



IRS Employment Tax Overview

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EMPLOYMENT TAX OVERVIEW

- FRINGE BENEFITS
- ACCOUNTABLE PLANS
- WORKER CLASSIFICATION
- FORM 1099 & W-9

FRINGE BENEFITS



What is a Fringe Benefit?

- Any Property, Service Or Cash (Other than Salary, Provided by Employer)
- Taxable Unless Excluded Specifically By Law
 - Example: Medical Premiums IRC 106

What to do?

- Identify specific benefit provided to employee(s),
- Determine if benefit is excluded by law and
- Determine if benefit is fully taxable, or only partially

Taxable Fringe Benefit

If the benefit is taxable:

- Determine the value of the benefit
- Include in Employee's wages and on W-2 (never on Form 1099-MISC)
- Subject to Federal Withholding, Social Security (if applicable) and Medicare)
- Even if benefit is received by/for spouse or child of employee

Accountable Plan

- Always think about the Accountable Plan Rules First!

Must meet ALL of the following:

- Business Connection
- Adequate accounting by employee in reasonable time period
- Excess reimbursements or advances are returned within a reasonable period of time. IRC §62(c); Reg. §1.62(c)-2(c)(2)

Non Accountable Plan

- Does not meet ALL 3 Requirements for an accountable plan
- Benefit is fully taxable when paid

Common Non-Taxable Fringe Benefits

- Employer paid health reimbursements or health insurance (IRC §104, §106)
- Certain Cafeteria Plan Benefits (IRC §125)
- Education Assistance (IRC §127)
- Dependent Care Assistance (IRC §129)
- Certain Benefits under IRC §132
 - (d) Working Condition Fringes
 - (e) De minimis Benefits
 - (f) Qualified Transportation Expenses
 - (g) Qualified Moving Expenses

Common Taxable Fringe Benefits

- Cash (not paid as regular wages)
- Stipends
- Awards and Prizes
- Reimbursements made under a non-accountable plan
- Meals while not away overnight
- Personal use of Employer-provided Vehicle
- Employer-provided Clothing adaptable to General Wear

Day Meals

If the employer reimburses or pays for meals on a **day trip** then:

- Include the cost of meal reimbursed to the employee in their payroll as a fringe benefit
- Subject to Federal Income Tax, SS (if applicable) and Medicare Taxes
- Revenue Ruling 75-432 & 75-170

Day Meals, con't

- If union contract says to pay for meals then reimburse but include in wages
- If have policy to pay for meals if traveling out of county it is still taxable and included in wages

Meals at Conferences

“Associated With” Meals - Tax-Free not included in wages if:

- Meals at conventions
- Meals at conferences
- Does not include going to lunch with co-worker (this would be personal & taxable = include in wages)

Clothing & Uniforms Allowances and Reimbursements

Excludable from wages if:

1. Specifically be required as a condition of employment **AND**
2. Are not worn or adaptable to general usage as ordinary clothing

Accountable plan rules **must** be met for reimbursements or clothing allowances. IRC §162; Reg. §1.62-2(c)(1)

How Clothing is Purchased

Clothing & Uniform rules applies:

- If the employer purchases the clothing
- If the employee purchases and the employer reimburses the employee
- If purchased thru a rental company

Examples of Non Uniforms

- Ball Caps
- T-Shirts
- Socks
- All shoes unless steel toe (safety)
- Tactical/BDU pants
- Polo Shirts
- Plain belts
- Shorts
- Under Armour
- Sweatshirts
- Carhart Jacket
- Jeans

Automobile Expenses

- Employee Car used for Employer's Business:
 - 2017 Federal Mileage Rate - \$.535
 - At this rate or lower: Non-taxable
 - Excess over this rate: Taxable Fringe Benefit included in wages
 - Monthly allowance for driving own car is taxable if no accountability (verifying mileage)
 - Substantiation required

