV-420
Virginia	Kentucky, Maryland, District of Columbia, Pennsylvania, West Virginia*	VA-4
West Virginia	Kentucky, Maryland, Ohio, Pennsylvania, Virginia	WV/IT-104
Wisconsin	Illinois, Indiana, Kentucky, Michigan	W-220

*The agreement with DC and Kentucky cover those employees who commute daily to their places of employment in Virginia. The agreements with Maryland, Pennsylvania and West Virginia cover only those employees whose sole income from Virginia is from salaries and wages which are subject to taxation by their home state.

STATE UNEMPLOYMENT INSURANCE TAXABLE WAGE BASES – 2018/2019

State/Territory	2018	2019
Alabama	$8,000	$8,000
Alaska	$39,500	
Arizona	$7,000	$7,000
Arkansas	$10,000	$10,000
California	$7,000	$7,000
Colorado	$12,600	
Connecticut	$15,000	$15,000
Delaware	$16,500	
District of Columbia	$9,000	$9,000
Florida	$7,000	$7,000
Georgia	$9,500	$9,500
Hawaii	$45,900	
Idaho	$38,200	
Illinois	$12,960	
Indiana	$9,500	$9,500
Iowa	$29,900	$30,600
Kansas	$14,000	$14,000
Kentucky	$10,200	$10,500
Louisiana	$7,700	$7,700
Maine	$12,000	$12,000
Maryland	$8,500	$8,500
Massachusetts	$15,000	$15,000
Michigan	$9,500	
Minnesota	$32,000	$34,000
Mississippi	$14,000	$14,000
Missouri	$12,500	$12,000
Montana	$32,000	$33,000
Nebraska	$9,000	$9,000

State/Territory	2018	2019
Nevada	$30,500	
New Hampshire	$14,000	
New Jersey	$33,700	
New Mexico	$24,200	
New York	$11,100	
North Carolina	$23,500	
North Dakota	$35,500	
Ohio	$9,500	
Oklahoma	$17,600	
Oregon	$39,300	
Pennsylvania	$10,000	
Puerto Rico	$7,000	
Rhode Island	$23,000/$24,500	
South Carolina	$14,000	
South Dakota	$15,000	
Tennessee	$7,000	
Texas	$9,000	
Utah	$34,300	
Vermont	$17,600	
Virginia	$8,000	
Washington	$47,300	
West Virginia	$12,000	
Wisconsin	$14,000	
Wyoming	$24,700	



STATE DISABILITY INSURANCE WAGE BASES AND TAX RATES

State	Wage Base		Contribution Rate	
	2018	2019	2018	2019
California	$114,967 (annual)		1.0% of annual wages up to wage base ($1,149.67)	
Hawaii	$1,068.62 (weekly)		Maximum of 0.5% of weekly wages up to wage base ($5.34 per week)	
New Jersey	$33,700 (annual)	$34,000 (annual)	0.19% of annual wages up to wage base ($64.03)	
New York	$120.00 (weekly)		0.5% of weekly wages up to maximum of $0.60	
Puerto Rico	$9,000 (annual)		0.3% of annual wages up to wage base ($27)	
Rhode Island	$69,300 (annual)		1.1% of annual wages up to wage base ($762.30)	

PERSONAL USE OF AUTO INFORMATION

All employers who furnish vehicles to employees for the employee's personal use are required to add the personal use value of the vehicle to the employee's W-2. As an option, the employee could pay the employer for the personal use of the "employer-provided" vehicle. In order for you or our office to know how much value is to be added or reimbursed, total use and personal use information must be reported by the employee using the vehicle.

NOTICE: EXHIBIT 1

Vehicles not used for personal purposes other than commuting

This notice may be posted and enforced by employers who wish to have employer-provided vehicles available for personal commuting and minimal personal use such as stops for lunch or personal errands if they are on the business trip route taken by the employee.

NOTICE: EXHIBIT 2

Vehicles not used for personal purposes (stored at employer's premises)

Alternatively, this notice may be posted and enforced by employers who wish to have employer-provided vehicles only available for business use by the employee. These vehicles may not be used for any personal purposes except de minimus personal use such as a stop for lunch between two business locations.

EMPLOYEE NOTICE

This notice summarizes the employer's position on employer-provided vehicles and the employee's responsibility for documentation of vehicle use.

