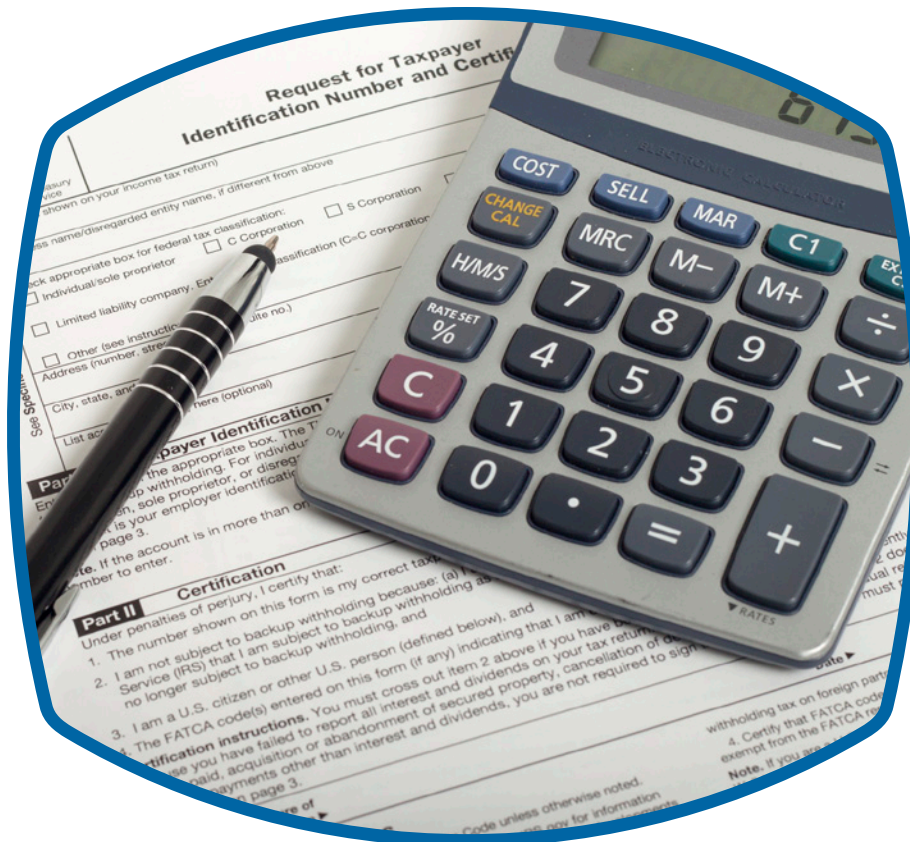




Employment Tax For Indian Tribal Governments



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Chapter 1

Introduction to Employment Tax Desk Guide for Indian Tribal Governments

The office of Indian Tribal Governments (ITG) at the Internal Revenue Service was established to help Indian tribes address their federal tax matters. ITG uses partnership opportunities with Indian tribal governments, tribal associations and other federal agencies to respectfully and cooperatively meet the needs of the Indian tribal governments and the federal government, and to simplify the tax administration process.

This *Employment Tax Desk Guide* provides information and tips for maintaining good records, preparing payroll, and filing and depositing employment taxes. It is provided for general information only and should not be cited as legal authority.

Your ITG specialist is available to answer any questions you may have. If you do not know who your specialist is, contact the ITG manager in your area. Visit us at <https://www.irs.gov/government-entities/indian-tribal-governments/how-to-contact-itg> to determine the local ITG manager in your area.

Contact your ITG specialist, or visit us at www.irs.gov/tribes for further information on any of the topics covered in this guide.

Are Federally Recognized Tribal Governments Subject to Employment Taxes?

Generally, Indian tribes in their role as employers are subject to federal employment tax laws and procedures. It is a well-established principle of tax law that in the ordinary affairs of life, Indians are U.S. citizens and are subject to the payment of federal income taxes.

Where a business enterprise or political subdivision of an Indian tribe is organized and operated by the tribe itself, the enterprise is considered a private tribal activity. When workers perform services in the employ of a private tribal activity, these services also constitute employment.

The federal statutes, regulations, case law, revenue rulings and other sources of tax authority establish the role of Indian tribal governments as employers. As such, tribal governments are required to follow substantially the same procedures as other employers. There are some special provisions that apply to tribal governments addressed in later chapters of this guide. If you have questions about anything contained in, or omitted from this guide, please telephone your local IRS Indian Tribal Governments office.

Employment Tax Requirements

Employers are required to withhold and pay employment taxes. Employment taxes include income tax, Social Security and Medicare taxes (also known as Federal Insurance Contributions Act (FICA) taxes) withheld from an employee's wages, plus the employer's share of FICA taxes and federal unemployment (FUTA) taxes, when applicable. The withheld (employee's) portion of employment taxes is referred to as "trust fund" taxes. FUTA is addressed in [Chapter 15](#).

In addition to your responsibilities for withholding, depositing and reporting federal taxes, your state taxing authority or tribal governmental taxing agency may also have tax reporting requirements. This guide is designed to assist you in complying with federal tax requirements. You should contact your state and, in some cases, tribal taxing agencies for information concerning state and tribal tax requirements.

Who is an Employee?

Employees are defined in the Treasury Regulations as every individual who performs services subject to the will and control of an employer, both as to what is to be done and how it is to be done. The right to discharge or to fire an employee is an important indicator that the person having the right to discharge is an employer. The employee may have considerable discretion and freedom of action as long as the employer has the legal right to control both the method and the result of the employee's work.

An employee may be called a partner, an agent or an independent contractor and still meet the criteria of an employee. The description is immaterial if the legal relationship of employer and employee exists. Managers and other supervisory personnel are employees. A corporate officer is an employee.

Tribal council members are employees, but receive special treatment for purposes of employment taxes. Tribal council members and other situations unique to Indian tribes are discussed in [Chapter 3](#).

Who is an Employer?

The Treasury Regulations define an employer as any person for whom an employee performs or performed any service. An employer may be an individual, a corporation, a partnership, a trust, an estate, an Indian tribe, educational institutions, organizations, federal/state/local governmental entities and other entities.

In addition to this publication, we offer a number of products and services to assist you...

ITG Publications

Publication 3908, *Gaming Tax Law and Bank Secrecy Act Issues for Indian Tribal Governments*

Workshops¹ available for presentation at your location:

- Employment Tax
- Gaming Tax
- Tip Reporting & Tip Agreements
- Title 31 (Bank Secrecy Act Overview & Compliance)

The "ITG Tax Kit" is a web page available at <https://www.irs.gov/government-entities/indian-tribal-governments/itg-tax-kit>.

The web page contains the following forms, publications and web links for additional services that are the most useful to tribal entities (The freely available Adobe Acrobat Reader software is required to view, print and search the forms and publications):

Forms

- **Form W-2** - *Wage and Tax Statement*
- **Form W-2G** - *Certain Gambling Winnings*
- **Form W-3** - *Transmittal of Wage and Tax Statements*
- **Form W-4** - *Employee's Withholding Allowance Certificate*
- **Form W-9** - *Request for Taxpayer Identification Number and Certification*
- **Form 11-C** - *Occupational Tax and Registration Return for Wagering*
- **Form 720** - *Quarterly Federal Excise Tax Return*

¹ Additional topics not listed can be provided as requested/needed

- **Form 730** - *Monthly Tax Return for Wagers*
- **Form 940** - *Employer's Annual Federal Unemployment (FUTA) Tax Return*
- **Form 941** - *Employer's Quarterly Federal Tax Return*
- **Form 941-X** - *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*
- **Form 941-X** - *Instructions*
- **Form 944** - *Employer's Annual Federal Tax Return*
- **Form 944** - *Instructions*
- **Form 945** - *Annual Return of Withheld Federal Income Tax*
- **Form 1042** - *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*
- **Form 1042-S** - *Foreign Person's U.S. Source Income Subject to Withholding*
- **Form 1096** - *Annual Summary and Transmittal of U.S. Information Returns*
- **Form 1099-INT** - *Interest Income*
- **Form 1099-MISC** - *Miscellaneous Income*
- **Form 5754** - *Statement by Person(s) Receiving Gambling Winnings*
- **Form 8027** - *Employer's Annual Information Return of Tip Income and Allocated Tips*
- **Form 8845** - *Indian Employment Credit*
- **Form 13551** - *Application to Participate in the IRS Acceptance Agent Program*

Publications

- **Publication 15** - *(Circular E), Employer's Tax Guide*
- **Publication 15-A** - *Employer's Supplemental Tax Guide*
- **Publication 15-B** - *Employer's Tax Guide to Fringe Benefits*
- **Publication 515** - *Withholding of Tax on Nonresident Aliens and Foreign Entities*
- **Publication 509** - *Tax Calendars*
- **Publication 526** - *Charitable Contributions*
- **Publication 531** - *Reporting Tip Income*
- **Publication 1281** - *Backup Withholding for Missing and Incorrect Name/TIN(s)*
- **Publication 3908** - *Gaming Tax Law and Bank Secrecy Act Issues for Indian Tribal Governments*

Services

- **SSA/IRS Reporter** - Information for employers who file business returns
- **EFTPS: The Electronic Federal Tax Payment System** - The easiest way to pay your federal taxes
- **Electronic Filing Options for Business and Self-Employed Taxpayers** - Information for businesses and self-employed taxpayers who file and pay electronically

Chapter 2

Employee or Independent Contractor

It is critical that the tribe and its wholly-owned entities correctly determine whether the individuals providing services for them are employees or independent contractors.

Generally, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. You do not generally have to withhold or pay any taxes on payments to independent contractors.

Employees

A person who works for you may be classified as a common law employee, a statutory employee or an independent contractor. The classification of the worker determines which forms you must file and which taxes you must pay. **Note: wholly owned tribal government entities may be exempt from federal unemployment taxes. Please refer to [Chapter 15](#) for further information.**

Internal Revenue Code (Code) Section 3121(d)(2) defines “employee” as “any individual who, under the **usual common law rules** applicable in determining the employer/employee relationship, has the status of an employee.” The “usual common law rules” referred to in the statute and the regulations, are those factors to which the courts have looked over the years to decide whether a person is an employee.

Generally, an employer/employee relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what will be done but how it will be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge is also an important factor indicating that an employer/employee relationship exists.

In determining whether a worker is an employee or an independent contractor under the common law rules, three main categories must be considered:

- 1) behavioral control,
- 2) financial control, and
- 3) relationship of the parties.

1) Behavioral control—Facts that show whether there is a right to direct or control how the worker does the work include:

■ Instruction the business gives to the worker, such as:

- How, when or where to do the work
- What tools or equipment to use
- What assistants to hire to help with the work
- Where to purchase supplies and services
- What work must be performed by a specified individual
- What order or sequence to follow

■ Training the business gives the worker

2) Financial control—Facts that show whether there is a right to direct or control the business part of the work include:

- Significant investment—the extent of the worker’s investment
- Expenses—the extent to which the worker has unreimbursed business expenses
- Opportunity for profit or loss—the extent to which the worker can realize a profit or loss
- The extent to which the worker makes services available to others
- How the business pays the worker

3) Relationship of the parties—Facts that illustrate how the business and worker perceive their relationship include:

- Employee benefits—whether the business provides the worker with employee-type benefits
- Written contracts describing the relationship
- The permanency of the relationship
- The extent to which services performed by the worker are a key aspect of the business

Even after evaluating the above factors, there will be times when it is difficult to make the determination as to whether an individual is a **common law employee** or self-employed and should be treated as an independent contractor. Many individuals who have personal service contracts with tribal governments may be employees rather than independent contractors. The mere existence of a contract does not mean the individual is not an employee.

It’s important to the worker that the employment status be determined as quickly as possible so the earnings can be properly reported. To request a determination from the IRS as to whether a worker is an employee, file a [Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding](#). Further information is provided in [Chapter 3](#).

Some workers may be considered **statutory employees** (even though they are considered independent contractors under the common law rules) if they fall into any one of four categories and they meet three additional conditions. The law defines certain workers as employees by statute. These categories include:

- drivers who distribute certain food products or deliver laundry or dry cleaning,
- full-time life insurance sales agents,
- individuals who work at home on materials and goods you supply and must be returned to you, and
- full-time traveling or city salespersons who turn in orders to you from wholesalers, retailers, contractors, or operators of hotels, restaurants or other similar establishments.

See Publication 15-A, Section 1, [Who are Employees?](#) for further information.

Independent Contractors

The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work, but not what will be done and how it will be done. The earnings of a person who is working as an independent contractor are subject to self-employment tax. A Form 1099-MISC, *Miscellaneous Income*, should be furnished to independent contractors and filed with the IRS.

An individual is not an independent contractor if they perform services that can be controlled by a payer (what will be done and how it will be done). This applies even if individuals are given freedom of action. What matters is that the employer has the legal right to control the details of how the services are performed. If an employer/employee relationship exists (regardless of what

the relationship is called), the individual is not an independent contractor and their earnings are generally not subject to self-employment tax.

Misclassification of Employees

If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you will be held liable for employment taxes for that worker (Code Section 3509). In some instances, you may have reasonable basis for not treating a worker as an employee and may be entitled to relief under Section 530 of the Revenue Act of 1978.

If you have a reasonable basis for not treating a worker as an employee, you may be relieved from having to pay employment taxes for that worker. To get this relief, you must file all required federal information returns on a basis consistent with your treatment of the worker. You (or your predecessor) must not have treated any worker holding a substantially similar position as an employee for any period beginning after 1977.

Workers who believe they have been improperly classified as independent contractors by an employer can use [Form 8919](#), *Uncollected Social Security and Medicare Tax on Wages*, to figure and report the employee's share of uncollected Social Security and Medicare taxes due on their compensation.

The Voluntary Classification Settlement Program (VCSP) is an optional program that provides taxpayers with an opportunity to reclassify their workers as employees for future tax periods for employment tax purposes with partial relief from federal employment taxes for eligible taxpayers who agree to prospectively treat their workers (or a class or group of workers) as employees. To participate in this voluntary program, the taxpayer must meet certain eligibility requirements, apply to participate in the VCSP by filing [Form 8952](#), *Application for Voluntary Classification Settlement Program*, and enter into a closing agreement with the IRS. Contact your ITG specialist for more information about this program.

Misclassified Workers to File Social Security Tax Form

Form 8919 is used to figure and report an employee's share of the uncollected Social Security and Medicare taxes due on their compensation if they were an employee but their employer treated them as an independent contractor. By filing this form, their Social Security earnings will be credited to their Social Security record.

Generally, a worker who receives a Form 1099 for services provided as an independent contractor must report the income on Schedule C and pay self-employment tax on the net profit, using Schedule SE. However, sometimes the worker is incorrectly treated as an independent contractor when they are actually an employee. When this happens, Form 8919 will be used by workers who performed services for an employer but the employer did not withhold the worker's share of Social Security and Medicare taxes.

In addition, the worker must meet one of several criteria indicating they were an employee while performing the services. The criteria include:

- The worker has filed Form SS-8 and received a determination letter from the IRS stating they are an employee of the firm.
- The worker has been designated as a Section 530 employee by their employer or by the IRS prior to January 1, 1997.
- The worker has received other correspondence from the IRS that states they are an employee.

- The worker was previously treated as an employee by the firm and they are performing services in a similar capacity and under similar direction and control.
- The worker's co-workers are performing similar services under similar direction and control and are treated as employees.
- The worker's co-workers are performing similar services under similar direction and control and filed Form SS-8 for the firm and received a determination that they were employees.
- The worker has filed Form SS-8 with the IRS and has not yet received a reply.

In the past, misclassified workers often used **Form 4137, Social Security and Medicare Tax on Unreported Tip Income**, to report their share of Social Security and Medicare taxes.

Misclassified workers should no longer use this form. Instead, Form 4137 should now only be used by tipped employees to report Social Security and Medicare taxes on allocated tips and tips not reported to their employers.

Examples of Employees

Example 1: The tribal business pays Tom \$500 per week to clean the tribal office complex. Tom only works for the tribe. He doesn't have the right to hire or fire any assistants, and he is required to personally do the work. The tribe provides Tom's supplies and tools. Based on these facts, Tom is considered an employee and the tribe should withhold income and employment taxes. Tom will be issued a Form W-2.

Example 2: Bill works as a deputy for the tribal police department. When Bill is off-duty, he has been repairing the roof of the tribal hospital. The tribe determined when the work was to be done, provided the supplies needed and determined how Bill will be paid. Based on these facts, Bill is considered an employee of the tribe for both jobs and should be issued a Form W-2 showing the withheld income and employment taxes.

Example 3: Fran is a tribal member but not a council member. Fran is on the Beautification Committee. She is required to attend the Ms. Indian Pageant Committee meeting and is paid \$50. Fran is considered an employee and is subject to withholding of federal income and employment taxes. Fran will also be issued a Form W-2.

Example of an Independent Contractor

The tribe pays Paul \$1,000 per week to clean the bingo halls. Paul operates his own janitorial service providing cleaning services to numerous entities. He has the right to hire and fire his own employees and provides his own supplies. The tribe doesn't have the right to control Paul. Therefore, Paul is not an employee of the tribe and would be issued a Form 1099-MISC.

Examples of workers misclassified as independent contractors who should have been treated as employees include:

- Pharmacist – Hired on contract. Worked only for the tribe.
- Bus driver – Worked as a janitor during the day. This is an additional wage to this employee.
- Janitor – Worked when instructed to and used supplies provided by the tribe. Paid a flat fee per month.
- Speech teacher – Hired on contract but worked only for the tribal school.
- Doctor – Paid by both tribe and IHS on a contract. Worked at the hospital. Whether wages were paid by either or both, Form 1099 is not acceptable.

If you have a question about the treatment of any of your workers, please contact your ITG specialist.

Agricultural Labor (Farm Work)

There are special rules for Social Security and Medicare withholding on agricultural workers. Employment taxes for farm workers must be filed on Form 943 and must be separate from other workers' employment taxes filed on Form 941. See [Chapter 14](#) for more information. Also, refer to [Publication 51](#), *Section 4, Social Security and Medicare Taxes*, and *Section 13, Federal Income Tax Withholding Methods*.