Employer – Provided Vehicle

- Personal Use is taxable
 - Commuting, spouse or weekend use
- Substantiation Requirements
 - Date, Purpose, Place of each trip
 - Business & Personal mileage

Employees may substantiate business use by maintaining mileage logs, account books, diaries, or similar records

Employer – Provided Vehicles, Con't

Personal Use of Government Vehicle:

- IF NO RECORD KEPT:
 - Value of ALL Use is taxable

- IF RECORD KEPT:
 - Only Personal Use is taxable

Valuation Rules For Autos

- Automobile Lease Valuation Rule
 - Reg §1.61-21(d)
- Vehicle Cents-Per Mile Rule
 - Reg § 1.61-21(e)
- Commuting Rule
 - Reg § 1.61-21(f)

Lease Valuation Rule

1. Determine FMV of vehicle (first day available to EE)
2. Use table in Reg. 1.61-21(d)(iii) or Publication 15-B
3. Determine % of personal use
4. Multiple Annual Lease Value by % of personal use
5. If fuel is provided, add 5.5 cents per mile driven by EE

Cents-Per-Mile Rule

Vehicle must meet one of these test:

- Vehicle “regularly used” in business OR
- Vehicle driven 10,000 miles a year and used primarily by employees
- Regularly used means:
 - 50% or more of mileage is for business or
 - Vehicle is used to transport at least 3 employees to work
- FMV of vehicle cannot exceed \$15,900 for cars and \$17,700 for truck & vans (2016)
- Standard Mileage Rate for 2017 is 53.5 cents per mile

Commuting Rule

Personal use can be valued at \$1.50 per one-way commute if all of the following are met:

- Vehicle owned/leased by employer
- Vehicle is provided for business purposes
- Employer requires the employee to commute for bona fide noncompensatory business reasons
- Written policy prohibiting personal use
- Employee does not use vehicle for other than de minimus personal use
- No control employees (elected officials)

Commuting Rule, con't

Keep in mind:

- Employer must require the employee to use the vehicle it cannot be voluntary on the employees part
- Don't assume \$3 every day worked
- Include commuting on weekends, evening and lunch
- Could have business trip on way in or home and then wouldn't be commuting

Qualified Non-Personal Use Vehicles

- Must have policy on restricting personal use of the vehicle
- Commuting is nontaxable to the employee
- Substantiation and record keeping is not required
- Reg. §1.274-5T(k) & Reg. §1.132-5(h)

Examples of Qualified Non-Personal Use Vehicles

- Clearly marked police and fire vehicles
- Unmarked vehicles used by law enforcement officer
- Ambulance or hearse used for its specific purpose
- School Bus
- Vehicle designed to carry cargo with a loaded gross vehicle weight >14,000 lbs
- Delivery Truck with seating for the driver, or the driver plus a folding jump seat
- A passenger bus with a capacity of at least 20 passengers used for its specific purpose



Employee versus Independent Contractor



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Employee Defined:

Under the common law standard:

- An employee-employer relationship exists when the business has the **right** to direct and control the worker
- Not only as to **what** work shall be done but also,
- **How** work shall be done

IRC 3121(d) and Reg. 31.3121(d)-1

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Independent Contractor Defined:

- An individual who performs service under an arrangement
- The taxpayer has the legal right to control & direct only what must be done (i.e. the results)
- Taxpayer has no control over how the work is performed

Categories of Evidence

When determining if the worker is an employee or independent contractor, the courts consider facts that fall into 3 categories:

- Behavioral Control
- Financial Control
- Relationship of the Parties

Behavioral Control

- Instructions
 - when and where to do the work
 - what tools or equipment to use
 - what work must be performed
- Training
 - procedures to follow & methods to be used
- Evaluation Systems
 - measures compliance with performance standards

Financial Control

- Significant Investment
- Unreimbursed Expenses
- Services available to the public
- Opportunity for profit and loss
- Method of Payment
 - Hourly, weekly basis – evidence of employee
 - Flat Fee – evidence of Independent Contractor