METHODS FOR VALUATION OF PERSONAL USE OF EMPLOYER-PROVIDED VEHICLE

This section explains the various methods available to compute the personal use of employer-provided vehicles.

STATEMENT FROM EMPLOYEE TO EMPLOYER REGARDING USE OF EMPLOYER-PROVIDED VEHICLE

This statement must be completed and signed by each employee who used an employer-provided vehicle.

EMPLOYER'S WORKSHEET TO CALCULATE EMPLOYEE'S TAXABLE INCOME RESULTING FROM EMPLOYER PROVIDED VEHICLE FOR THE PERIOD 12/1/17 – 11/30/18

This worksheet is to be completed after receiving the mileage information from the employee. This worksheet is used to calculate the taxable income.

Please read through the packet carefully! Feel free to call our office if you need assistance with the forms and worksheets. We can calculate the taxable income and FICA taxes for you.

NOTICE: EXHIBIT 1

In accordance with Internal Revenue Service Temporary Regulations Section 1.274-6T filed November 1, 1985, you are hereby notified that vehicles provided to you for Company use during business hours are not to be used personally, except for de minimus personal use (such as a stop for lunch while on business), other than for commuting to and from your residence to our place of business. The commuting use permitted by our policy would apply only to you as an employee and all other personal use is strictly prohibited by you or any party related to you. (A related party under the tax law normally means your family.)

NOTICE: EXHIBIT 2

In accordance with Internal Revenue Service Temporary Regulations Section 1.274-6T filed November 1, 1985, you are hereby notified that vehicles provided to you for Company use during business hours are not to be used personally, except for de minimus personal use (such as a stop for lunch while on business).

EMPLOYEE NOTICE

Attention: All Employees Provided with Company Vehicles from December 1, 2017, through November 30, 2018.

Income Tax Implications of use of Company Vehicles

Tax laws and IRS regulations impose stringent rules to the personal use of employer-provided vehicles and require good record keeping to document the business use of such vehicles.

The following is a general discussion of the personal income tax considerations associated with the use of the Company vehicle you have been provided. We recommend that you consult your personal tax advisor regarding any specific questions you may have.

Company Policy

1. The Company has elected to use special valuation rules for determining the taxable value of your personal use of the Company vehicle. Your additional compensation related to this personal use will be determined by using either the annual lease valuation, cents-per-mile or commuting valuation rules.
2. In accordance with IRS Announcement 85-113, the Company has adopted a November 30 cut-off date for gathering information to report the following income on your 2018 Form W-2:
    a. The annual lease value/cents-per-mile/or commuting value of your vehicle as determined under IRS regulations.
    b. The value of Company-paid gasoline costs, which will be calculated by multiplying $.0545 by your non-business mileage driven from December 1, 2017 to November 30, 2018.

    The Company is preparing individualized statements for each employee showing the amount of income that will be either added to your W-2 form or reimbursed by you to the Company.

    These statements will be mailed to you as soon as possible after we receive the Company Vehicle Mileage Statement (attached) on which you must indicate total miles and business miles driven in your Company vehicle from December 1, 2017 to November 30, 2018.
3. In accordance with IRC section 3402(s), the Company elects that federal income taxes will not be withheld on the taxable personal-use value of your vehicle or on the value of Company-paid gasoline costs.
4. Social Security (FICA) tax and Medicare tax will be withheld at a rate of 6.2% and 1.45% respectively on a one-time, lump-sum basis for 2018. An additional 0.9% Medicare Surtax will also be withheld if required. This withholding will take place in the final 2018 pay period.

Suggestions on how to Substantiate Business Use

1. You must keep your own records. We suggest that you keep a log showing the date, amount and business purpose of each use or cost associated with your Company vehicle. (A daily calendar book will work nicely and automatically document date and purpose.) To determine your non-business use, simply calculate your total miles and then subtract your business-use miles for the period beginning December 1, 2017, and ending November 30, 2018. Note: You should record the beginning of the period and end of the period odometer readings from the vehicle.
2. Failure to maintain adequate records may result in the entire value of the vehicle being treated as taxable income to you. Such treatment could result in an assessment for back taxes, penalties and interest which could create a significant financial burden for you. Proper documentation will ensure that the Company reports the proper amount of income from personal use to you on your W-2 form or bills you for the proper reimbursement.
3. You should keep these records for at least four years so that your documentation will be available in the event of an IRS audit.