Crew Leaders

A crew leader is an employer of farm workers. A crew leader is a person who furnishes and pays (either on his or her own behalf or on behalf of the farm operator) workers to do farm work for the farm operator. If there is no written agreement between you and the farm operator stating that you are his or her employee and if you pay the workers (either for yourself or for the farm operator), then you are a crew leader. Crew leaders are independent contractors and should be issued Form 1099-MISC.

References

- [Publication 15](#), *(Circular E), Employer's Tax Guide*
- [Publication 15-A](#), *Employer's Supplemental Tax Guide*
- [Publication 51](#), *(Circular A), Agricultural Employer's Tax Guide*
- [Publication 1779](#), *Independent Contractor or Employee*
- [Form SS-8](#), *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*
- [Form 8919](#), *Uncollected Social Security and Medicare Tax on Wages*
- [Form 8952](#), *Application for Voluntary Classification Settlement Program (VCSP)*

Chapter 3

Treatment of Certain Payments

In this chapter, we'll discuss how certain payments are treated. Some of these payments are specific to Indian tribes, while others are not. For example, payments made from fishing rights-related activities and payments made to tribal council members are tribal specific issues. Payments made to elected and appointed officials and those payments made as bonuses are general in nature. The proper treatment of these payments for withholding and reporting purposes is sometimes confusing.

The next four sections of this chapter discuss payments to tribal council members, fishing rights-related activities, bonuses and payments to elected and public officials. If you have questions about any of these payments, or how they are to be treated, you should contact your local Indian Tribal Governments office for assistance.

Fishing Rights-Related Activities

Any income derived by a member of an Indian tribe, either directly or through a "qualified Indian entity" (defined later in this chapter), or by a "qualified Indian entity" from a **fishing-rights related activity** of that member's or entity's tribe is exempt from federal and state taxation (**income tax, income tax withholding, FICA, unemployment tax and self-employment tax**).

Wages are not exempt if paid by an employer who is not a member of the same tribe or is not a qualified Indian entity. Wages are also not exempt if paid to an employee who is not a member of the tribe whose fishing rights are exercised. **Tribal members must fish in their own waters to be exempt.**

Fishing rights-related activity means an activity (including aquaculture) directly related to harvesting, processing or transporting fish harvested in the exercise of recognized fishing rights of the tribe or to selling fish, but only if members of the tribe perform substantially all of the harvesting.

A recognized fishing right must have been secured as of March 17, 1988, by a treaty between the tribe and the United States, by an Executive Order or an Act of Congress.

As an employer exercising fishing rights-related activities you should:

- Verify your status as a qualified Indian entity.
- Verify your employee's proof of tribal membership.
- Verify time allocated to fishing versus non-fishing activity. For example, consider a game warden that is responsible for protecting other wildlife and has other duties, as well as patrolling the treaty waters of his tribe. His employer should verify the percentage of time he engages in fishing rights-related activities of his tribe.
- Maintain records to support each employee's time allocation.
- Maintain records to support the 90 percent gross receipts rule (defined later in this chapter).

Tax Return Preparation

- Do not include exempt wages on Form 941, Form 940 or Form W-2.
- Wages paid for non-fishing activities are subject to all applicable employment taxes and employment tax reporting, including Form W-2.
- If only fishing rights-related income is paid to an individual, no Form W-2 is required.
- A letter stating the amount and tax-exempt nature of an employee's wages may be issued to the employee to be used for various non-tax purposes, such as bank loans.

Special Definitions

A “**qualified Indian entity**” is 100 percent owned by a federally recognized Indian tribe or tribal members, and substantially all management functions are performed by tribal members. It may be jointly owned by more than one tribe or members of more than one tribe.

90 percent rule for processors and transporters - If the entity engages to any extent in any substantial processing or transporting of fish, then at least 90 percent of the annual gross receipts of the entity must be derived from the exercise of protected fishing rights of tribes whose members own at least 10 percent of the equity interests in the entity.

Note: If a processor or transporter fails to meet the 90% rule, all income from that year is taxable.

Examples of categories of tribal employees whose wages may be exempt or partially exempt:

- Fishers, processors (including smoking), transporters
- Hatchery workers
- Environmental and conservation workers
- Enforcement staff and tribal court personnel
- Support staff, for example, secretary, accounting, payroll
- Program director, executive director
- Fishery biologist
- Fishery aide
- Fishery and habitat policy analyst
- Water quality biologist
- Habitat inventory and assessment technician
- Legislative analyst
- Information and education services
- Data analyst
- Policy analyst
- Public information staff

Tribal Council Members

Revenue Ruling 59-354 sets forth a limited employment tax exception for amounts paid to tribal council members for services performed by them as council members. Revenue Ruling 59-354 holds that while these amounts are includible in the council member’s gross income, they do not constitute wages for purposes of FICA, FUTA and federal income tax withholding.

Tribal chairs and tribal council members are employees; however, salaries paid to them for services performed by them as council members are treated differently. These amounts should be included in the council member’s gross income; however, they do not constitute wages for purposes of FICA or federal withholding taxes. Revenue Ruling 59-354 requires you to provide Forms W-2 to these individuals. Tribal officials are liable for federal income tax on these wages, and some may voluntarily have this tax withheld to avoid making quarterly estimated tax payments or personal year-end deficiencies.

Council members’ salaries will be shown in box 1, Wages, Tips, Other Compensation, of the Form W-2. Additionally, in box 14, Other, you should include “Revenue Ruling 59-354” and the total amount subject to Revenue Ruling 59-354. This will show why there are no amounts listed in the boxes for federal income tax withheld (box 2) or FICA (boxes 3, 4 and 7).

Note: If the tribal council member requests to have federal income taxes withheld, box 2 will reflect these voluntarily-withheld amounts. Voluntary withholding of FICA taxes to receive Social Security and Medicare credit isn't permitted, however.

Exhibit 3.1 (at the end of this chapter) is a sample of a Form W-2 for a tribal council member. Tribal council members may receive two Forms W-2, one for tribal council member wages and one for services performed in another capacity. See Form W-2 instructions for further information.

Part of your responsibility as an employer is to provide the council member with either a copy of Revenue Ruling 59-354 or a statement advising them that their W-2 is treated differently (such as, salaries do not constitute wages for purposes of FICA or federal withholding taxes per Revenue Ruling 59-354).

Claim for Over Collected Employee Social Security and Medicare Taxes

If the Indian tribal government withheld Social Security taxes and Medicare taxes from a tribal council member's salary, those over collected taxes may be refunded to the tribal council member in one of two ways: 1) by the tribal council member filing Form 843, *Claim for Refund and Request for Abatement*, or 2) the tribal government may file a Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*, and refund the member's share of FICA taxes (to correct prior period Forms 941).

When filing a Form 941-X, a written statement must be obtained from each tribal council employee stating that the employee has not claimed, and will not claim, refund or credit for the amount of over collection. The Indian tribal government can make a claim for both the employer and the employee shares of Social Security and Medicare taxes for those employees who provide the required written statements.

For those employees who do not provide statements, you (as the employer) can make a claim for only the employer's share of Social Security and Medicare taxes.

Next, complete the Form 941-X for each Form 941 being corrected. When completing the Form 941-X, be sure to complete Part 1 by checking the appropriate boxes and signing at the bottom of Part 5. The tribe then reimburses the council members for their share of the Social Security and Medicare taxes.

Finally, complete Form W-2c, *Corrected Wage and Tax Statement*, for each employee for whom adjustments were made to Social Security and Medicare taxes. This corrects the previous Form W-2 filed. Submit the Forms W-2c along with the Form W-3c to the Social Security Administration.

Benefit Payments for Training or Retraining

Revenue Ruling 63-136 addresses the issue of benefit payments, received by individuals undergoing training or retraining under the Area Redevelopment Act (75 Stat. 47-63), or the Manpower Development and Training Act of 1962 (76 Stat. 23-33). Examples of state-funded retraining programs are the Job Training Partnership Act (JTPA) and the Work Investment Act (WIA). A tribe may establish its own work employment program.

As stated in Revenue Ruling 63-136, these benefit payments are not taxable. The payments are intended to aid the recipients in their efforts to acquire new skills to prepare them for better employment opportunities. As such, the payments fall into the same category as other unemployment relief payments and are not includible in the recipient's gross income.

Bonuses

Bonuses that the tribe pays an employee are includable in the employee's income and are shown as wages on the Form W-2. If the bonuses are paid to the employee in the form of goods or services, the fair market value of the goods or services will be added to the employee's income.

Bonuses are considered supplemental wages paid in addition to the employee's regular wages. How you withhold on bonuses depends on whether the bonus is identified as a separate payment from regular wages.

Bonus Combined with Regular Wages

If you pay bonuses with regular wages but do not specify the amount of each, withhold income tax as if the total were a single payment for a regular payroll period.

Bonus Identified Separately from Regular Wages

If you pay bonuses separately (or combine them in a single payment and specify the amount of each), the income tax withholding method depends partly on whether you withhold income tax from your employee's regular wages.

If you **withheld** income tax from an employee's regular wages, you can use one of the following methods for the bonus:

- a) Withhold a flat 25 percent (no other percentage allowed).
- b) Add the bonus and regular wages for the most recent payroll period this year. Figure the income tax withholding as if the total were a single payment. Subtract the tax already withheld from the regular wages. Withhold the remaining tax from the bonus.

If you **did not withhold** income tax from the employee's regular wages, use method **b** above. (This would occur, for example, when the value of the employee's withholding allowances claimed on Form W-4 is more than the wages.)

Regardless of the method you use to withhold income tax on bonuses, they are subject to Social Security, Medicare and FUTA (if applicable) taxes.

Example 1: You pay Sharon a base salary on the first of each month. She is single and claims one allowance. Her July 1 pay is \$2,000. Using the current wage bracket tables, you withhold \$200. On July 15 you pay Sharon a bonus of \$2,000. Electing to use supplemental payment method b, you:

- 1) Add the bonus amount to the amount of wages from the most recent pay date ($\$2,000 + \$2,000 = \$4,000$).
- 2) Determine the amount of withholding on the combined \$4,000 (\$521 using the wage bracket tables).
- 3) Subtract the amount withheld from wages on the most recent pay date from the combined withholding amount ($\$521 - \$200 = \$321$).
- 4) Withhold \$321 from the bonus payment.

Example 2: The facts are the same as in the above example, except you elect to use the flat rate method of withholding on the bonus. You withhold 25 percent of \$2,000, or \$500, from Sharon's bonus payment.

Stipend Payments

A stipend is defined as a fixed sum of money paid periodically for services or to defray expenses. The fact that remuneration is termed a “fee” or “stipend” rather than salary or wages is immaterial. Wages are generally subject to employment taxes and should be reported on Form W-2. Refer to [Publication 15](#), (*Circular E*), *Employer’s Tax Guide*, section 5, *Wages and Other Compensation*, for rules on accountable and nonaccountable plans for employee business expenses.

Is the stipend or fee paid to an employee or an independent contractor reportable? The answer is generally yes. However, if the stipend is intended to be a reimbursement of expenses and the requirements for an accountable plan are met, the stipend may not be reportable.

Elected and Public Officials

To determine whether an elected or public official is an employee, Tribal Governments would apply the ‘common law’ factors. The Tribal Government should use the 3-prong test to determine whether a common law employment relationship exists. The three prongs are:

- 1) behavioral control;
- 2) financial control; and
- 3) the relationship of the parties.

Each determination is based upon its unique facts and circumstances. **If there is any question whether a person is a public official, obtain a copy of, or a reference to, the statute or ordinance relating to the establishment of the position.**

For more information on employer-employee relationships, refer to Chapter 2 of [Publication 15](#) and Chapter 2 of [Publication 15-A](#), *Employer’s Supplemental Tax Guide*. If you would like the IRS to determine whether services are performed as an employee or independent contractor, you may submit [Form SS-8](#), *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*.

Election Workers

If an election worker’s compensation is subject to withholding of FICA tax, reporting is required for all compensation, regardless of the amount. If an election worker’s compensation is not subject to withholding of FICA tax, information reporting is required for payments that aggregate \$600 or more in a calendar year. See [Revenue Ruling 2000-6](#) (Attachment C at the end of this guide) to determine when an election worker’s compensation is subject to withholding of FICA tax.

In the following examples, all the wages paid in 2016 have been for services as an election worker only.

- 1) If wages paid during the year are less than \$600, no Form W-2 is required. The wages are not subject to FICA or federal income tax withholding. The election worker must report the earnings as wages.
- 2) If wages paid during the year are between \$600 and \$1,699, file a Form W-2. FICA and federal income tax withholding are not required. The election worker must report the earnings as wages.
- 3) If wages are equal to or greater than \$1,700 (this amount is indexed for inflation) a W-2 must

be issued. The wages are subject to FICA, but not federal income tax withholding. The election worker must report the earnings as wages.

For later years, see Special Rules for Various Types of Services and Payments in [Publication 15](#) for the FICA wage requirement for Election Workers.

Form SS-8

Occasionally, an Indian tribal government will be unable to determine whether a worker is an employee or is self-employed and should be treated as an independent contractor. Many individuals who have personal service contracts with Indian tribal governments may be employees rather than independent contractors. The existence of a contract does not mean that the individual performing the service is not an employee. It is important to the worker that the employment status be determined as soon as possible so the earnings can be properly reported.

If no clear resolution is possible, consider filing a [Form SS-8](#), with the IRS for a determination. A Form SS-8 is used to gather information to determine whether a worker is an employee for federal employment taxes.

All pertinent facts about the individual's work arrangement should be obtained and submitted to the IRS on a Form SS-8. A Form SS-8 may be submitted by the tribal government or by the worker. If a contract has been executed between the worker and the entity, a copy of the contract should be furnished with the Form SS-8. When a Form SS-8 is submitted to the IRS, all the facts are analyzed and the determination of a worker's status is presented to the employer in the form of a determination or letter ruling.

Several problems arise for a worker when incorrectly treated as an independent contractor. To begin with, the worker would probably pay more taxes (that is, Self-Employment Contributions Act (SECA) taxes) than if the worker were being treated correctly as an employee. As an employee, only the employee's portion of the Social Security and Medicare taxes are withheld and paid from the employee's wages. As an independent contractor, the worker is not eligible for any unemployment benefits or other benefit plans that the worker would have as an employee. Also, as an independent contractor, the worker may have to pay estimated tax payments each quarter.

References

- [Internal Revenue Code Section 7873](#)
- [Publication 15](#), *(Circular E), Employer's Tax Guide*
- [Publication 15-A](#), *Employer's Supplemental Tax Guide*
- [Revenue Ruling 59-354](#) (Attachment A at the end of this guide)
- [Revenue Ruling 63-136](#) (Attachment B at the end of this guide)
- [Revenue Ruling 2000-6](#) (Attachment C at the end of this guide)
- [Form 843](#), *Claim for Refund and Request for Abatement*
- [Form 941-X](#), *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*

Exhibit 3.1

Sample Form W-2 for Tribal Council Member

22222		Void <input type="checkbox"/>	a Employee's social security number 000-00-0000		For Official Use Only OMB No. 1545-0008	
b Employer identification number (EIN) 00-0000000			1 Wages, tips, other compensation 5000.00		2 Federal income tax withheld	
c Employer's name, address, and ZIP code Tribe XYZ 123 Main Street Anytown, USA 12345			3 Social security wages		4 Social security tax withheld	
			5 Medicare wages and tips		6 Medicare tax withheld	
			7 Social security tips		8 Allocated tips	
d Control number			9		10 Dependent care benefits	
e Employee's first name and initial Ima		Last name Official		Suff.		11 Nonqualified plans
f Employee's address and ZIP code P.O. Box 000 Anytown, USA 12345			13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12a See instructions for box 12	
			14 Other Rev.Ruling 59-354		12b	
			5000.00		12c	
					12d	
15 State Employer's state ID number		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.
						19 Local income tax
						20 Locality name

Form **W-2** Wage and Tax Statement

2016

Department of the Treasury—Internal Revenue Service

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Form W-3 to the Social Security Administration; photocopies are **not** acceptable.

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Chapter 4

Tipped Employees

Tips are Wages

Tips are defined as wages under Code Sections 3121(a) and 3401(a). Tips that are received by an employee in the course of employment should be reported to the employer whether received directly from customers or indirectly in the form of shared tips or tip-outs from fellow employees. For purposes of FICA, the term “wages” means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash (unless specifically excepted). For purposes of federal income tax withholding, the term “wages” is similar to the one for FICA.

All tips your employees receive are taxable income subject to federal income tax. Cash tips include tips received directly from customers, tips from other employees under any tip-sharing arrangement and charged tips (for example, credit and debit card charges) that are distributed to the employee. Both directly and indirectly tipped employees must report tips received to you.

Cash tips of \$20 or more an employee receives in a calendar month while working for any one employer are wages subject to FICA and income tax withholding. Cash tips include charged tips, and tips paid by check or other cash equivalents. Even though these tips are taxable income, tips of less than \$20 received by an employee during a calendar month while working for a particular employer are not wages for FICA or federal income tax withholding purposes. Once the amount of tips received in a calendar month reaches \$20 from any one employer, the entire amount of tips received must be reported to the employer and included in wages (not just the amount over \$20).

An employee who receives \$20 or more in cash tips must report those tips in writing to you by the tenth day following the month in which the tips are received (or more often if required by the employer). Employees who receive tips of less than \$20 in a calendar month are not required to report their tips to you but must report these amounts as income on their tax returns and pay taxes, if any.

Service Charges

Service charges added to a bill or fixed by the employer that the customer must pay will not constitute a tip when paid to an employee, but rather constitute non-tip wages. These **non-tip wages** are subject to Social Security, Medicare and federal income tax withholding. Common examples of service charges (sometimes called auto-gratuities) in service industries are:

- large party charge (restaurant),
- bottle service charge (restaurant and night-club),
- room service charge (hotel and resort),
- contracted luggage assistance charge (hotel and resort), and
- mandated delivery charge (pizza or other retail deliveries).