Relationship of the Parties

- Written contracts
 - Showing intent for both parties
- Employee benefits
 - Insurance, paid vacation, vehicle
- Discharge/Termination

Not Valid Reasons to treat as Independent Contractor

- Part-time
- Do not want to pay into PERS/Retirement
- Only going to work a few weeks or months
- Will hire as employee if work out
- Retired and rehired
- Don't want to pay overtime
- Money came from a grant

References

- Available at www.irs.gov
- Publication 1779 (blue tri fold) Independent Contractor or Employee
- Publication 963, Federal-State Reference Guide Chapter 4
- Publication 1976 – Section 530 Relief Requirements
- Form SS-8 – can be filled out by employer or worker with IRS to determine worker status

FORM 1099 & W-9



What is a Form 1099-MISC

Form 1099 –MISC is an information return and required to report payments for each person paid during the year for:

- Services OR,
- A combination of services & products

What is Reported on Form 1099?

- Payments of \$600 or more per calendar year
- Paid in the course of your trade or business
- Services (may include parts & materials)
- Payments to Sole proprietor, partnership, trusts and corporations if:
 - attorney or health and medical

Examples of Payments to Report on Form 1099-MISC?

- Non-Employee Compensation
- Commissions
- Fees
- All forms of remuneration for services rendered
- Prizes and awards
- Royalties (\$10 or more)
- Rents
- Payments to Attorneys
- Medical and health care payments

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Payments to Attorneys

- Payments to attorneys includes law firms or other providers of legal services
- Attorney Fees are reported in Box 7
- Gross Proceeds paid to attorney are reported in Box 14 (Settlement Agreement)
- If the attorney is an employee then wages are reported on Form W-2

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Medical & Health Care Payments

- Medical & Health Care Payments are reported in Box 6
- Report payments made to all individuals, partnerships, and corporations
- Medical payments include doctor fee, drug testing, lab fees, physical therapy, speech therapy, etc.
- Do not report payments to pharmacies or tax exempt hospitals

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Form W-9

- Provide to every vendor who performs services for your entity (not merchandise)
- Use Current Version of W-9 (Dec 2014)
- Use to request the Name/Taxpayer Identification Number (SSN or EIN) and address
- Identifies type of business
 - Sole proprietor, partnership, Corp, LLC
- Substitute form is acceptable if its content is substantially similar to W-9

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LLC's and Reportable Payments

- LLC = Limited Liability Company
- An LLC may be taxed as either a sole proprietorship, a partnership, or a corporation
- Do not assume that an LLC is a corporation

No W-9 Information

- Get the W-9 information before job is awarded or payment is made
- No TIN – Payments subject to Backup Withholding (BUW)
- Backup Withhold rate is 28%
- File Form 945 to report BUW & report on Form 1099

Common Errors

- Failure to obtain identifying information before making payment (use Form W-9)
- Failure to aggregate payments from all expense categories (use vendor files)
- Assuming payee is a corporation:
 - Name has “Company or Associates”
 - EIN is furnished

TIN Matching Program

- Online System
- Open to all payer's of “reportable payments”
- Matches TIN and name combinations with IRS records prior to submitting forms
- Must register with E-Services
- Publication 2108-A, On-Line TIN Matching Program

Benefits of Using TIN Matching

- Avoid TIN Errors
- Reduce backup withholding notices (CP2100 notices)
- Meet reasonable cause to avoid penalties
- Save time and money!

RESOURCES

How to Find our Home Page

- www.irs.gov/govts, OR
- www.irs.gov
- On top right side: Information for
 - select: Government Entities
- On left side select:
 - Federal, State & Local Governments

Educational Resources

- Publication 5137, Taxable Fringe Benefits Guide
- Publication 5138 Quick Reference Guide for Public Employers
- Publication 963 Federal-State Reference Guide
- Publication 2108-A
- Webinar Archives
 - www.irsvideos.gov/governments

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