METHODS FOR VALUATION OF PERSONAL USE OF EMPLOYER-PROVIDED VEHICLE

1. Annual Lease Value Table Method – value for purchased or leased autos is different.

   Purchased Auto - value is determined by using employer cost plus wholesale book value of any traded vehicle (if acquired at fair market value) with cost to include sales tax and title fees.

   a. If the employee contributes an amount toward the purchase price of an automobile in return for a percentage ownership interest in the automobile, the annual lease value is determined by reducing the fair market value of the employer-provided automobile by the lesser of:

      i. The amount contributed, or

      ii. An amount equal to the employee's percentage ownership interest multiplied by the unreduced fair market value of the automobile.

      The employee's ownership interest will only be recognized if the employee's name is included in the automobile's title.

   b. If an employee contributes an amount toward the cost to lease an automobile in return for a percentage interest in the automobile lease, the annual lease value is determined by reducing the fair market value of the employer-provided automobile by the lesser of:

      i. The employee's percentage interest in the lease, or

      ii. A fraction, the numerator of which is the amount contributed and the denominator of which is the entire lease cost.

      An employee's interest in an automobile lease will not be recognized unless the employee is a named co-lessee on the lease.

   Example: Assume that an employer pays $15,000 and an employee pays $5,000 toward the purchase of an automobile. Assume further that the employee receives a 25 percent interest in the automobile and is named as a co-owner on the title to the automobile. The adjusted fair market value of the automobile is determined by reducing the fair market value of the automobile, $20,000, by the $5,000 employee contribution resulting in an adjusted fair market value of $15,000. Thus, the annual lease value of the automobile is $4,350.

If the employee in this example does not receive an ownership interest in the automobile and is provided the use of the automobile for two years, the annual lease value would be determined without regard to the $5,000 employee contribution. Thus, the annual lease value would be $5,600. However, the $5,000 employee contribution would reduce the amount includible in the employee's income. Thus, if the employee places 50 percent of the mileage on the automobile for the employer's business each year, then the amount includible in the employee's income in the first year would be ($5,600 - 2,800 - 2,800), or $0, the amount includible in the employee's income in the second year would be ($5,600 - 2,800 - 2,200 ($5,000 - 2,800)) or $600 and the amount includible in the third year would be ($5,600 - 2,800) or $2,800 since the employee's contribution has been completely used in the first two years.

Leased Auto – value for leased automobiles is either:

a. Manufacturer's suggested retail price, including sales tax and title fees, less 8%,

b. The retail value provided in any nationally recognized publication or electronic data base that regularly reports retail car values, or

c. The manufacturer's invoice price (including options) plus 4%.

Once the fair market value of the automobile has been determined, locate the annual lease value amount in the Annual Lease Value table and calculate the employee's personal share. In addition, you must add the value of the fuel provided, currently 5.5 cents per mile. In determining the fair market value of the vehicle you are not required to add the value of specialized equipment, i.e. car phone, if the equipment was added to satisfy employer business needs.

Once elected, the use of the annual lease value table amounts must be used for the election year and the subsequent four-year period. For example, all vehicles which were placed in service on or after January 2, 2013 and before January 2, 2014 will need to be revalued as of January 1, 2018.

2. **Cents-Per-Mile Method** – value is determined by multiplying the miles driven by 53.5 cents per mile for miles driven from December 1, 2017 to December 31, 2017 and 54.5 cents per mile for miles driven from January 1, 2018 to November 30, 2018. Since fuel is considered to be included in the valuation, you may subtract 5.5 cents per mile if the employer does not provide fuel.

   Severe restrictions apply to the use of this method. The vehicle value must be less than $15,900 for an auto first made available in 2017 or less than $15,900 for an auto first made available in 2018, and less than $17,800 for trucks and vans first made available in 2017 or less than $17,800 for trucks and vans first made available in 2018 (passenger autos built on a truck chassis, including minivans and sport-utility vehicles (SUVs) built on a truck chassis). The employer must reasonably expect that the vehicle will be used regularly in its trade or business; or the vehicle must be driven at least 10,000 miles in each year and be used primarily by employees.