These service charges are treated as wages and are includible on Form W-2.

Large Food and Beverage Establishments

If you operate a large food or beverage establishment, you must file **Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips**, for each calendar year, and may be

required to allocate tips to your employees. A large food or beverage establishment is a food or beverage operation where:

- food and beverages are provided for consumption on the premises,
- tipping is a customary practice, and
- there are more than 10 employees who work more than 80 hours on a typical business day.

For the Form 8027 filing requirement:

- Casino buffets are included if tipping is customary.
- Ten or more employees include all employees at the establishment, not just the tipped employees.
- If you own more than one establishment, you must file a separate Form 8027 for each establishment.
- If there is more than one business operating within a single building, and if the receipts for the businesses are recorded separately, then each business should file a separate Form 8027.

File Form 8027 by the last day of February for the preceding calendar year. However, if you file electronically, the due date is March 31, for the preceding calendar year. You may request an extension on [Form 8809, Application for Extension of Time to File Information Returns](#), if you file the request before the due date of the return. Refer to [Publication 1239, Specifications for Electronic Filing of Form 8027](#), to file electronically.

Allocated Tips

Code Sections 6053(c)(2) and (3) require large food and beverage establishments to allocate tips to those employees who report tips of less than 8 percent of gross receipts to them (or a lower rate approved by the IRS). You may base the allocation on each employee's share of gross receipts or share of total hours worked, or on a written agreement between you and your employees. You are required to report the amount allocated on Form W-2 in the box labeled "Allocated Tips" for each employee to whom you allocated tips. Penalties may be imposed for both failing to file and failing to furnish a correct Form W-2 for each form on which you fail to include this required information. Do not withhold income, Social Security or Medicare taxes on allocated tips, since your employee did not report these amounts to you. See [Exhibit 4.1](#) for an example.

Whether or not you are required to allocate tips, your employees must continue to report all tips to you, and you must use the amounts they report to figure payroll taxes.

Tip Rate Reduction Requests

You may request for a reduced allocation rate by submitting a petition that clearly demonstrates that a rate less than 8 percent should apply. Refer to [Instructions for Form 8027](#) on how to apply.

Code Section 3121(q)

Code Section 3121(q) provides that tips are deemed to have been paid by the employer for purposes of FICA tax and requires that employers withhold both the employer and employee shares of FICA. It also provides that unreported tips are subject to employer FICA tax. Code Section 3121(q) allows the IRS to assess the employer's share of FICA taxes on reported tips (for example, where the employee did not furnish a statement reporting the tips or to the extent the statement is inaccurate or incomplete). When determining the employer's additional FICA tax

liability, the tips are deemed paid on the date the **Notice and Demand** is made to the employer by the IRS.

Employer's General Responsibilities

The employer is responsible for deducting and depositing the employee's FICA tax on tips included in the written report furnished by the employee to the extent that collections can be made from the employee's wages (under the employer's control, excluding tips) on or after the time the written statement is furnished.

Additional FICA Tax Payable

An employee's regular pay may not be enough for the employer to withhold all the taxes an employee owes on the regular pay and reported tips. If this happens an employee may give the employer more money to cover the taxes.

If the employee's pay under the employer's control, including any additional money given by the employee, is not enough to cover all the taxes, Treasury Regulations Section 31.3102-3(a)(1) clarify the sequence the employer must follow when paying over the withheld taxes:

- 1) All taxes (FICA, federal withholding, and state and local) on regular pay, exclusive of tips
- 2) Social Security and Medicare taxes on reported tips
- 3) Federal, state and local taxes on reported tips

The employer must furnish to the employee a written statement showing the amount of employee FICA on tips that exceeds the tax the employer can collect from the wages under the control of the employer. The statement is provided on the employee's Form W-2. The employee is required to report and pay over to the IRS the portion of employee tax that the employer was unable to withhold due to the lack of employee wages available to cover the liability.

Example - Employee taxes on wages and tips exceed regular wages:

Grady is a blackjack dealer for a tribal casino. He routinely receives tips as a part of his compensation as a dealer. The casino pays him a salary of \$200 per week. He receives tips in cash each day that he works.

Grady keeps a daily tip record and reports tips to his employer every other Friday. He has a Form W-4, *Employee's Withholding Allowance Certificate*, on file with his employer (the casino). It reflects that he is single with one exemption. For the two-week period ending April 12, Grady reported \$1,200 in cash tips to his employer. His regular wages for the same two-week period are \$400. The casino tip policy allows Grady to keep his cash tips at the time he receives them.

The following computation illustrates that Grady's total withholding for wages and tips exceeds his regular wages, causing him to owe taxes to his employer.

Gross Regular Pay\$400.00
 Tips Reported..... \$1,200.00

Deductions	Deductions from Gross Regular Pay	Deductions from Tip Income	Total
FICA	\$30.60	\$91.80	\$122.40
Federal Withholding	\$100.00*	\$200.00*	\$300.00*
State Withholding	\$26.00	\$78.00	\$104.00
Total	\$156.60	\$369.80	\$526.40
Net Paycheck			Zero**

* The withholding amounts are for this example only. The withholding tables were not consulted for federal or state withholding taxes.

**The employee owes the amount of tax that exceeds his regular paycheck (\$526.40 – 400.00 = \$126.40).

Because all tips are taxable wages to the employee, this situation creates a withholding shortfall for Grady. The withholding on his wages plus his tips exceeds his biweekly paycheck from his regular salary.

If Grady does not make arrangements with his employer to pay all his FICA and withholding, his taxes will be applied in the following order:

- 1) Withholding on regular wages (FICA, federal income, state income) (\$156.60)
- 2) FICA withholding tax on tips (\$91.80)
- 3) Federal income tax withholding (\$151.60 of the \$200 due)

Net paycheck = \$0 (\$400 less \$156.60, \$91.80 and \$151.60)

Grady owes \$48.40 in federal income tax withholding and \$78 in state withholding.

Because Grady's regular pay is not enough for his employer to withhold all the taxes he owes on his regular pay plus his reported tips, he may give his employer money until the close of the calendar year to pay the rest of the taxes.

His employer may also collect any taxes that remain unpaid from his next paycheck. If withholding taxes remain uncollected at the end of the year, Grady may be subject to a penalty for underpayment of estimated tax.

In the example, Grady's regular paycheck paid all his FICA (Social Security and Medicare taxes). This is not always the case; sometimes an employee may owe Social Security and Medicare taxes uncollected at the end of the year. These uncollected taxes will be shown in box 12 of Form W-2 and must be reported on the employee's Form 1040, *U.S. Individual Income Tax Return*.

Employer Tip Employment Tax Responsibilities

- Include tips as wages, withholding FICA and federal income tax, and include on Form 941 and Form W-2
- Allocate tips when required
- File the information report, Form 8027, if required

Employer and Employees' Record Keeping Responsibilities (Specific to Large Food and Beverage Establishments)

The written statement furnished by the employee to the employer for tips received by the employee must be signed by the employee and should disclose:

- The name, address and SSN of the employee.
- The name and address of the employer.
- The period for which, and the date on which, the statement is furnished. If the statement is for a calendar month, the month and year should be specified. If the statement is for a period of less than one calendar month, the beginning and ending dates of the period should be shown (for example, January 1 through January 8, 201X).
- The total amount of tips received by the employee during the period covered by the statement, which are required to be reported to the employer.

No particular form is required; however, Form 4070 (included in [Publication 1244](#), *Employee's Daily Record of Tips and Report to Employer*) may be used unless the employer provides some other form.

If the employer chooses to use another form, the form must meet the requirements of Treasury Regulation Section 31.6053-1(b)(2)(ii):

- The form is to be used solely for the purpose of reporting tips,
- It meets the requirements of subparagraph (1) (of the regulations as listed above), and
- A blank copy must be made available to the employee for completion and retention by the employee.

In lieu of a special form for tip reporting, Treasury Regulation Section 31.6053-1(b)(2)(ii) provides that an employer may provide regularly used forms (such as time cards) for the employees to use in reporting tips. The form must include the period for which, and the date on which, the statement is furnished, the total amount of tips the employee received and identifying information, which will ensure identification of the employee by the employer.

Tip Rate Determination and Education Program (Tip Agreements)

The IRS began its Tip Rate Determination/Education Program (TRD/EP) for businesses where tip income is customary to improve and ensure compliance by employers and employees with statutory provisions on tip income. Employers may participate in the TRD/EP. The program primarily consists of voluntary tip compliance agreements developed to improve tip income reporting by helping taxpayers to understand and meet their tip reporting responsibilities. These voluntary tip compliance agreements offer many benefits for the employer and the employee.

Employers in the food and beverage industry or industries with tipped employees other than the gaming industry may enter into a Tip Rate Determination Agreement (TRDA). Businesses in the gaming industry may enter into a Gaming Industry Tip Compliance Agreement (GITCA).

The IRS will assist applicants in understanding and meeting the requirements for participation. Please contact your ITG specialist for any questions about entering into a tip agreement or to review your current agreement.

For more information about GITCA and TRDA agreements, search for Market Segment Understandings (MSU) by using keyword "MSU tips" on [IRS.gov](https://www.irs.gov).

References

- **Publication 15**, (Circular E), *Employer's Tax Guide*
- **Publication 531**, *Reporting Tip Income*
- **Instructions for Form W-2**, Box 1 and box 8
- **Publication 3148**, *Tips on Tips - A Guide to Tip Income Reporting for Employees Who Receive Tip Income*
- **Publication 3144**, *Tips on Tips - A Guide to Tip Income Reporting for Employers in Businesses Where Tip Income is Customary*
- **Instructions for Form 941**, Line 5b, *Taxable Social Security Tips*
- **Form 8027 and instructions**, *Employer's Annual Information Return of Tip Income and Allocated Tips*
- **Publication 1239**, *Specifications for Electronic Filing of Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips*

References for your employees

- **Publication 1244**, *Employee's Daily Record of Tips and Report to Employer* (This publication includes Form 4070, *Employee's Report of Tips to Employer*, and Form 4070A, *Employee's Daily Record of Tips*.)
- **Form 4137**, *Social Security and Medicare Tax on Unreported Tip Income*

Exhibit 4.1,

Form W-2, Wage and Tax Statement, showing allocated tips

22222		Void <input type="checkbox"/>	b Employee's social security number 000-00-0000		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number (EIN) 00-0000000			1 Wages, tips, other compensation 5000.00		2 Federal income tax withheld 515.00	
c Employer's name, address, and ZIP code Tribe Casino 123 Main Street Anytown, USA 12345			3 Social security wages 5000.00		4 Social security tax withheld 310.00	
			5 Medicare wages and tips 5000.00		6 Medicare tax withheld 72.50	
			7 Social security tips		8 Allocated tips 425.00	
d Control number			9		10 Dependent care benefits	
e Employee's first name and initial Ima		Last name Employee	Suff.	11 Nonqualified plans		12a See instructions for box 12
P.O. Box 000 Anytown, USA 12345			13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b	
			14 Other		12c	
f Employee's address and ZIP code					12d	
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form **W-2** Wage and Tax Statement

2016

Department of the Treasury—Internal Revenue Service
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Form W-3 to the Social Security Administration; photocopies are **not** acceptable.**Do Not Cut, Fold, or Staple Forms on This Page**

Chapter 5

Employee Business Expense Reimbursements

IRS **Publication 15**, (*Circular E*), *Employer's Tax Guide*, defines employee business expense reimbursements. A reimbursement or allowance arrangement is a system by which the employer substantiates and pays the advances, reimbursements and charges for its employees' business expenses. The reimbursement policy of the employer will determine the proper tax treatment of these reimbursed employee business expenses. This chapter addresses the two basic types of reimbursement arrangements that can exist between an employer and an employee and how these reimbursements are handled for income tax purposes.

There are two general types of expense reimbursement plans that an employer may use to reimburse employees for out-of-pocket business expenses:

- 1) an accountable plan, and
- 2) a nonaccountable plan.

The principal difference is whether employees are required to substantiate expenses (accountable plan) to their employer for the amounts they incur for job related expenses, or not (nonaccountable plan).

Accountable Plan

Amounts paid under an accountable plan are not wages and are not subject to income tax withholding and payment of Social Security, Medicare, State Unemployment Tax Act (SUTA) and Federal Unemployment Tax Act (FUTA) taxes.

To qualify as an accountable plan, the plan must contain the following features:

- The employee's expenses must be incurred in connection with services as an employee with no personal expenses.
- The employee must substantiate expenses to the employer within a reasonable period of time from when the expenses were incurred.
- The employer must require that any excess advance or reimbursement over the actual substantiated expense be returned within a reasonable period of time.

If the expenses covered by this arrangement are not substantiated, or amounts in excess of expenses are not returned within a reasonable period of time, the amount is treated as paid under a nonaccountable plan. A reasonable period of time depends on the facts and circumstances. It is considered reasonable if the employees:

- 1) Receive the advance within 30 days of the time they incur the expense.
- 2) Adequately account for the expenses within 60 days after the expenses were paid or incurred.
- 3) Return any amounts in excess of expenses within 120 days after the expense was paid or incurred.

Also, it is considered reasonable if you give your employees a periodic statement (at least quarterly) that asks them to either return or adequately account for outstanding amounts and they do so within 120 days.

Nonaccountable Plan

Simply stated, a reimbursement plan that doesn't meet the requirements for an accountable plan is a nonaccountable plan. Under a nonaccountable reimbursement plan, the employee is generally not required to substantiate any expenses to the employer. Payments to your employee for travel and other necessary expenses of your business under a nonaccountable plan are treated as supplemental wages subject to income tax withholding, Social Security, Medicare, SUTA and FUTA taxes. The payments are treated as paid under a nonaccountable plan if:

- Your employee is not required to or does not substantiate timely those expenses to you with receipts or other documentation, or
- You advance an amount to your employee for business expenses and your employee is not required to or does not return timely any amount not used for business expenses.

Employees may deduct the actual expenses incurred as a miscellaneous itemized deduction on their personal income tax returns.

See Section 7 of [Publication 15](#) for more information on supplemental wages.

Per Diem or Other Fixed Allowance

A per diem allowance is a fixed amount of daily reimbursement an employer gives an employee for lodging, meals and incidental expenses when the employee is away from home on business. You may reimburse your employees by travel days, miles or some other fixed allowance. In these cases, your employee is considered to have accounted to you if the payments do not exceed rates established by the federal government. The standard mileage rates for auto expenses are:

Standard Mileage Rates	
January 2014	\$0.56
January 2015	\$0.575
January 2016	\$0.54

The federal per diem rates for meals and lodging in the continental U.S. are published by the U.S. General Services Administration (GSA).

Per diem allowances may be used only if the time, place and business purpose of the travel are substantiated by adequate records or other evidence. An employee can satisfy the substantiation requirements for business vehicle expenses in two general ways:

- 1) An employee can submit periodically to the employer a log of business miles driven. The expense is deemed substantiated to the extent of the standard mileage rate (see table above).
- 2) An employee can submit documentation of actual vehicle expenses (gas, maintenance, insurance and so on) with support for the percentage of business use of the vehicle (for example, a log showing both business and personal mileage).

If the per diem or allowance exceeds the federal rate, and you do not require your employees to return the difference between the two rates, you must report the excess amount as wages. This excess amount is subject to income tax withholding, and payment of Social Security, Medicare and FUTA taxes. Report the nontaxable (substantiated) portion of the per diem or mileage allowance in box 12 of Form W-2 using code L.

Example: The tribe sent an employee on a 5-day business trip to Phoenix and gave the

employee a \$400 advance to cover meals and incidental expenses (\$80 per day). The federal per diem for meals and incidental expenses for Phoenix is \$44.25 for the first and last day of travel and \$59 for non-travel days. The tribe does not require the employee to return the difference between the advance and the federal per diem rate allowed for Phoenix:

Per Diem	Daily Rates	Total
Advance travel payment		\$400.00
First & last day per diem	(\$59.00 x 0.75) \$44.25	\$88.50
3 non-travel days	\$59.00	\$177.00
Total federal diem allowed		\$265.50
Taxable per diem		\$134.50

The \$134.50 excess federal per diem amount will be included in box 1 on Form W-2. Box 12 will show \$265.50 using code L.

References

- **Publication 15**, (Circular E), *Employer's Tax Guide*
- **Publication 15-B**, *Employer's Tax Guide to Fringe Benefits*
- **Publication 463**, *Travel, Entertainment, Gift, and Car Expenses*
- **Publication 5137**, *Fringe Benefit Guide*
- **Instructions** for Forms W-2 and W-3

Exhibit 5.1 - Reporting Reimbursements Table

Reporting Reimbursements

If the type of reimbursement (or other expense allowance) arrangement is under	Then the employer reports on Form W-2:
An ACCOUNTABLE PLAN with:	
<ul style="list-style-type: none"> Actual expense reimbursement Adequate accounting made and excess returned 	No amount.
<ul style="list-style-type: none"> Actual expense reimbursement Adequate accounting and return of excess both required but excess not returned 	The excess amount as wages in box 1.
<ul style="list-style-type: none"> Per diem or mileage allowance up to the federal rate Adequate accounting and excess returned 	No amount.
<ul style="list-style-type: none"> Per diem or mileage allowance up to the federal rate Adequate accounting and return of excess both required but excess not returned 	The excess amount as wages in box 1. The amount up to the federal rate is reported only in box 12 – it is not reported in box 1.
<ul style="list-style-type: none"> Per diem or mileage allowance exceeds the federal rates Adequate accounting up to the federal rate only and excess not returned 	The excess amount as wages in box 1. The amount up to the federal rate is reported only in box 12 – it is not reported in box 1.
A NONACCOUNTABLE PLAN with:	
Either adequate accounting or return of excess, or both, not required by plan	The entire amount as wages in box 1.
No reimbursement plan	The entire amount as wages in box 1.

Fringe Benefits

IRS **Publication 15-B**, *Employer's Tax Guide to Fringe Benefits*, addresses the question, "Are fringe benefits taxable?" If your employee is the recipient of a taxable fringe benefit, the benefit is subject to employment taxes and must be reported on Form W-2. However, you can use special rules to withhold, deposit and report the employment taxes. See Section 4 of Publication 15-B, Rules for Withholding, Depositing and Reporting.

What is a Fringe Benefit?

A fringe benefit is any property, service, cash or cash equivalent in addition to regular pay provided to an employee by an employer in connection with the performance of services. Treasury Regulations Section 1.61-21 states that gross income includes compensation for services, including fees, commissions, fringe benefits or similar items. Whether a particular fringe benefit is taxable depends on whether there is a specific statutory exclusion that applies to the benefit. Employers should treat taxable fringe benefits as wages for employment tax purposes.

Because the tax treatment of fringe benefits can vary depending on the facts and circumstances under which they are provided, it may be helpful to follow a three-step analysis:

- 1) Identify the particular fringe benefit and start with the assumption that its value will be taxable as compensation to the employee.
- 2) Check to see if there are any statutory provisions that exclude the fringe benefit from the employee's gross income.
- 3) Value any portion of the benefit that is not excludable for inclusion in the employee's gross income.

Examples of fringe benefits include:

- Accident/health benefits
- Allowances not accounted for (for example, clothing)
- Automobile allowances
- Awards and prizes
- Back pay awards
- Bonuses
- Cafeteria plans
- Club memberships
- Dependent care assistance programs
- Educational reimbursements
- Employee discounts
- Frequent flier credits
- Group term life insurance
- Law enforcement housing assistance
- Legal counseling
- Local transportation for commuting
- Lodging on the employer's premises
- Meal money
- Moving expense reimbursements
- Parking
- Professional licenses or dues for professional organizations

- Severance pay
- Scholarships and fellowships
- Sick pay
- Stipends
- Travel reimbursement
- Use of vacation homes
- Vacations

These fringe benefits may or may not be taxable to the employee who receives the benefit. Refer to [Publication 15-B](#) to determine if fringe benefits are taxable and how to value them.

Employer-Provided Vehicles

Employer-provided vehicles are sometimes available for employees to use during off-duty hours. The personal use of a tribally-owned vehicle is a taxable fringe benefit. Personal use includes the value of commuting to and from work in the vehicle, even if the vehicle is taken home for the convenience of the employer.

The value of the fringe benefit must be included in income as wages and is subject to income and employment taxes. The three methods that can be used to determine the value of the vehicle provided to the employee are the:

- 1) Commuting value rule,
- 2) Cents-per-mile rule, or
- 3) Automobile lease rule.

There are certain employees designated as “control employees” who must use the automobile lease rule. A “control employee” is a government employee who is either an elected official or whose compensation is equal to or exceeds Federal Government Executive Level V. (See the [Office of Personnel Management website](#) for compensation information.) See Chapter 3 of [Publication 15-B](#) for further information on control employees.

Qualified Nonpersonal Use Vehicle

A qualified nonpersonal use vehicle is any vehicle the employee is not likely to use more than minimally for personal purposes because of its design. Qualified nonpersonal use vehicles are:

- Clearly marked police and fire vehicles
- Unmarked vehicles used by law enforcement officers - the officer must be authorized to carry a firearm, execute search warrants and make arrests
- An ambulance or hearse used for its specific purpose
- Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds
- Delivery trucks with seating for the driver only or driver plus a folding jump seat
- A passenger bus with a capacity of at least 20 passengers used for a specific purpose
- School buses
- Tractors and other special purpose farm vehicles

If an employee drives one of these vehicles home, the personal use of the vehicle is not a taxable fringe benefit.

All Other Employer-Provided Vehicles

If you have an employer-provided vehicle that does not qualify as a nonpersonal use vehicle, and the employee uses the vehicle for personal use (which includes commuting), the personal use of the vehicle is a noncash taxable fringe benefit.

It is the employer's responsibility to determine the actual value of this fringe benefit and to include the taxable portion in the employee's income.

Example: A tribally-owned pickup truck that is not a police vehicle has the name of the tribe marked on the vehicle. Usually the employee is allowed to take the vehicle home because he is "on call." The vehicle is not a qualified nonpersonal use vehicle, thus, the commuting is a noncash taxable fringe benefit. The value of the personal use of this vehicle must be included as wages to the employee, and it is subject to income and employment taxes.

Lodging on Your Business Premises

You can exclude the value of lodging furnished to an employee from the employee's wages if:

- It is furnished on your business premises,
- It is furnished for your convenience, and
- The employee accepts it as a condition of employment.

This exclusion does not apply if you allow your employee to choose to receive additional pay instead of lodging.

On your business premises. For this exclusion, your business premises is generally your employee's place of work.

For your convenience. Whether you furnish lodging for your convenience as an employer depends on all the facts and circumstances. You furnish the lodging to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the lodging is furnished as pay. However, a written statement that the lodging is furnished for your convenience isn't sufficient.

Condition of employment. Lodging meets this test if you require your employees to accept the lodging because they need to live on your business premises to be able to properly perform their duties. Examples include employees who must be available at all times and employees who couldn't perform their required duties without being furnished the lodging.

It doesn't matter whether you must furnish the lodging as pay under the terms of an employment contract or a law fixing the terms of employment.

Example: Joan, an employee of a hospital, is given the choice of living at the hospital free of charge or living elsewhere and receiving a cash allowance in addition to her regular salary. If Joan chooses to live at the hospital, the hospital cannot exclude the value of the lodging from her wages because she is not required to live at the hospital to properly perform the duties of her employment.

Example: A police officer of an Indian tribal government is required to live in housing furnished by the tribe, as a condition of employment. The tribe requires this as a matter of security for the residents in the neighborhood and as a convenience for the tribe to protect the housing facilities. The value of the lodging is not included in the police officer's salary since the housing is a condition of employment, it is on the business premises and it is a convenience to the tribe.

References

- [Publication 15](#), *(Circular E), Employer's Tax Guide*
- [Publication 15-A](#), *Employer's Supplemental Tax Guide*
- [Publication 15-B](#), *Employer's Tax Guide to Fringe Benefits*
- [Publication 463](#), *Travel, Entertainment, Gift, and Car Expenses*
- [Publication 521](#), *Moving Expenses*
- [Publication 525](#), *Taxable and Nontaxable Income*
- [Publication 970](#), *Tax Benefits for Education*
- [Publication 5137](#), *Fringe Benefit Guide*
- [Instructions](#) for Forms W-2 and W-3

Chapter 7

Pension Plans

This chapter provides basic information on the pension plans that Indian tribal governments may have, as well as annual reporting requirements that apply to these plans. Since the area of pension law can be quite complex, this chapter is not all-inclusive. Your pension plan administrator should address more detailed questions.

Pension Plans that Indian Tribal Governments May Maintain:

- 1) Simplified Employee Pension Plan (SEP)** – SEPs provide a simplified method for employers to make contributions to a retirement plan for their employees. Instead of setting up a qualified plan with a separate trust, the employer contributes to an Individual Retirement Account or Annuity (IRA) set up for each plan participant (commonly referred to as a SEP-IRA) that meets the requirements of Code Section 408(k).
- 2) SIMPLE IRA Plan** – A Savings Incentive Match Plan for Employees (SIMPLE) IRA plan is described under Code Section 408(p). This plan provides small employers with a simplified method to contribute toward their employees' and their own retirement savings. Employees may choose to make salary reduction contributions and the employer is required to make either matching or nonelective contributions. Contributions are made to an IRA set up for each employee (a SIMPLE IRA). A SIMPLE IRA plan can be established only if the employer had 100 or fewer employees who earned \$5,000 or more in compensation during the preceding year. An employer cannot sponsor a SIMPLE plan if they currently sponsor another plan.
- 3) 401(k) Plan** – A 401(k) plan is also referred to as a cash or deferred arrangement (CODA). A 401(k) plan is a qualified plan (under Code Section 401(a)) that includes a feature allowing an employee to elect to have the employer contribute a portion of the employee's wages (pre-tax or Roth contributions) to an individual account under the plan. The CODA must be part of a profit-sharing, stock bonus or pre-ERISA money purchase plan. Indian tribal governments are allowed to maintain 401(k) plans, effective January 1, 1997.
- 4) 403(b) Plan** – A 403(b) plan (also called a tax-sheltered annuity (TSA) plan) is a retirement plan offered by public schools and certain 501(c)(3) tax-exempt organizations. Contributions may be deferred and invested in annuity contracts or mutual funds. Employees save for retirement by contributing to individual accounts. Employers can also contribute to employees' accounts. Indian tribal governments are eligible to maintain this type of plan only in limited circumstances. Generally, the organization associated with the tribal government must be an educational institution, a 501(c)(3) organization or a grandfathered Indian tribe (see definitions).
- 5) Qualified Plan** – A qualified plan, also referred to as a 401(a) plan, satisfies the requirements of Code Section 401(a). Examples of qualified plans include profit-sharing, money purchase, 401(k), target benefit or defined benefit plans.

All these plans, with the exception of certain qualified plans, are deferred compensation plans that allow employees to save for retirement on a pre-tax basis.

Note: Indian tribal governments cannot maintain governmental deferred compensation plans under Code Section 457. They are not an eligible employer for 457 purposes.

Limits on Contributions and Benefits

There are **limits** to how much employers and employees can contribute to a plan (or IRA) each year. The plan must specifically state that contributions or benefits cannot exceed certain limits. The limits differ depending on the type of plan. Code Section 415 requires the limits to be adjusted annually for **cost-of-living increases**.

Definitions

Deferred Compensation – Deferred compensation is an amount the employer deducts from the employee’s current compensation and pays to a retirement plan. Employees do not pay tax on qualified deferred compensation until distributions are received (except with Roth contributions). Participation in a deferred compensation plan allows employees to “defer” or delay, receiving a portion of their wages until a later date, generally when they retire or reach a distributable event.

Rollover – The contribution or direct transfer of a qualified plan distribution to another plan within 60 days. The plan receiving the rollover may be any of the following:

- another qualified plan
- an IRA
- a SEP-IRA
- A SIMPLE IRA (after two years)
- for distributions made after December 31, 2001, a Section 403(b) plan

501(c)(3) Organization – Defined generally as one organized and operated exclusively for the following purposes:

- religious
- charitable
- scientific
- public safety testing
- literary or education
- to encourage national or international amateur sports competition
- for the prevention of cruelty to children or animals

These organizations include:

- charities
- social welfare agencies
- private hospitals
- health care organizations
- private schools
- religious institutions
- research facilities

Grandfathered Indian Tribe – An Indian tribal government; a subdivision, agency or instrumentality of an Indian tribal government; or a corporation chartered under federal, state or tribal law that is owned in part by any of the foregoing is treated as an employer described in 501(c)(3) with respect to any annuity contract purchased in a plan year beginning before January 1, 1995.

Catch-Up Contributions – Elective deferrals that are made under Code Section 414(v) in excess of the limits under Code Sections 402(g), 403(b), 408(p) and 415 to 401(k), 403(b), SARSEPs (SEPs that include a salary reduction arrangement), SIMPLE IRA or SIMPLE 401(k) plans. Catch-up contributions may be made only by participants who are at least age 50 by the end of the

year in which the catch-up contributions are being made.

Qualified Plan – A qualified plan is a plan that meets the requirements of Code Section 401(a). These requirements are generally designed to ensure that the plan is established and operated for the benefit of a broad class of employees. Meeting the requirements entitles the plan sponsor, the trust or other funding vehicle and participants to certain income tax advantages.

Nonqualified Plan – A nonqualified plan is a plan that does not meet the requirements of Code Section 401(a). As a result, the plan sponsor, participants and trust or other plan funding vehicle are generally not entitled to income tax benefits, unless the plan is intended to be, and meets the requirements of, for example, section 403(b) plans, SEPs, SIMPLE plans and certain IRAs.

Salary Reduction Arrangement – An agreement where the employee chooses to have part of their pay contributed to a retirement plan rather than receive it in cash.

Elective Deferral – Contributions made by the employer at the election of the employee to a retirement plan via a salary reduction agreement. The elective deferrals are excluded from the employee's gross income (compensation) (except Roth contributions) and include deferrals under a 401(k), 403(b), SIMPLE IRA or a SARSEP plan.

Nonelective Contributions – Employer contributions made to any type of plan, excluding those employer contributions made under a salary reduction agreement. Employer contributions also do not include matching contributions.

Income Tax Withholding

Generally, the participant's pretax contributions (deferred compensation) plus any earnings on these contributions will not be included in gross income until that amount is paid or made available to the participant or beneficiary.

Therefore, this amount will not be subject to income tax withholding at the time the contribution is made. However, the total amount contributed during the tax year will be reflected in box 12 on the participant's Form W-2.

Social Security, Medicare and FUTA Taxes

Qualified plans, TSAs, SEPs and SIMPLE IRA plans – Generally, elective deferrals made by an employee are excluded from the employee's gross income. However, they are included in wages for purposes of Social Security, Medicare and FUTA taxes.

Employer contributions to these plans are not included in the definition of wages and are not subject to Social Security, Medicare or FUTA taxes unless the payment is made for services rendered.

Nonqualified Deferred Compensation Plans – Annual deferrals under a nonqualified plan are treated as wages subject to Social Security, Medicare and FUTA taxes in the tax year in which the later of the following occurs:

- when the services are performed, or
- when there is no substantial risk of forfeiture of the employee's right to the deferred amount.

A substantial risk of forfeiture exists where rights in property that are transferred are conditioned upon the future performance of services or the occurrence of a condition related to the purpose of the transfer. Annual deferrals mean the amount of compensation deferred under the plan

whether by salary reduction or nonelective employer contribution during a taxable year.

Example: The tribe's nonqualified plan provides for elective deferrals from current salary, as well as a one percent of salary nonelective contribution for each employee who participates in the plan and who is employed with the tribe during the plan year. All deferrals and contributions, including the tribe's contributions, are fully and immediately vested.

Because these contributions are not subject to a substantial risk of forfeiture (and the services to which they relate have already been performed), the elective deferrals are required to be taken into account as wages for purposes of the Social Security, Medicare and FUTA tax at the time of the deferral. The tribe's nonelective contribution is required to be taken into account as wages at the time of the contribution for purposes of the Social Security, Medicare and FUTA tax.

Example: Assume the same facts as above, except the plan has two year vesting for the tribe's nonelective contribution. In this case, an employee's rights to the nonelective contributions (and the associated earnings) are subject to a substantial risk of forfeiture until the employee has been employed by the tribe for three years.

The tribe's nonelective contributions (and earnings thereon) are not wages for purposes of the Social Security, Medicare and FUTA taxes until the employee has completed three years of service. At that time, the aggregate amount of the tribe's nonelective contributions, plus earnings, is required to be taken into account as wages for purposes of the Social Security, Medicare and FUTA tax. Once an individual has met the vesting requirements, future nonelective contributions by the tribe are required to be taken into account as wages for these purposes when the contribution is made.

The following are examples of how you would prepare a Form W-2 to reflect deferred compensation depending on whether the plan is a qualified plan or a nonqualified plan.

Example - Qualified Plan: Sarah earned \$30,000 during the year. She elected to contribute 10 percent (\$3,000) to her employer's qualified 401(k) plan. The employer also contributed 5 percent (\$1,500) to the plan on Sarah's behalf. Sarah had federal withholding of \$3,000, Social Security withholding of \$1,860 and Medicare withholding of \$435.

Sarah's W-2 will reflect the following amounts:

- Box 1 - \$27,000 (\$30,000 gross wages less \$3,000 elective deferral)
- Box 3 - \$30,000 – Although Sarah's elective deferrals are not included in gross wages for federal income tax purposes; they are includable wages for the Social Security tax
- Box 5 - \$30,000 – Sarah's elective deferrals are includable wages for Medicare tax purposes
- Box 12 - D \$3,000 – Code D is the code for elective deferrals to a section 401(k) cash or deferral arrangement. (See W-2 instructions for other retirement plan codes)
- Box 13 - Check the Retirement plan box
- Box 14 - \$1,500 – This is the nonelective employer contribution made for Sarah. This is not a mandatory entry.

If your state has a state income tax, then box 16 on Form W-2 will normally be the same amount as the amount shown in box 1 provided the employee was a resident of the state for the entire year.

Exhibit 7.1-Qualified Plan

Form W-2

22222		Void <input type="checkbox"/>	a Employee's social security number 000-00-0000		For Official Use Only OMB No. 1545-0008	
b Employer identification number (EIN) 00-0000000			1 Wages, tips, other compensation 27000.00		2 Federal income tax withheld 3000.00	
c Employer's name, address, and ZIP code Tribe XYZ 123 Main Street Anytown, USA 12345			3 Social security wages 30000.00		4 Social security tax withheld 1860.00	
			5 Medicare wages and tips 30000.00		6 Medicare tax withheld 435.50	
			7 Social security tips		8 Allocated tips	
d Control number			9		10 Dependent care benefits	
e Employee's first name and initial Sara A.		Last name Lee	Suff.		11 Nonqualified plans	
P.O. Box 000 Anytown, USA 12345			13 Statutory employee <input type="checkbox"/> Retirement plan <input checked="" type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12a See instructions for box 12 D 3000.00	
			14 Other 1500.00		12b	
f Employee's address and ZIP code					12c	
					12d	
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form **W-2** Wage and Tax Statement

2016

Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are **not** acceptable.

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Example - Nonqualified Plan: Assume the same facts as above except the plan is a nonqualified plan, and there is no substantial risk of forfeiture of the deferred amount.