3. **Commuting Valuation Method** – value is determined by multiplying $1.50 per one-way commute by the number of one-way commutes by the employee during a given year. This method is available only if the employer requires the employee to commute in the car for a "bona-fide non-compensatory business reason". If the employee uses the car more than a de minimus amount for other personal reasons, this method is not available.

   Note: This method is not available to a "control employee". A "control employee" is defined asthe following:

   a. A board or shareholder-appointed, confirmed or elected officer whose compensation equals or exceeds $110,000 for 2018.

   a. A director of the employer or

   a. A one percent or greater owner (equity, capital or profits interest) of the business or an employee whose compensation equals or exceeds $220,000 for 2018.

   a. For governmental employees, a "control employee" is an elected official or a governmental employee whose compensation equals or exceeds $153,800 for 2018.

4. **Fleet Average Valuation Rule** – value is to be determined by using the annual lease value tables for the average fleet cost. This method is available only to employers providing 20 or more vehicles and has very limited use. If you feel that your company may qualify, please contact our office for the details regarding the use of this method.

Company Name: ______________________________

STATEMENT FROM EMPLOYEE TO EMPLOYER REGARDING USE OF EMPLOYER-PROVIDED VEHICLE

Reporting Period from December 1, 2017 to November 30, 2018

Vehicle Make: ______________________________

Model: ______________________________

Year: ______________________________

Date placed in service: ______________________________

The IRS requires employers to provide certain information on their tax return with respect to the vehicle provided to you. The IRS generally requires that written records be maintained to document the use of business vehicles. Since our policy requires you to maintain the detailed records, please provide answers to the following questions. If you were provided more than one vehicle, you need to prepare one of these statements for each vehicle provided.

If you have any questions regarding the requirement that you maintain sufficient evidence to support your answers to the following questions, contact your supervisor immediately.

1. Was the vehicle available for your personal use during off-duty hours? [ ] YES [ ] NO
2. Did you have another vehicle available for your personal use (this includes a car you own personally)? [ ] YES [ ] NO
3. Are you an officer or 1% owner of the business? [ ] YES [ ] NO
4. How many commuting round trips did you make in this vehicle?

   ____

5. Please provide the number of miles for each category below:

   Total business miles: ______________________________

   Total commuting miles: ______________________________

   Total other personal (non commuting miles): ______________________________

   Total Miles: ______________________________

6. Did the employer pay the cost of fuel consumed by this vehicle? [ ] YES [ ] NO
7. Auto expenses paid by employee personally or any fee paid to Company.

   ____

The above figures are based upon my written records of business and personal use. I understand that I may be required to furnish such documentation in the event of an IRS examination.

______________________________ ______________________________

EMPLOYEE'S SIGNATURE **DATE**

**The information contained in this form will be used to calculate an amount to be included in your 2018 W-2 income.*

EMPLOYER'S WORKSHEET TO CALCULATE EMPLOYEE'S TAXABLE INCOME RESULTING FROM EMPLOYER PROVIDED VEHICLE FOR CALENDAR YEAR 2018

Employee's Name: ______________________________

Select one method (note limitations on methods II and III)

Method I – Annual Lease Value Table Method

Fair market value of vehicle at date first available for personal use. (Value must be reevaluated at the beginning of the year following four full calendar years since the last determination.)	(A)	________	[1]
Purchased Auto Amount employee contributed or percentage ownership interest *unreduced FMV	(B)	________	[1]
Leased Auto Employee's percentage interest in the lease or a fraction, of which the numerator equals the amount contributed and the denominator equals the entire lease cost	(C)	________	[1]
Adjusted fair market value	(A) - (B) - (C)	________	
Annual lease value – table	(D)	________	
Personal use % Total miles ________ [1] Business miles ________ [1] Personal miles ________ [1]			
Personal miles/Total miles	E)	________%	
*Personal value of annual lease	(D) x (E) = (F)	________	
If employer pays for fuel, multiply the number of personal miles driven by 5.5 cents per mile.	(G)	________	
Expenses paid by employee personally	(H)	________	[1]
Total employee taxable income	(F) + (G) - (H)	________	[1]

[1] Fill out and return if you want the taxable income computed for you.