- Box 1 - \$27,000
- Box 3 - \$31,500 – Note: both Sarah's contributions (elective deferrals) and the employer's contributions (nontelective deferrals) are includable wages for the Social Security tax.
- Box 5 - \$31,500 – Same as above with regard to the Medicare tax
- Box 12 - D \$3,000
- Box 13 - Check the Retirement plan box
- Box 14 - \$1,500 – Not mandatory

Exhibit 7.2-Nonqualified Plan

Form W-2

22222		Void <input type="checkbox"/>	a Employee's social security number 000-00-0000		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number (EIN) 00-0000000			1 Wages, tips, other compensation 27000.00		2 Federal income tax withheld 3000.00	
c Employer's name, address, and ZIP code Tribe XYZ 123 Main Street Anytown, USA 12345			3 Social security wages 31500.00		4 Social security tax withheld 1953.00	
			5 Medicare wages and tips 31500.00		6 Medicare tax withheld 457.00	
			7 Social security tips		8 Allocated tips	
d Control number			9		10 Dependent care benefits	
e Employee's first name and initial Sara A.		Last name Lee	11 Nonqualified plans		12a See instructions for box 12 D 3000.00	
f Employee's address and ZIP code P.O. Box 000 Anytown, USA 12345			13 Statutory employee <input type="checkbox"/> Retirement plan <input checked="" type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b	
			14 Other 1500.00		12c	
					12d	
15 State Employer's state ID number		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.
						19 Local income tax
						20 Locality name

Form **W-2** Wage and Tax Statement

2016

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Catch-Up Contributions

Participants age 50 and over may contribute additional elective deferrals “catch-up contributions” to 401(k), 403(b), SIMPLE IRA or SARSEP plans.

Catch-up contributions are combined with regular contributions for W-2 reporting.

Example: Jerry, age 52, earned \$25,000 during the year. He contributed 10 percent (\$2,500) of his salary to his employer’s qualified 401(k) plan. In addition, Jerry contributed \$500 in catch-up contributions during the year. His employer contributed \$1,250 to the plan for Jerry. Jerry had federal withholding of \$2,800, Social Security withholding of \$1,550 and Medicare withholding of \$363.

Jerry’s W-2 will reflect the following amounts:

- Box 1 - \$22,000 (\$25,000 gross wages less \$3,000, (\$2,500 elective deferral plus \$500 catch-up contribution))
- Box 3 - \$25,000 – The elective deferral and catch-up contributions are includable wages subject to Social Security tax
- Box 5 - \$25,000 – Same as above with regard to the Medicare tax
- Box 12 - D \$3,000 – Elective deferral and catch-up contributions are combined in this box using the proper retirement code (see W-2 instructions)
- Box 13 - Check the Retirement plan box
- Box 14 - \$1,250 – Not mandatory

Exhibit 7.3-Catch-Up Contributions

Form W-2

22222		Void <input type="checkbox"/>	a Employee's social security number 000-00-0000		For Official Use Only ▶ OMB No. 1545-0008	
b Employer identification number (EIN) 00-0000000			1 Wages, tips, other compensation 22000.00		2 Federal income tax withheld 2800.00	
c Employer's name, address, and ZIP code Tribe XYZ 123 Main Street Anytown, USA 12345			3 Social security wages 25000.00		4 Social security tax withheld 1550.00	
			5 Medicare wages and tips 25000.00		6 Medicare tax withheld 363.00	
			7 Social security tips		8 Allocated tips	
d Control number			9		10 Dependent care benefits	
e Employee's first name and initial Jerry Q.		Last name Public	Suff.	11 Nonqualified plans		12a See instructions for box 12 D 3000.00
f Employee's address and ZIP code P.O. Box 000 Anytown, USA 12345			13 Statutory employee <input type="checkbox"/> Retirement plan <input checked="" type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b	
			14 Other 1250.00		12c	
					12d	
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form **W-2** Wage and Tax Statement

2016

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Distributions

Reporting of distributions from these plans must be made on [Form 1099-R](#), *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, rather than Form W-2. For each year the employee receives a payment from the pension plan, the plan administrator or annuity provider is required to issue the employee a Form 1099-R no later than January 31 of the following year.

Loans to employees from a plan may be considered distributions and taxable.

Note: On occasion, the annuity provider may send withholding from pension distributions to the plan sponsor or employer. In these cases, the plan sponsor must file Form 945, Annual Return of Withheld Federal Income Tax, to report the withheld amounts.

Indian Tribes and 403(b) Plans

Indian tribes and wholly owned tribal entities (with the exception of tribally owned public schools and qualified 501(c)(3) organizations) do not currently qualify to establish a Code Section 403(b) plan for their employees. Contributions to a 403(b) plan are not allowable and are not excludable from gross income by the employees.

Tribes that entered into a contract for a 403(b) plan prior to January 1, 1995, are allowed to continue the plan and make current contributions for the employees who were participating before January 1, 1995, as if they were a 501(c)(3) organization. Current employee contributions are excludable from the employee's gross income as authorized in Code Section 403(b)(1).

If the tribe entered into a contract for a 403(b) plan after December 31, 1994, the plan is not qualified under the Code and the tribe should refer to the [IRS Voluntary Correction Program](#), which explains acceptable methods to voluntarily correct the situation. If the tribe ceases contributions, this program explains how the tribe may receive a letter giving them 403(b) status for prior years. There is a fee to participate in the program.

Form 5500

Most pension plans covered by ERISA are required to file a Form 5500, *Annual Return/Report of Employee Benefit Plan*. An exception to this requirement is a "governmental plan."

Code Section 414(d) provides that a "governmental plan" includes a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

Certain plans of Indian tribal governments (ITG) are also governmental plans under 414(d). Specifically, section 906(a)(1) of the Pension Protection Act of 2006 (PPA '06) amended Section 414(d), effective August 17, 2006, to provide that the term 'governmental plan' includes a plan that is established and maintained by an Indian tribal government (as defined in Section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with Section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).

Notice 2006-89 provides that the IRS and Treasury anticipate issuing guidance on Section 414(d) and that, until that guidance is issued, an ITG plan will be treated as satisfying the requirements to be a governmental plan under Section 414(d) if it complies with those requirements based on

a reasonable and good faith interpretation of section 906(a)(1) of PPA '06. Section III.B. of the notice provides certain approaches that, if taken by September 30, 2007, permit separate plans to be established for commercial ITG employees and for other ITG employees who perform essential governmental functions (governmental ITG employees) under the reasonable and good faith compliance standard. Section III.E. indicated that the relief provided in Section III applied pending the issuance of further guidance relating to Section 414(d), including the amendment made by PPA section 906(a)(1). The notice also invited comments from the public on whether additional transition issues need to be addressed.

Since the issuance of Notice 2006-89, the IRS and Treasury have continued to consult with Indian tribal government representatives. Based on those consultations and the comments received in response to Notice 2006-89, and until future guidance is issued, the transition relief provided under Notice 2006-89 has been revised so that the date "September 30, 2007" in Section III.B. of Notice 2006-89 was replaced with "the date that is six months after guidance is issued under §414(d) of the Code, as amended by section 906 of the Pension Protection Act of 2006, on the determination of whether a retirement plan maintained by an ITG is a governmental plan with the meaning of §414 (d)."

This extension is conditioned on the plans involved not being amended, for periods before the extended date, to reduce benefits unless the reduction:

- 1) does not vary based upon whether the participant is a governmental ITG employee or a commercial ITG employee, or
- 2) is made to the plan for commercial ITG employees and is the minimum reduction necessary to satisfy the requirements of the Code.

If a reduction occurs that does not meet either of these conditions, the extension provided under this notice ends on the date the reduction goes into effect.

References

- **Publication 15**, *(Circular E), Employer's Tax Guide*
- **Publication 15-A**, *Employer's Supplemental Tax Guide*
- **Publication 505**, *Tax Withholding and Estimated Tax*
- **Publication 560**, *Retirement Plans for Small Business*
- **Publication 571**, *Tax-Sheltered Annuity Plans (403(b) Plans)*
- **Instructions** for Forms W-2 and W-3
- **Announcement 2001-93**, *Reporting Elective Deferral Catch-up Contributions on the 2002 Form W-2*
- **Form 5500**, *Annual Return/Report of Employee Benefit Plan*

Chapter 8

Cafeteria Plans

Section 125 of the Internal Revenue Code makes it possible for employers to offer their employees a choice between cash and a variety of nontaxable benefits.

A cafeteria plan is a written benefit plan maintained by an employer for the benefit of its employees. It provides participants an opportunity to receive certain benefits on a pretax basis. The plan must allow employees to choose between two or more benefits consisting of cash (or a taxable benefit which is treated as cash) and certain “qualified benefits.”

The written plan must include:

- a specific description of each benefit available under the plan and the period of coverage
- the rules governing which employees are eligible to participate in the plan
- the procedures for making elections under the plan, including when elections may be made, the rules governing irrevocability of elections and the periods for which elections are effective
- the manner in which employer contributions may be made, such as by salary reduction agreement between the employer and employee, by nonelective employer contributions, or by both
- the maximum amount of employer contributions available to any participant
- the plan year

Examples of qualified benefits of a cafeteria plan are:

- accident and health benefits (but not Archer medical savings accounts or long-term care insurance)
- adoption assistance
- dependent care assistance
- group-term life insurance coverage
- health savings accounts, including distributions to pay long-term care services

Filing Requirements

Contributions to a cafeteria plan are usually made under salary reduction agreements between the employer and the employee in which the employee agrees to contribute a portion of his or her salary on a pretax basis to pay for the qualified benefits. Salary reduction contributions are not actually or constructively received by the employee. Therefore, those contributions are not considered wages for federal income tax purposes. In addition, those sums generally are not subject to FICA and FUTA. Employers may report the employee’s nontaxable cafeteria plan benefits on the Form W-2, in box 14.

If you maintain a cafeteria plan, you must report on Form 5500 information about the plan each year by the last day of the 7th month after the plan year ends.

References

- **Publication 15**, *(Circular E), Employer’s Tax Guide*
- **Publication 15-A**, *Employer’s Supplemental Tax Guide*
- **Publication 15-B**, *Employer’s Guide to Fringe Benefits*
- **Form 5500**, *Annual Return/Report of Employee Benefit Plan*
- **Publication 502**, *Medical and Dental Expenses*
- **Publication 503**, *Child and Dependent Care Expenses*
- **Form 8839**, *Qualified Adoption Expenses (attachment to Form 1040)*

Chapter 9

Scholarships & Educational Assistance

Educational Assistance Programs

Section 127 of the Internal Revenue Code addresses educational assistance programs and whether this assistance should be included in income. An educational assistance program must be a written plan that benefits employees. The plan may not discriminate in favor of highly compensated employees.

Gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee. The income exclusion from employee gross income is limited to \$5,250 per employee in educational assistance during a calendar year. The excludable amount is not subject to income tax withholding or other employment taxes. The education need not be job-related.

For purposes of Code Section 127, the term “educational assistance” means:

- The payment, by an employer, of expenses incurred by or for an employee for the employee’s education (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), but 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.

If you don’t have an educational assistance plan or you provide more than \$5,250 to an employee in annual education assistance, the payment is taxable unless it qualifies as a “working condition” fringe benefit. A working condition fringe benefit is a tax-free benefit of property or service provided by an employer to an employee that, if the employee had paid for it, the employee could have deducted as an unreimbursed employee business expense on Form 1040. The exclusion is generally available for any form of educational instruction or training that improves or develops the job-related capabilities of an employee.

Scholarships

A scholarship or fellowship grant is any amount paid or allowed to, or for the benefit of, an individual to aid the individual in the pursuit of study or research. A scholarship may, for example, be in the form of a reduction owed by the recipient to an educational organization for tuition, room and board, or any other fee.

Code Section 117 provides an exclusion from income for certain scholarships made to an individual who is candidate for a degree. Code Section 170 defines an educational institution as an educational organization, which maintains a regular faculty, a curriculum and has a regularly enrolled body of students on site.

Nontaxable Benefits

Only “qualified scholarships” may be excluded from income. Where participants are degree candidates, these payments will ordinarily be excludable from the recipient’s gross income

to the extent of their qualified tuition and related expenses. The student may be either an undergraduate or graduate.

A qualified scholarship is defined as any amount expended for “qualified tuition and related expenses.” Qualified tuition and related expenses include:

- Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution
- Course-related expenses, such as fees, books, supplies and equipment that are required for the courses at the eligible educational institution. These items must be required of all students in the course of instruction

Qualified education expenses do not include the cost of:

- Room and board
- Incidental living expenses
- Travel
- Research
- Clerical help
- Equipment and other expenses that are not required for enrollment in or attendance at an eligible educational institution

This is true even if the fee must be paid to the institution as a condition of enrollment or attendance. Thus, scholarship receipts that exceed expenses for “qualified tuition and expenses” are not excludable from a recipient’s gross income (scholarship amounts used to pay these costs are taxable).

The scholarship may be tax free only if the student is a candidate for a degree at an educational institution. Thus, in the case of non-degree candidates, the entire amount of the scholarship is includable in gross income of the recipient regardless of its use.

Reporting Taxable Scholarship Benefits

Do not issue Form 1099-MISC to report scholarship or fellowship grants. A scholarship or fellowship grant represents payment for services when the grantor requires the recipient to perform services in return for granting of the scholarship or fellowship. A requirement that the recipient pursue studies, research or other activities primarily for the benefit of the grantor is treated as a requirement to perform services.

A scholarship or fellowship grant conditioned upon either past, present or future services by the recipient, or upon services that are subject to the direction or supervision of the grantor represents payment for services and is considered wages.

The grantor of this amount is subject to certain withholding and reporting requirements respecting wages, including withholding for income taxes and filing of Forms W-2. The application of Social Security and Medicare taxes depends on the nature of the employment and the status of the grantor.

Exceptions

You do not have to include in income the part of any scholarship or fellowship that represents payment for teaching, research or other services if you receive the amount under the:

- National Health Service Corps Scholarship Program, or
- Armed Forces Health Professions Scholarship Financial Assistance Program.

You must also be a candidate for degree at an eligible educational institution, and use part of the scholarship or fellowship to pay qualified education expenses.

You are not required to report other taxable scholarship or fellowship payments (to a degree or non-degree candidate) to the IRS on any form.

The recipient of these payments is responsible for determining whether the payment is, in whole or in part, includable in gross income for federal income tax purposes.

You may wish to advise scholarship recipients that the amount of their scholarship or fellowship stipends that exceeds their qualified tuition and related expenses, if any, is generally includible in gross income for federal income tax purposes.

References:

- **Publication 15**, (*Circular E*), *Employer's Tax Guide* (Section 15, Special Rules for Various Types of Services and Payments, for students)
- **Publication 15-A**, *Employer's Supplemental Tax Guide* (Section 5, Wages and Other Compensation, Scholarship and Fellowship Payments)
- **Publication 15-B**, *Employer's Guide to Fringe Benefits*, (Section 2, Fringe Benefit Exclusion Rules, Working Condition Benefits)
- **Publication 970**, *Tax Benefits for Education*
- **Instructions** for Forms W-2 and W-3

Chapter 10

Earned Income Tax Credit

The Earned Income Tax Credit (EITC) is a refundable tax credit for certain workers whose earned income is below a certain level. Because it is a “credit,” the EITC is subtracted from the amount of tax owed, if any, on the worker’s individual income tax return. As a refundable credit, any excess over the total tax is refunded to the individual. Even workers who have not filed a tax return in the previous year because their wages were below the minimum income level requirements to file may be able to get the credit – but only if they file a tax return. Therefore, you must notify each employee who worked for you at any time during the year, and from whom you did not withhold any income tax about EITC.

You will meet the notification requirements by giving the employee either [Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit \(EIC\)](#), your own written statement as long as it has the exact wording of Notice 797 or the official IRS Form W-2, *Wage and Tax Statement*, which contains a statement on the back of Copy B. You do not need to notify employees who claimed exemption from withholding on Form W-4, *Employee’s Withholding Allowance Certificate*.

The amount of the credit depends on a worker’s wages and family size.

To claim the EITC, a worker must file a tax return. But many of the workers who are eligible for the EITC do not ordinarily file tax returns because their incomes are too low to trigger any federal tax liability. These workers may have had little or no exposure to the federal tax forms that explain what the EITC is and how to claim it.

The [IRS website](#) provides extensive resources on the EITC for individuals, employers and tax professionals.

Advance Payments of EITC Eliminated

Legislation signed by the President on August 10, 2010, repealed the Advanced Earned Income Tax Credit. Recipients will not be able to claim Advance EITC after **December 31, 2010**.

References

- [Publication 15](#), *(Circular E), Employer’s Tax Guide*
- [Publication 15-A](#), *Employer’s Supplemental Tax Guide*
- [Notice 797](#), *Possible Federal Tax Refund Due to the Earned Income Credit (EIC)*

Chapter 11

Employment Taxes

Employers must deposit and report employment taxes with the Internal Revenue Service.

Employment taxes are:

- amounts you should generally withhold from your employees' wages for income, Social Security and Medicare taxes, and
- matching amounts of Social Security and Medicare tax you pay on behalf of your employees.

Employer Identification Number

An Employer Identification Number (EIN) is a nine-digit number that IRS assigns in the format XX-XXXXXXX. It is used to identify the tax accounts of employers and certain other entities that have no employees. The IRS uses the number to identify taxpayers that are required to file various tax returns. EINs are used by employers, sole proprietors, corporations, partnerships, nonprofit associations, trusts, estates of decedents, government agencies, certain individuals and other business entities. Use your EIN on all of the items that you send to the IRS and the Social Security Administration (SSA).

If the employer does not already have an EIN, it will need to get one if the employer:

- pays wages to employees;
- is required to withhold taxes for non-wage payments;
- operates as a corporation, partnership; or
- files any of these tax returns:
 - employment;
 - excise;
 - fiduciary; or
 - alcohol, tobacco and firearms.

If an EIN has not already been applied for and an EIN is required, an EIN can be obtained by applying:

- online,
- by fax, or
- by mail.

Apply Online

The **online EIN application** is the preferred method for taxpayers to apply for and obtain an EIN. Once the application is completed, the information is validated during the online session and an EIN is issued immediately. The online application process is available for all entities whose principal business, office or agency, or legal residence (in the case of an individual), is located in the United States or U.S. Territories. The principal officer, general partner, grantor, owner, trustor, etc. must have a valid Taxpayer Identification Number (Social Security Number, Employer Identification Number, or Individual Taxpayer Identification Number) to use the online application.

Note: Taxpayers who apply for an EIN online have the option to view, print and save their EIN assignment notice at the end of the session.

Apply by Fax

Taxpayers can fax the completed **Form SS-4**, *Application for Employer Identification Number*, to the appropriate fax number (see **Instructions** for Form SS-4, Where to File or Fax) after ensuring

that the Form SS-4 contains all the required information. If it is determined that the entity needs a new EIN, one will be assigned using the appropriate procedures for the entity type. If the taxpayer's fax number is provided, a fax will be sent back with the EIN within four business days.

Apply by Mail

The processing time frame for an EIN application received by mail is four weeks. Ensure that the Form SS-4 contains all the required information. If it is determined that the entity needs a new EIN, one will be assigned using the appropriate procedures for the entity type and mailed to the taxpayer. Find where to mail Form SS-4 in the Instructions for Form SS-4.

Other Important Information

Daily Limitation of an EIN

Effective May 21, 2012, to ensure fair and equitable treatment for all taxpayers, the IRS will limit EIN issuance to one per **responsible party** per day. This limitation applies to all requests for EINs whether online or by fax or mail.

Form SS-4

When completing Form SS-4 Indian tribal governments should select the **"Indian tribal governments/enterprises"** box on Line 9a, Type of entity. Designating this box will let IRS know the entity's status as a federally recognized Indian tribal government. This will reduce errors and facilitate processing of tax returns by routing them to specially trained employees. It allows IRS to code the returns so any questions will be directed to the IRS Indian Tribal Governments division. Because it takes several weeks to receive an EIN after the Form SS-4 has been filed, apply for the EIN well before tax returns are due. An EIN may be obtained sooner by using the online EIN application process or by fax.

Note: Use your EIN on all items you send to the IRS or SSA.

Federal Employment Taxes

This section introduces federal employment taxes. It briefly explains your responsibilities as an employer to withhold and pay these taxes. Employment taxes represent the income tax and Social Security and Medicare (FICA) taxes withheld from the wages of an employee plus the employer's share of Social Security taxes and federal unemployment (FUTA) taxes. The withheld (employee's) portion of employment taxes is referred to as "trust fund" taxes. FUTA will be addressed later in this guide.

If the tribe is required to withhold income or Social Security and Medicare taxes, a return reporting the amounts withheld must be filed. **Form 941**, *Employer's Quarterly Federal Tax Return*, is used for this purpose. However, other forms are used under certain circumstances.

- **Form 943**, *Employer's Annual Federal Tax Return for Agricultural Employees*, is used for farms operated for a profit, you paid wages to one or more farm workers and the wages were subject to Social Security and Medicare taxes or federal income tax withholding.
- **Form 944**, *Employer's Annual Federal Tax Return*, is used for employers whose liability for Social Security, Medicare and withheld federal income taxes for the calendar year is \$1,000 or less.
- **Form 945**, *Annual Return of Withheld Federal Income Tax*, is used to report income tax withheld from non payroll payments, such as pensions, IRAs, gambling winnings, Indian gaming profits and backup withholdings.

Alternative Signature Method (Revenue Procedure 2005-39).

Effective with returns filed after June 2005, corporate officers or duly authorized agents may sign any of the following forms by facsimile (such as, by rubber stamp, mechanical device or computer software program):

- 1) the Form 94X series,
- 2) Form 1042,
- 3) Form 8027,
- 4) Form CT-1, or
- 5) any variant of the designated form (for example, Form 941-X).

Officers or agents using a facsimile means of signature are personally responsible for ensuring that their facsimile signature is affixed to returns. The person filing the form must retain a letter, signed by the officer or agent authorized to sign the return, declaring under penalties of perjury that the facsimile signature appearing on the form is the signature adopted by the officer or agent and that the facsimile signature was affixed to the form by the officer or agent or at the officer's or agent's direction. The letter must list each return by name and identifying number. The letter should not be sent to the IRS unless specifically requested. The letter must be maintained for at least four years after the later of the due date of the tax as the return relates, or the date the tax is paid.

For additional information, see:

■ **Revenue Procedure 2005-39**

■ **Publication 15**, (*Circular E*), *Employer's Tax Guide*, explains the rules and methods of withholding, paying, depositing and reporting federal income tax, Social Security and Medicare taxes and federal unemployment (FUTA) tax on wages, tips and fringe benefits. It also explains who is an employee, what are taxable wages and what are taxable tips.

■ **Publication 15-A**, *Employer's Supplemental Tax Guide*, provides a more detailed discussion of fringe benefits and information on how to report third-party sick pay.

Form I-9, Employment Eligibility Verification

Form I-9, *Employment Eligibility Verification*, is used for verifying the identity and employment authorization of individuals hired for employment in the United States. All U.S. employers must ensure proper completion of Form I-9 for each individual they hire for employment in the United States. This includes citizens and noncitizens. Both employees and employers (or authorized representatives of the employer) must complete the form. On the form, an employee must attest to his or her employment authorization. The employee must also present the employer with acceptable documents evidencing identity and employment authorization. The employer must examine the employment eligibility and identity documents an employee presents to determine whether the documents reasonably appear to be genuine and to relate to the employee and record the document information on the Form I-9. The list of acceptable documents is on the last page of the form. Employers must retain Form I-9 for a designated period and make it available for inspection by authorized government officers.

Do not file Form I-9 with the U.S. Citizenship and Immigration Services (USCIS) or U.S. Immigrations and Customs Enforcement (ICE). Employers must have a completed Form I-9 on file for each person on their payroll who is required to complete the form. Form I-9 must be retained and stored by the employer either for three years after the date of hire or for one year

after employment is terminated, whichever is later. The form must be available for inspection by authorized U.S. Government officials from the Department of Homeland Security, Department of Labor or Department of Justice.

For questions or more information on employer responsibilities, contact USCIS at 800-375-5283 or visit the [Department of Homeland Security website](#) (you may also download the Form I-9 from this link).

Form W-4, Employee's Withholding Allowance Certificate

When employees are hired, the employer must have the employee complete a Form W-4, *Employee's Withholding Allowance Certificate*; the employer must have a Form W-4 on file for each employee. The federal income taxes to be withheld is determined by the employee's gross wages and the information submitted by the employee on Form W-4.

This information includes:

- employee's marital status,
- number of withholding allowances claimed,
- employee's request to have additional tax withheld, or
- employee's claim to exemption from withholding.

Ask each new employee to submit a signed Form W-4 by his or her first day of work. This Form W-4 is effective with the first wage payment and will last until the employee files a new Form W-4.

If an employee fails to provide a properly completed Form W-4, you must withhold federal income taxes from the employee's wages as if the employee were single and claiming no withholding allowances. If not enough tax is withheld and the employee has not provided a valid Form W-4 or has claimed an exemption from withholding, the employee may be subject to penalties.

An employee may want to change the number of withholding allowances or withholding rate (marital status) on Form W-4 for any number of reasons, such as a marriage, a change in the number of dependents or a change in the amount of itemized deductions or tax credits anticipated for the tax year. If you receive a revised Form W-4 from an employee, you must put it into effect no later than the start of the first payroll period ending on or after the 30th day from the date you received the revised Form W-4. You must honor the request unless the situations described in the sections "Invalid Form W-4" and "Lock-in Letters" below apply.

Exemption from Withholding

If an employee qualifies, Form W-4 is also used by the employee to tell you not to deduct any federal income tax from the employee's wages. To qualify for this exempt status, the employee must have had no tax liability for the previous year and must expect to have no tax liability for the current year. However, if the employee can be claimed as a dependent on a parent's or another person's tax return, additional limitations may apply (see the instructions for Form W-4). A Form W-4 claiming exemption from withholding is valid for only the calendar year in which it is filed with the employer. To continue to be exempt from withholding in the next year, an employee must give you a new Form W-4 claiming exempt status by February 15 of that year. If the employee does not give you a new Form W-4, withhold tax as if the employee is single, with no withholding allowances. However, if you have an earlier Form W-4 (not claiming exempt status)

for this employee that is valid, then withhold with the information provided on this valid Form W-4 until you receive a new one.

Note: Student status does not automatically exempt the employee from income tax withholding

Invalid Form W-4

Any unauthorized change or addition to Form W-4 makes it invalid. This includes taking out any language by which the employee certifies that the form is correct, material defacing of the form, or any writing on the form other than the entries requested. A Form W-4 is also invalid if, by the date an employee gives it to the employer, the employee indicates in any way that it is false. When you receive an invalid Form W-4, do not use it to determine federal income tax withholding. Tell the employee that it is invalid and ask for another one. If the employee does not provide a valid Form W-4, withhold taxes as if the employee is single and claiming no withholding allowances. However, if you have an earlier Form W-4 for this employee that is valid, then withhold with the information provided on the valid Form W-4 until you receive a new one.

Lock-in Letters

The IRS uses information reported on Forms W-2 to identify employees with withholding compliance problems. In some cases, where a serious under-withholding problem is found to exist for a particular employee, the IRS may issue a notice (commonly referred to as a “lock-in-letter”) to the employer specifying the withholding rate and maximum number of withholding allowances permitted for a specific employee for purposes of calculating the required withholding. The IRS will provide the employee with an opportunity to dispute the determination before the employer will adjust the withholding based on the lock-in letter.

The IRS will send a letter to the employee explaining that the IRS will require you to start withholding additional income tax unless the employee contacts the IRS to explain why the employee should not have withholding increased. A toll-free number and address for the unit handling this program will be provided in the letter. As an additional safeguard, you will also receive a notice to provide to the employee.

After the lock-in letter takes effect, you must disregard any Form W-4 that results in less tax withheld, until the IRS notifies you otherwise. However, you must honor any Form W-4 that results in more income tax withheld than at the withholding rate and withholding allowances specified in the lock-in letter. Employers who use electronic Form W-4 systems must make sure the employee cannot override the lock-in letter to decrease withholding via an electronic Form W-4 system. Lock-in letter provisions also apply to employees rehired within 12 months from the date of the notice.

After the lock-in letter takes effect, if the employee wants to claim complete exemption from withholding or claim a withholding rate, withholding allowances or an additional amount that results in less income tax withheld than the lock-in letter, the employee must contact the IRS. A toll-free number and address for the unit handling this program is provided in the lock-in letter.

Recordkeeping Requirements

After the employee completes and signs the Form W-4, you must keep it in your records for at least 4 years (See [Publication 15](#)). This form serves as verification that you are withholding federal income tax according to the employee’s instructions and needs to be available for inspection should the IRS request it. Form W-4 is still subject to review. You may be directed

(in a written notice or in future published guidance) to send certain Forms W-4 to the IRS. You must be able to supply a hardcopy of an electronic Form W-4. Generally, Forms W-4 are for your records. They need not be sent to IRS. For more information on withholding, see [Publication 505, Tax Withholding and Estimated Tax](#).

Federal Income Tax

The wages paid to employees generally are subject to income tax withholding if their wages for any payroll period are more than the dollar amount of their withholding allowances for that period. The amount to be included is figured separately for each payroll period. Wages include all pay the employer gives an employee for services performed. The pay may be in cash or in other forms. It includes salaries, vacation allowances, bonuses, commissions and fringe benefits not excluded by law. It does not matter how payments are measured or paid. Wages paid in any form other than money (such as goods, lodging and meals) are measured by the fair market value. See [Publication 15](#) for more information about income tax withholding.

The income tax to be withheld is figured on gross wages before any deductions are made for Social Security and Medicare taxes. You may figure the withholding by different methods, the most common of which are the percentage method and the wage bracket tables method. Publication 15 contains the income tax withholding tables and instructions for using both of these withholding methods, and it gives more information on reporting and withholding requirements on wages and tip income.

Social Security and Medicare Taxes

Under the Federal Insurance Contributions Act (FICA), employers must withhold Social Security and Medicare taxes from wages that employees receive each payroll period.

Generally, meals, lodging, clothing, services and other payments in-kind are subject to Social Security and Medicare taxes, as are wages paid in cash. However, meals are not taxable wages if furnished for the employer's convenience and on the employer's premises. Lodging is not taxable if furnished for the employer's convenience, on the employer's premises and as a condition of employment.

The employer must withhold and deposit the employee's part of the taxes and pay a matching amount. The Social Security tax is withheld from the employee's gross wages until the employee's cumulative wages for the year reach the wage base limit. Any wages above the wage base limit are not subject to Social Security withholding. However, there is no wage base limit for Medicare tax; **all covered wages are subject to Medicare tax.**

The United States has Social Security agreements with many countries that eliminate dual taxation and coverage. Compensation subject to Social Security and Medicare taxes may be exempt under one of these agreements. More information and a list of agreement countries can be obtained from the [Social Security Administration](#) website.

Social Security and Medicare Tax for 2017

For 2017, the employee tax rate for Social Security is 6.2 percent. The employer tax rate for Social Security remains unchanged at 6.2 percent. The 2017 Social Security wage base limit is \$127,200. For 2017, the Medicare tax rate is 1.45 percent each for employers and employees, unchanged from 2016. There is no wage base limit for Medicare tax.

Additional Medicare Tax

In addition to withholding Medicare tax at 1.45 percent, you must withhold a 0.9 percent Additional Medicare tax from wages paid to an employee in excess of \$200,000 in a calendar year. You are required to begin withholding the Additional Medicare tax in the pay period in which you paid wages in excess of \$200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare tax is only imposed on the employee. There is no employer share of Additional Medicare tax. All wages that are subject to Medicare tax are subject to Additional Medicare tax withholding if paid in excess of the \$200,000 withholding threshold.

For the most current information on the Social Security, Medicare and Additional Medicare tax rates, see [Publication 15](#), “What’s New” section.

How and When to Deposit Taxes

In general, you must deposit income tax withheld and both the employer and employee Social Security and Medicare taxes. First, you must determine which deposit schedule to use. There are two deposit schedules – **monthly or semiweekly** – for determining when you deposit Social Security, Medicare and withheld income taxes. These schedules tell you when a deposit is due after a tax liability arises (for example, when you have a payday).

Important Note:

Remember that Form 941 is a quarterly return, but deposits may be required on a monthly or semiweekly schedule. [Publication 509](#), *Tax Calendars*, assists employers in monitoring due dates of deposits. Publication 509 has deposit due date schedules for both monthly and semiweekly depositors. The calendars in this publication also include due dates for filing returns, providing information returns to employees, and other important dates you need to know.

Lookback Period

The deposit schedule for a calendar year is determined from the total taxes reported on your Form 941 (line 11) in a four-quarter lookback period. The lookback period for Form 941 filers begins July 1 and ends June 30. See [Publication 15](#), “Depositing Taxes” section for the table that explains the lookback period for the current calendar year. If you reported \$50,000 or less in taxes for the lookback period, then you are a monthly schedule depositor; if you reported more than \$50,000, then you are a semiweekly schedule depositor.

Monthly Deposit Schedule

Under the monthly deposit schedule, deposit Form 941 taxes on payments made during a month by the 15th day of the following month.

Note: If this is a new tribal entity, during the first calendar year the tax liability for each quarter in the lookback period is considered to be zero. Therefore, this entity is considered a monthly schedule depositor for the first calendar year of the business unless the \$100,000 Next-Day Deposit rule (discussed later) applies.

Semiweekly Deposit Schedule

The employer is a semiweekly schedule depositor for a calendar year if the total taxes on Form 941 during the lookback period was more than \$50,000. If the payday falls on Wednesday,

Thursday or Friday, you must deposit the Form 941 taxes no later than the following Wednesday. If the payday falls on Saturday, Sunday, Monday or Tuesday, deposit by Friday.

Exhibit 11.1

Semiweekly Deposit Schedule

If the payday falls on a...	Then deposit taxes by the following...
Wednesday, Thursday or Friday	Wednesday
Saturday, Sunday, Monday or Tuesday	Friday

Note: Semiweekly schedule depositors must complete [Schedule B](#) (Form 941), *Report of Tax Liability for Semiweekly Schedule Depositors*, and submit it with Form 941.

\$100,000 Next-Day Deposit Rule

If the employer accumulates a tax liability of \$100,000 or more on any day during a deposit period, then you must deposit the tax by the next banking day, regardless of whether you are a monthly or semiweekly schedule depositor. The term deposit period refers to the period during which tax liabilities are accumulated for each required deposit due date.

If you are a monthly schedule depositor and accumulate a \$100,000 tax liability on any day, you become a semiweekly schedule depositor on the next day and remains so for of the remainder of the calendar year and for the following calendar year.

How to Deposit

You are required to deposit employment taxes by electronic funds transfer (EFT). Generally, an EFT is made using the Electronic Federal Tax Payment System (EFTPS). If you do not want to use EFTPS, then you can arrange for a tax professional, financial institution, payroll service or other trusted third party to make electronic deposits for you. EFTPS is a free service provided by the Department of Treasury. To get more information about EFTPS or to enroll in EFTPS, visit www.eftps.gov, or call 800-555-4477. Additional information about EFTPS is also available in [Publication 966](#), *Electronic Federal Tax Payment System – A Guide to Getting Started*, and in Publication 15, Chapter 11, “Depositing Taxes.”

For deposits made by EFTPS to be on time, you must submit the deposit by 8 p.m. Eastern Time the day before the date the deposit is due. If you use a third party to make a deposit for you, the third party may have different cutoff times.