Method II – Cents-Per-Mile Method

In order to qualify to use the cents-per-mile method, the vehicle must have a fair market value of less than $15,900 for autos first made available in 2017 or $15,900 for autos first made available in 2018 and $17,800 for trucks and vans first made available in 2017 or $17,800 for trucks and vans first made available in 2018 (passenger autos built on a truck chassis, including minivans and sport-utility vehicles (SUVs) built on a truck chassis), and either (1) be regularly used in the employer's business or (2) be driven at least 10,000 miles per year and be used primarily by employees.

Once this special alternative is used for a particular vehicle, it must be continued for as long as the vehicle is owned by the employer. If this method is desirable, it must be selected in the year the vehicle is first used for personal purposes.

Enter personal miles driven December 1, 2017 to December 31, 2017
________ x $0.535 $________ =

Enter personal miles driven January 1, 2018 to November 30, 2018
________ x $0.545 $________ =

Enter miles for which employee paid for fuel
________ x $0.055 $(________) =

Total employee taxable income $________

Method III - Commuting Valuation Method

This part can only be used for vehicles covered by a written policy (Exhibit 1) which allows commuting but no other personal use.

Number of commuting round trips made $________

Value per round trip x $ 3.00 x $3.00

Total employee taxable income $ $________

Note: This method is not available to a "control employee". A "control employee" is defined as the following:

1. *A board or shareholder-appointed, confirmed or elected officer whose compensation equals or exceeds $110,000*
2. *A director or*
3. *A one percent or greater owner of the business or an employee whose compensation equals or exceeds $220,000 for 2018.*
4. *For governmental employees, a "control employee" is an elected official or a governmental employee whose compensation equals or exceeds $153,800 for 2018.*

* If used less than the entire year, multiply this amount by a fraction which is the number of days available divided by 365. A minimum of 30 days personal use must be assumed or a daily rate (4 times the regular rate) applied.

TO DETERMINE FAIR MARKET VALUE:

1. New or used vehicle purchased and no trade in - Use actual purchase price.
2. New or used vehicle purchased and trade in of old vehicle - Use boot price plus wholesale book value of traded vehicle (which you may obtain from the auto dealer).

ANNUAL LEASE VALUE TABLE

Automobile Fair Market Value	Annual Lease Value	Automobile Fair Market Value	Annual Lease Value
$ 0 - 999	$ 600	$ 22,000-22,999	$ 6,100
1,000 - 1,999	850	23,000 - 23,999	6,350
2,000 - 2,999	1,100	24,000 - 24,999	6,600
3,000 - 3,999	1,350	25,000 - 25,999	6,850
4,000 - 4,999	1,600	26,000 - 27,999	7,250
5,000 - 5,999	1,850	28,000 - 29,999	7,750
6,000 - 6,999	2,100	30,000 - 31,999	8,250
7,000 - 7,999	2,350	32,000 - 33,999	8,750
8,000 - 8,999	2,600	34,000 - 35,999	9,250
9,000 - 9,999	2,850	36,000 - 37,999	9,750
10,000 - 10,999	3,100	38,000 - 39,999	10,250
11,000 - 11,999	3,350	40,000 - 41,999	10,750
12,000 - 12,999	3,600	42,000 - 43,999	11,250
13,000 - 13,999	3,850	44,000 - 45,999	11,750
14,000 - 14,999	4,100	46,000 - 47,999	12,250
15,000 - 15,999	4,350	48,000 - 49,999	12,750
16,000 - 16,999	4,600	50,000 - 51,999	13,250
17,000 - 17,999	4,850	52,000 - 53,999	13,750
18,000 - 18,999	5,100	54,000 - 55,999	14,250
19,000 - 19,999	5,350	56,000 - 57,999	14,750
20,000 - 20,999	5,600	58,000 - 59,999	15,250
21,000 - 21,999	5,850		

For vehicles having a fair market value in excess of $59,999, the annual lease value is equal to:
(.25 x automobile fair market value) + $500.

BUSINESS OUTSOURCING & STRATEGY

TAKE **CHARGE** AND **TAKE PRESSURE** OFF THE DAY-TO-DAY

Take charge of your business and get back to why you got into business in the first place. Our services are meant to relieve the stress of critical business functions that you don't want to do or don't have the deep expertise on staff to complete successfully.

That includes:

- CFO Services
- Controller Services
- Bookkeeping Services
- Payroll
- Accounting Coach
- Management Advisory