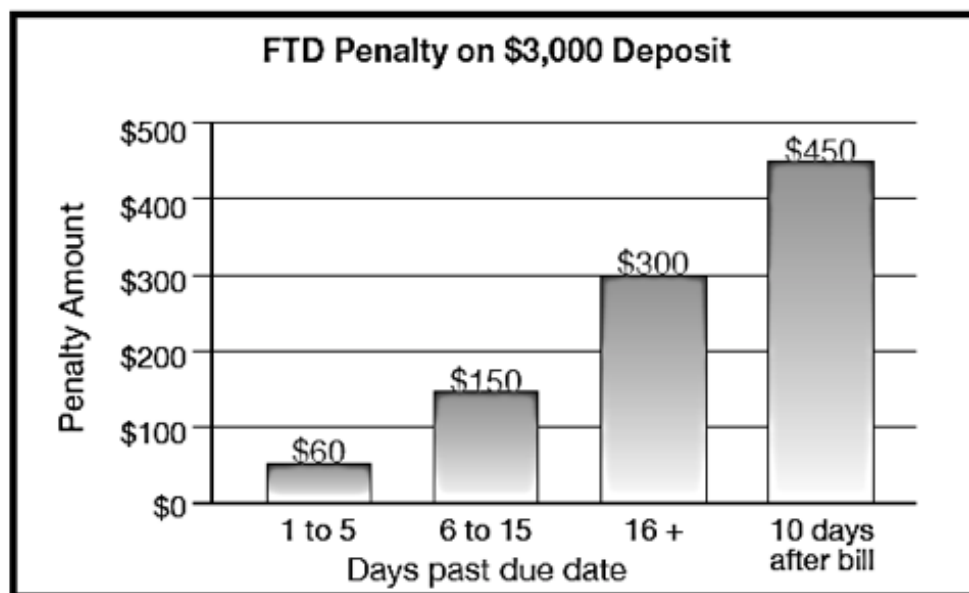
If you fail to submit a deposit transaction on EFTPS by 8 p.m. Eastern Time the day before the date a deposit is due, you can still make your deposit on time by using the Federal Tax Collection Service (FTCS). To use the same-day wire payment method, you will need to make arrangements with your financial institution ahead of time. Please check with the financial institution regarding availability, deadlines and costs. The financial institution may charge a fee for payments made this way. To learn more about the information needed to provide to the financial institution to make a same-day wire payment, visit www.irs.gov/e-pay and click on “Same-day wire.”

Deposit Penalties

Penalties may apply if you do not make required deposits on time, if deposits are for less than the required amount or if you do not make your deposits via EFT. The penalties do not apply if any failure to make a proper and timely deposit was due to reasonable cause and not to willful

neglect. The IRS may also waive penalties if you inadvertently fail to deposit in the first quarter required to deposit any employment tax, or in the first quarter during which the frequency of deposits changed, if the employment tax return was timely filed. Always ensure that tax deposits are timely. For amounts not properly or timely deposited, the penalty rates are:

- 2 percent - Deposits made 1 to 5 days late.
- 5 percent - Deposits made 6 to 15 days late.
- 10 percent - Deposits made 16 or more days late. Also applies to amounts paid within 10 days of the date of the first notice the IRS sent asking for the tax due.
- 10 percent - Amounts (that should have been deposited) paid directly to the IRS or paid with your tax return. See [Publication 15](#) for more exceptions.
- 15 percent - Amounts still unpaid more than 10 days after the date of the first notice the IRS sent asking for the tax due or the day on which you received notice and demand for immediate payment, whichever is earlier.



The following example illustrates how a tribe (a monthly tax depositor) would figure their deposit requirements and due dates:

Period Ending	Gross Wages	*FICA Withheld	*Employer's FICA	Income Tax Withheld	Total Taxes
1/31	\$4,800.00	\$367.20	\$367.20	\$400.00	\$1,134.40
2/28	\$4,750.00	\$363.38	\$363.38	\$406.00	\$1,132.76
3/31	\$4,200.00	\$321.30	\$321.30	\$340.00	\$982.60
Quarterly Totals	\$13,750.00	\$1,051.88	\$1,051.88	\$1,146.00	\$3,249.76

*Social Security and Medicare taxes are referred to as FICA

As a monthly depositor, the tribe must deposit each month's taxes by the 15th of the following month (\$1,134.40 by February 15; \$1,132.76 by March 15 and \$982.60 by April 15. If the total taxes for all three months of the quarter had been less than \$2,500, then the taxes could have been deposited or paid with the Form 941 to be filed by April 30.

If you do not pay the withheld employment taxes (trust fund taxes), the IRS may take additional collection action and may require you to:

- File and pay employment taxes monthly rather than quarterly
- Open a special bank account for depositing the withheld employment tax amounts, under penalty of prosecution

See [Publication 15](#) for more information.

Basic Federal Employment Tax Responsibilities

The following provides a brief summary of basic federal employment tax responsibilities. Because the individual circumstances for each tribe can vary greatly, its responsibilities for withholding, depositing and reporting employment taxes can differ.

New Employees:

- Verify work eligibility of employees via Form I-9, *Employment Eligibility Verification*, (available for download from [U.S. Citizenship and Immigration Services](#) or by calling 800-870-3676)
- Record employee's name and SSN from Social Security card
- Ask employees for Form W-4, *Employee's Withholding Allowance Certificate*

Each Payday:

- Withhold federal income tax based on each employee's Form W-4
- Withhold employee's share of Social Security and Medicare taxes

Deposit Requirements:

- You may pay the income, Social Security and Medicare taxes with Form 941 if the total tax liability for the quarter is less than \$2,500 and the taxes are paid in full with a timely filed return
- If the total tax liability for the quarter is \$2,500 or more, see [Publication 15](#), for deposit requirements

Quarterly (by April 30, July 31, October 31 and January 31):

- File Form 941, *Employer's Quarterly Federal Tax Return*

Annually:

For Employees:

- Before December 1 - remind employees to submit a new Form W-4 if they need to change their withholding
- Reconcile amounts on Forms 941 with Forms W-2 and W-3
- By January 31 - furnish each employee copies B, C and 2 of Form W-2
- By January 31 - beginning in 2017, file Copy A of Forms W-2 via Form W-3 with the SSA if filing paper forms or filing electronically
- By February 15 - ask for a new Form W-4 from employees claiming exemption from income tax withholding
- File copy A of Forms W-2 via transmittal Form W-3 with the SSA by February 28 if filing paper forms or March 31 if filing electronically

For Independent Contractors:

- By January 31 - furnish each recipient a Form 1099 (such as Form 1099-MISC). Form W-9 may be used to secure the vendor's taxpayer identification number (SSN or EIN).
- By January 31 - file Form 945 for any nonpayroll income tax withholding, such as backup withholding. See the [Instructions](#) for Form 945 for details on depositing nonpayroll income tax withholding.

- By January 31 - beginning in 2017, file Copy A of Forms 1099-MISC reporting non-employee compensation in box 7 via transmittal Form 1096 with the IRS if filing paper forms or filing electronically.
- File copy A of Forms 1099 via transmittal Form 1096 with the IRS by February 28 if filing paper forms or March 31 if filing electronically.

References:

- **IRS Tax Calendar for Businesses and Self-Employed**
- **Publication 15**, *(Circular E), Employer's Tax Guide*
- **Publication 15-A**, *Employer's Supplemental Tax Guide*
- **Publication 505**, *Tax Withholding and Estimated Tax*
- **Publication 509**, *Tax Calendars*
- **Publication 515**, *Withholding of Tax on Nonresident Aliens and Foreign Entities*
- **Publication 519**, *U.S. Tax Guide for Aliens*
- **Form W-4**, *Employee's Withholding Allowance Certificate, Instructions*
- **Publication 966**, *Electronic Federal Tax Payment System*
- **Form I-9**, *Employment Eligibility Verification*
- **Publication 1635**, *Understanding Your Employer Identification Number*
- **Form SS-4**, *Application for Employer Identification Number*

Chapter 12

Preparation of Payroll Checks

Payroll Files

In Chapter 11, Form W-4, *Employee's Withholding Allowance Certificate*, and Form I-9, *Employment Eligibility Verification*, are discussed. These are forms that employees may have on file with your payroll department. It is important to maintain separate files for each employee with the employee's completed and signed payroll forms.

Payroll Records

Other employment tax records maintained in your payroll records are discussed in [Publication 15](#). Payroll records should be retained for a minimum of four years. Those records include:

- notification of assignment of employer identification number (EIN) or other record of your EIN
- amounts and dates of all wage, annuity and pension payments
- amounts of tips reported
- records of allocated tips
- fair market value of in-kind wages paid
- names, addresses, Social Security numbers and occupations of employees and recipients
- any employee copies of Form W-2 that were returned to you as undeliverable
- dates of employment for each employee
- periods for which employees and recipients were paid while absent due to sickness or injury and the amount and weekly rate of payments you or third-party payers made to them
- copies of employees' and recipients' income tax withholding allowance certificates (Forms W-4)
- dates and amounts of tax deposits made and acknowledgment numbers for deposits made using the Electronic Federal Tax Payment System (EFTPS)
- copies of returns filed and confirmation numbers
- records of fringe benefits provided, including substantiation
- Notice 797, *Possible Federal Refund Due to Earned Income Tax Credit*, or other proof of notification of Earned Income Tax Credit (EITC) eligibility
- Form I-9, *Employment Eligibility Verification*
- travel reimbursement plan for nonaccountable plans

Payroll Period

The payroll period is a span of time for which wages are paid. When you have a regular payroll period, withhold income tax for that time period even if your employee does not work the full period.

Each tribe or entity determines the dates on which it will pay its employees. Some entities have weekly paydays, some on the first and fifteenth of the month (semimonthly), some pay every other week (biweekly), some on a monthly basis and some at irregular intervals. Some entities have different classes of workers (for instance, factory and office) who are paid at different times. It is important to know the payroll period covered for each individual for each paycheck that will be issued. Knowing the proper payroll period is one element to ensure that Social Security, Medicare and federal income tax is withheld at the proper amounts from employee's wages. [Publication 15](#) has a detailed discussion of this topic.

Wages

Wages subject to federal employment taxes include all pay remitted to an employee for services performed. The pay may be in cash or in other forms. It includes salaries, vacation allowances, bonuses, commissions and fringe benefits. It does not matter how the employer determines or make the payments. [Publication 15-A](#) provides additional information on wages and other compensation, including:

- adoption assistance
- awards
- back pay
- below-market loans
- cafeteria plans
- deferred compensation
- educational assistance
- group-term life insurance
- outplacement services
- retirement plans
- supplemental unemployment benefits

A common item that must be included as wages is employee business expense reimbursement that is under a **nonaccountable** plan. Accountable and nonaccountable plans are discussed in [Publication 463, Travel, Entertainment, Gift, and Car Expenses](#), and in [Chapter 5](#) of this guide.

Unusual situations may be encountered in determining gross wages paid to an employee. The general rule is all payments in cash, cash equivalents, goods and services are wages for purposes of withholding. [Publication 15-A](#) is a good reference for determining what constitutes wages.

Timekeeping

A manual or computerized timekeeping system is generally used to record the hours employees worked during any given pay period. Some type of record will be given to the payroll department as a voucher from which a paycheck will be generated. The timesheet or other voucher should be signed by the appropriate party, or parties, and retained for record keeping purposes.

Once the payroll department is assured of proper reporting of time, it should be determined if any miscellaneous items (as discussed above) should be included in the gross wage computation. Gross wages are the dollar value of the total wages for the pay period. Gross wages are the starting point for computing withholdings and net payroll.

Part-Time Workers

For income tax withholding and Social Security, Medicare and federal unemployment tax (FUTA) purposes, there are no differences between full-time employees, part-time employees and employees hired for short periods. It does not matter whether the worker has another job or has the maximum amount of Social Security tax withheld by another employer. Income tax withholding may be figured the same way as for full-time workers, or it may be figured by the part-year employment method explained in [Publication 15-A](#).

Review Payroll Records

After gross wages are computed for each employee, inspect the employee's file to determine federal and state (if applicable) income tax withholding allowances. You may be required to withhold other items such as child support payments, wage garnishments by court order, federal income tax wage levies, health insurance, charitable payroll deductions and other items. The payroll department should retain copies of all items that support a deduction to an employee's wages for four years.

Federal Income Tax Withholding

To know how much federal income tax to withhold from employees' wages, refer to the Form W-4, *Employee's Withholding Allowance Certificate*, on file for each employee. If a new employee does not give you a completed Form W-4, withhold tax as if the employee is single, with no withholding allowances.

Generally, Form W-4 remains in effect until the employee submits a new one. If an employee gives you a Form W-4 that replaces an existing Form W-4, begin withholding no later than the start of the first payroll period ending on or after the 30th day from the date you received the replacement Form W-4.

Form W-4 claiming exemption for the previous calendar year expires on February 15. A new Form W-4 is required annually if the employee claimed exemption from withholding. Begin withholding for any employee who previously claimed exemption from withholding but hasn't given you a new Form W-4 by February 16 of the current year. Withhold based on the last valid Form W-4 you have for the employee that doesn't claim exemption from withholding or, if one doesn't exist, as if the employee is single with zero withholding allowances.

The amount of income tax withholding must be based on marital status and withholding allowances. Employees may not base their withholding amounts on a fixed dollar amount or percentage. However, the employee may specify a dollar amount to be withheld in addition to the amount of withholding based on filing status and withholding allowances claimed on Form W-4.

Employees may claim fewer withholding allowances than they are entitled to claim. They may wish to claim fewer allowances to ensure that they have enough withholding or to offset other sources of taxable income that are not subject to adequate withholding.

An employee may claim exemption from income tax withholding because the employee had no income tax liability last year and expects none this year. The Form W-4 instructions state that you cannot claim exemption from withholding if your income exceeds a certain dollar threshold and includes more than a certain dollar amount of unearned income (for example, interest and dividends) and another person can claim you as a dependent on their tax return. See the [Form W-4 instructions](#) for these dollar amounts and more information. The wages are still subject to Social Security and Medicare taxes.

In general, if wages are paid to nonresident aliens, then income tax (unless exempted by regulations), Social Security and Medicare taxes must be withheld just as is completed for a U.S. citizen. The general rules for nonresident aliens are found in [Publication 515](#), *Withholding of Tax on Nonresident Aliens and Foreign Entities*, and [Publication 519](#), *U.S. Tax Guide for Aliens*.

Social Security and Medicare Taxes

The Federal Insurance Contributions Act (FICA) provides for a federal system of old age, survivors, disability and hospital insurance. The old age, survivors and disability insurance part is financed by the Social Security tax. The hospital insurance part is financed by the Medicare tax. Each of these taxes is reported separately.

Social Security and Medicare taxes are levied on both the employer and employees. The employer must withhold and deposit the employee's part of the taxes and must pay a matching amount. Generally, employee wages are subject to Social Security and Medicare taxes regardless of the employee's age or whether he or she is receiving Social Security benefits.

Other Payroll Deductions

Before arriving at the employee's net paycheck, the individual's payroll folder must be reviewed to determine if other amounts are required to be withheld. Many states require the employer to withhold state income taxes. Income earned by members of an Indian tribe who live and work on their reservation is generally not subject to state income tax. Contact your state tax authority for information and instructions on their requirements.

Miscellaneous payroll deductions may include insurance, charitable items, union dues and others. In each case, you should have an authorization signed by the employee to allow you to make deductions from their wages and remit to the various organizations. Each signed authorization should have instructions on when and where to remit payments. It's important to be able to account for each deduction from an employee's paycheck.

There may be involuntary deductions from an employee's paycheck such as a court ordered judgment, a federal or state tax levy or court enforced child support payments. In these cases, federal or state law requires the employer to make the deductions and remit them to the appropriate agency, even if the employee disagrees with the process. Again, the employer is required to keep all payroll records for at least four years.

Payroll Taxes

After you have computed payroll, you must calculate your payroll tax liability.

Federal income, Social Security and Medicare taxes are withheld from your employees' pay. Taxes withheld from employees' pay make up what is known as "trust fund" taxes. They are called trust fund taxes because you are entrusted to deposit the taxes withheld from your employees' wages with a federal depository. See [Chapter 19](#) for more specific information on trust fund penalties.

NOTE: As the employer, you are entrusted with the responsibility of remitting other payroll deductions withheld from employees' wages to the proper payee.

Net Paycheck

Once you ensure that you have computed the payroll correctly, then you're ready to issue payroll checks. You may want to use a computerized or manual payroll system to monitor the process. Often, someone other than the payroll clerk is required to sign payroll checks as a matter of internal control.

Many computerized payroll systems automatically print a check stub with fields to list the gross wages and each of the items deducted, with columns for the current pay period and year-to-date totals for each category. If your system does not automatically track these items, then you may want to design a spreadsheet to do so. Employees need to be able to reconcile these items from time to time during the year to ensure that the proper amounts are being withheld.

Example 12.1

Sample Payroll Ledger Sheet for an Hourly Employee Paid Weekly For the Quarter Ending March 31

Name	SSN	Address	W-4	W-5
John Doe	123-45-6789	111 Elm St. Anytown, USA	Married, 3 exemptions	None

Date	Hrs.	Hourly Rate	Gross Pay	Social Security	Medicare	Federal WH	State WH	Insurance	Other	Net Pay
January										
Week 1	40	\$10.00	\$400.00	\$24.80	\$5.80	\$7.00	\$4.00	\$25.00	\$0.00	\$333.40
Week 2	38	\$10.00	\$380.00	\$23.56	\$5.51	\$5.00	\$4.00	\$25.00	\$0.00	\$316.93
Week 3	40	\$10.00	\$400.00	\$24.80	\$5.80	\$7.00	\$4.00	\$25.00	\$0.00	\$333.40
Week 4	40	\$10.00	\$400.00	\$24.80	\$5.80	\$7.00	\$4.00	\$25.00	\$0.00	\$333.40
February										
Week 5	38	\$10.00	\$380.00	\$23.56	\$5.51	\$5.00	\$4.00	\$25.00	\$0.00	\$316.93
Week 6	38	\$10.00	\$380.00	\$23.56	\$5.51	\$5.00	\$4.00	\$25.00	\$0.00	\$316.93
Week 7	40	\$10.00	\$400.00	\$24.80	\$5.80	\$7.00	\$4.00	\$25.00	\$0.00	\$333.40
Week 8	40	\$10.00	\$400.00	\$24.80	\$5.80	\$7.00	\$4.00	\$25.00	\$0.00	\$333.40
March										
Week 9	32	\$10.00	\$320.00	\$19.84	\$4.64	\$0.00	\$2.00	\$25.00	\$0.00	\$268.52
Week 10	31	\$10.00	\$310.00	\$19.22	\$4.50	\$0.00	\$0.00	\$25.00	\$0.00	\$261.28
Week 11	40	\$10.00	\$400.00	\$24.80	\$5.80	\$7.00	\$4.00	\$25.00	\$0.00	\$333.40
Vacation	40	\$10.00	\$400.00	\$24.80	\$5.80	\$7.00	\$4.00	\$25.00	\$0.00	\$333.40
Week 13	40	\$10.00	\$400.00	\$24.80	\$5.80	\$7.00	\$4.00	\$25.00	\$0.00	\$333.40
Total			\$4,970.00	\$308.14	\$72.07	\$71.00	\$46.00	\$325.00	\$0.00	\$4,147.79

Example 12.2

Sample Payroll Ledger Sheet for a Salaried Employee Paid Semi-Monthly

Name	SSN	Address	W-4	W-5
John Doe	000-65-4321	111 Elm St. Anytown, USA	Married, 2 exemptions	None

Date	Semi-Monthly Salary	Gross Pay	Social Security	Medicare	Federal WH	State WH	Insurance	Other	Net Pay
Jan 15	\$900.00	\$900.00	\$55.80	\$13.05	\$32.00	\$10.00	\$35.00	\$0.00	\$754.15
Jan 31	\$900.00	\$900.00	\$55.80	\$13.05	\$32.00	\$10.00	\$35.00	\$0.00	\$754.15
Feb 15	\$900.00	\$900.00	\$55.80	\$13.05	\$32.00	\$10.00	\$35.00	\$0.00	\$754.15
Feb 28	\$900.00	\$900.00	\$55.80	\$13.05	\$32.00	\$10.00	\$35.00	\$0.00	\$754.15
Mar 15	\$900.00	\$900.00	\$55.80	\$13.05	\$32.00	\$10.00	\$35.00	\$0.00	\$754.15
Mar 31	\$900.00	\$900.00	\$55.80	\$13.05	\$32.00	\$10.00	\$35.00	\$0.00	\$754.15
Total	\$5,400.00	\$5,400.00	\$334.80	\$78.30	\$192.00	\$60.00	\$210.00	\$0.00	\$4,524.90

References:

- **Publication 15**, (Circular E), Employer's Tax Guide
- **Publication 15-A**, Employer's Supplemental Tax Guide
- **Publication 515**, Withholding of Tax on Nonresident Aliens and Foreign Entities
- **Publication 519**, U.S. Tax Guide for Aliens
- **Instructions**, Form W-4

Chapter 13

Form 941, Employer's Quarterly Federal Tax Return

Employers who withhold income taxes from wages or who must pay Social Security or Medicare tax, use [Form 941](#) to report those taxes.

Due Dates for Filing Form 941

Form 941 is due by the last day of the month after each quarter ends. The return filing dates are:

Quarter	Ends	Due date
January, February, March	March 31	April 30*
April, May, June	June 30	July 31*
July, August, September	September 30	October 31*
October, November, December	December 31	January 31*
*If the due date for a return falls on a Saturday, Sunday or legal holiday, the due date is the next business day.		

If you paid the quarterly tax payments in full, you're allowed an additional 10 days to file the return. For example, your return for the quarter that ends June 30 would be due on August 10 instead of July 31.

Semiweekly schedule depositors, and monthly schedule depositors who accumulate \$100,000 or more on any day, must complete a [Schedule B \(Form 941\), Report of Tax Liability for Semiweekly Schedule Depositors](#), and attach it to Form 941. You do not need to complete a Schedule B if you accumulate less than \$2,500 in tax liability during the quarter and you pay in full with a timely filed return.

The IRS uses Schedule B to determine if you have timely deposited your employment and withholding tax liabilities. Unless Schedule B is properly completed and filed with your Form 941, the IRS may not be able to process your return correctly and deposit penalties could be applied.

Do not file more than one Form 941 per quarter and do not report more than one calendar quarter on a return.

Seasonal employers are not required to file for quarters when they regularly have no tax liability because they have paid no wages. To alert the IRS that you will not have to file a return for one or more quarters during the year, check the seasonal employer box above line 16 on Form 941 each time you file. See section 12 of [Publication 15](#) for more information.

If the tribe has an entity that ceases to do business or pay wages, a final return needs to be filed. The instructions on Form 941 give information on how to file the final return.

Annual Employment Tax Filing for Small Employers

Certain employers will need to file [Form 944, Employer's Annual Federal Tax Return](#), instead of Form 941. Form 944 must be filed by employers whose liability for Social Security, Medicare and withheld federal income taxes for the calendar year is \$1,000 or less. The IRS will directly notify employers who are required to file Form 944. If you believe you are eligible but are not notified, you can contact the IRS at 800-829-4933 to determine your eligibility. **Do not file Form 944 unless directed to do so by the IRS.**

How to Complete the Form 941

Your EIN must be shown on the Form 941. If you have not received notification of your EIN, write **"Applied For"** and the date you applied in the space provided for the EIN. Be sure to include your name and EIN on the top of page 2 on the Form 941; this is commonly missed when completing the Form 941.

Under "Report for this Quarter of 2016" at the top of Form 941, check the appropriate box of the quarter for which you are filing. Make sure the quarter checked is the same as shown on any attached Schedule B (Form 941).

Make entries on Form 941 as follows to enable accurate scanning and processing:

Use 10-point Courier font (if possible) for all entries if you are typing or using a computer to complete your form. Portable Document Format (PDF) forms on IRS.gov have fillable fields with acceptable font specifications.

- Do not enter dollar signs and decimal points. Commas are optional. Enter dollars to the left of the preprinted decimal point and cents to the right of it.
- Leave blank any data field (except lines 1, 2 and 10) with a value of zero.
- Enter negative amounts using a minus sign (if possible). Otherwise, use parentheses.
- Enter your name and EIN on all pages and attachments.
- Staple multiple sheets in the upper left corner when filing.

Where to Mail Forms 941 Without a Payment

Department of the Treasury
Internal Revenue Service
Ogden, UT 84201-0005

Regardless of where the tribal government is located, all Forms 941 that are not accompanied by a payment should be mailed to the Ogden address.

Payment with Return

You may make a payment with Form 941 instead of depositing it if your net tax liability during the quarter (line 10 of Form 941) is less than \$2,500 and you pay in full with a timely filed return. Use Form 941-V, Payment Voucher. See [Publication 15](#) for additional information and exceptions.

Where to Mail Forms 941 With a Payment and Form 941-V, Payment Voucher

Internal Revenue Service
P. O. Box 105083
Atlanta, GA 30348-5083

Regardless of where the tribal government is located, all Forms 941 that are accompanied by a payment should be mailed to the Atlanta address.

Note: Do not use the Form 941-V to make federal tax deposits.

Correcting Form 941

Corrections to a previously filed Form 941 must be made on [Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund](#). Form 941-X replaces Form 941c, *Supporting Statement to Correct Information*, and Form 843, *Claim for Refund and Request for Abatement*. Form 941-X is a stand-alone form corresponding to, and relates line-by-line

with, the employment tax return it is correcting. You will be able to file Form 941-X when an error is discovered, rather than having to wait to file it at the end of the quarter with the next employment tax return. You **must**:

- Correct the error using Form 941-X
- File a **separate** Form 941-X for each Form 941 to be corrected
- File Form 941-X separately. **Do not** file with the Form 941

Form 941 no longer provides adjustment lines (formally lines 7d through 7g) for correcting prior quarter errors. However, current period adjustments for fraction of cents, third-party sick pay, tips and group-term life insurance will continue to be reported on Form 941 lines 7 through 9.

Report the correction of underreported and overreported amounts for the **same** tax period on a single Form 941-X unless you are requesting a refund. If you are requesting a refund and are correcting **both** underreported and overreported amounts file one Form 941-X correcting the underreported amounts only and a second Form 941-X correcting the overreported amounts.

COBRA Health Insurance Continuation Premium Subsidy

The American Recovery and Reinvestment Act of 2009 (The Recovery Act) established an employer-provided health insurance continuation subsidy for workers who involuntarily lost their jobs between Sept. 1, 2008, and March 31, 2010. The COBRA premium assistance credit is not available for individuals who were involuntarily terminated after May 31, 2010. Therefore, only in rare circumstances, such as instances where COBRA eligibility was delayed as a result of employer-provided health insurance coverage following termination, will the credit be available.

NOTE: An employer can no longer claim the COBRA premium assistance payments as a credit on Forms 941, 943 or 944. Instead:

- For tax periods beginning after Dec. 31, 2013, an employer who files Form 941 must file Form 941-X to be reimbursed for the COBRA premium assistance payments that it has provided to assistance-eligible individuals.
- For tax periods beginning after Dec. 31, 2013, an employer who files Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*, must file Form 943-X, *Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund*, to be reimbursed for the COBRA premium assistance payments that it has provided to assistance eligible individuals.
- For tax periods beginning after Dec. 31, 2013, an employer who files Form 944 must file Form 944-X to be reimbursed for the COBRA premium assistance payments that it has provided to assistance eligible individuals.

View the latest [information about developments](#) related to Form 941 and its instructions, such as legislation enacted after it was published.

References

- [Publication 15](#), (Circular E), *Employer's Tax Guide*
- [Publication 15-A](#), *Employer's Supplemental Tax Guide*
- [Form 941](#), *Employer's Quarterly Federal Tax Return*, and [Instructions](#)
- [Schedule B](#) (Form 941), *Report of Tax Liability for Semiweekly Schedule Depositors*
- [Form 941-X](#), *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*, and [Instructions](#)
- [Form 944](#), *Employer's Annual Federal Tax Return*, and [Instructions](#)

EXHIBIT 13.1

Sample Form 941, Employer's Quarterly Federal Tax Return and related Form 941-X:

Form **941 for 2016: Employer's QUARTERLY Federal Tax Return** 950114
(Rev. January 2016) Department of the Treasury — Internal Revenue Service OMB No. 1545-0029

Employer identification number (EIN) -

Name (not your trade name)

Trade name (if any)

Address
Number Street Suite or room number City State ZIP code

Foreign country name Foreign province/county Foreign postal code

Report for this Quarter of 2016
(Check one.)

☐ 1: January, February, March
☒ 2: April, May, June
☐ 3: July, August, September
☐ 4: October, November, December

Instructions and prior year forms are available at www.irs.gov/form941.

Read the separate instructions before you complete Form 941. Type or print within the boxes.

Part 1: Answer these questions for this quarter.

1 Number of employees who received wages, tips, or other compensation for the pay period including: *Mar. 12* (Quarter 1), *June 12* (Quarter 2), *Sept. 12* (Quarter 3), or *Dec. 12* (Quarter 4) 1

2 Wages, tips, and other compensation 2

3 Federal income tax withheld from wages, tips, and other compensation 3

4 If no wages, tips, and other compensation are subject to social security or Medicare tax ☐ Check and go to line 6.

	Column 1		Column 2
5a Taxable social security wages . . .	<input type="text" value="1269293"/> <input type="text" value="19"/>	x .124 =	<input type="text" value="157392"/> <input type="text" value="36"/>
5b Taxable social security tips . . .	<input type="text"/>	x .124 =	<input type="text"/>
5c Taxable Medicare wages & tips. . .	<input type="text" value="1269293"/> <input type="text" value="19"/>	x .029 =	<input type="text" value="36809"/> <input type="text" value="50"/>
5d Taxable wages & tips subject to Additional Medicare Tax withholding <input type="text"/>		x .009 =	<input type="text"/>
5e Add Column 2 from lines 5a, 5b, 5c, and 5d . . .			<input type="text" value="194201"/> <input type="text" value="86"/>
5f Section 3121(q) Notice and Demand—Tax due on unreported tips (see instructions) . .			<input type="text"/>
6 Total taxes before adjustments. Add lines 3, 5e, and 5f . . .			<input type="text" value="369593"/> <input type="text" value="12"/>
7 Current quarter's adjustment for fractions of cents . . .			<input type="text"/>
8 Current quarter's adjustment for sick pay . . .			<input type="text"/>
9 Current quarter's adjustments for tips and group-term life insurance . . .			<input type="text"/>
10 Total taxes after adjustments. Combine lines 6 through 9 . . .			<input type="text" value="369593"/> <input type="text" value="12"/>
11 Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), 944-X, or 944-X (SP) filed in the current quarter . . .			<input type="text" value="369593"/> <input type="text" value="12"/>
12 Balance due. If line 10 is more than line 11, enter the difference and see instructions . . .			<input type="text"/>
13 Overpayment. If line 11 is more than line 10, enter the difference <input type="text"/>		Check one: <input type="checkbox"/> Apply to next return. <input type="checkbox"/> Send a refund.	

▶ You MUST complete both pages of Form 941 and SIGN it.

For Privacy Act and Paperwork Reduction Act Notice, see the back of the Payment Voucher.

Cat. No. 17001Z

Form **941** (Rev. 1-2016)

Next ▶

950214

Name (not your trade name)

ABC Tribe

Employer identification number (EIN)

89-1234567

Part 2: Tell us about your deposit schedule and tax liability for this quarter.

If you are unsure about whether you are a monthly schedule depositor or a semiweekly schedule depositor, see section 11 of Pub. 15.

14 Check one: ☐ Line 10 on this return is less than \$2,500 or line 10 on the return for the prior quarter was less than \$2,500, and you did not incur a \$100,000 next-day deposit obligation during the current quarter. If line 10 for the prior quarter was less than \$2,500 but line 10 on this return is \$100,000 or more, you must provide a record of your federal tax liability. If you are a monthly schedule depositor, complete the deposit schedule below; if you are a semiweekly schedule depositor, attach Schedule B (Form 941). Go to Part 3.

☐ **You were a monthly schedule depositor for the entire quarter.** Enter your tax liability for each month and total liability for the quarter, then go to Part 3.

Tax liability: Month 1

Month 2

Month 3

Total liability for quarter

Total must equal line 10.

☒ **You were a semiweekly schedule depositor for any part of this quarter.** Complete Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, and attach it to Form 941.

Part 3: Tell us about your business. If a question does NOT apply to your business, leave it blank.

15 If your business has closed or you stopped paying wages ☐ Check here, and enter the final date you paid wages / / .

16 If you are a seasonal employer and you do not have to file a return for every quarter of the year . . . ☐ Check here.

Part 4: May we speak with your third-party designee?

Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the instructions for details.

☐ Yes. Designee's name and phone number

Select a 5-digit Personal Identification Number (PIN) to use when talking to the IRS.

☐ No.

Part 5: Sign here. You MUST complete both pages of Form 941 and SIGN it.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign your
name here

S. Smith

Print your
name here

S. Smith

Print your
title here

Payroll Supervisor

Date 06 / 30 / 2016

Best daytime phone 555-555-5555

Paid Preparer Use Only

Check if you are self-employed . . . ☐

Preparer's name

PTIN

Preparer's signature

Date

/ /

Firm's name (or yours if self-employed)

EIN

Address

Phone

City

State

ZIP code

Schedule B (Form 941):

960311

Report of Tax Liability for Semiweekly Schedule Depositors

(Rev. January 2014)

Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

Employer identification number (EIN) 8 9 - 1 2 3 4 5 6 7Name (not your trade name) ABC TribeCalendar year 2 0 1 6 (Also check quarter)**Report for this Quarter...**

(Check one.)

- ☐ 1: January, February, March
- ☒ 2: April, May, June
- ☐ 3: July, August, September
- ☐ 4: October, November, December

Use this schedule to show your TAX LIABILITY for the quarter; DO NOT use it to show your deposits. When you file this form with Form 941 or Form 941-SS, DO NOT change your tax liability by adjustments reported on any Forms 941-X or 944-X. You must fill out this form and attach it to Form 941 or Form 941-SS if you are a semiweekly schedule depositor or became one because your accumulated tax liability on any day was \$100,000 or more. Write your daily tax liability on the numbered space that corresponds to the date wages were paid. See Section 11 in Pub. 15 (Circular E), Employer's Tax Guide, for details.

Month 1

1		9		17		25	
2		10		18		26	
3		11		19		27	
4		12		20		28	
5		13		21		29	
6		14		22		30	61,598. 86
7		15	61,598. 85	23		31	
8		16		24			

Tax liability for Month 1

123197. 71

Month 2

1		9		17		25	
2		10		18		26	
3		11		19		27	
4		12		20		28	
5		13		21		29	
6		14		22		30	61,598. 86
7		15	61,598. 85	23		31	
8		16		24			

Tax liability for Month 2

123197. 71

Month 3

1		9		17		25	
2		10		18		26	
3		11		19		27	
4		12		20		28	
5		13		21		29	
6		14		22		30	61598. 85
7		15	61598. 85	23		31	
8		16		24			

Tax liability for Month 3

123197. 70

Fill in your total liability for the quarter (Month 1 + Month 2 + Month 3) ►

Total must equal line 10 on Form 941 or Form 941-SS.**Total liability for the quarter**

369593. 12

For Paperwork Reduction Act Notice, see separate instructions.

IRS.gov/form941

Cat. No. 11967Q

Schedule B (Form 941) (Rev. 1-2014)

Form 941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund

(Rev. April 2015)

Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

Employer identification number (EIN)	8	9	-	1	2	3	4	5	6	7
Name (not your trade name)	ABC Tribe									
Trade name (if any)										
Address	P.O. Box 0									
	Number		Street				Suite or room number			
	Anytown				US		12345			
	City				State		ZIP code			
	Foreign country name			Foreign province/county			Foreign postal code			

Read the separate instructions before completing this form. Use this form to correct errors you made on Form 941 or 941-SS. Use a separate Form 941-X for each quarter that needs correction. Type or print within the boxes. You MUST complete all three pages. Do not attach this form to Form 941 or 941-SS.

Part 1: Select ONLY one process. See page 4 for additional guidance.

- ☒ 1. **Adjusted employment tax return.** Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you are correcting both underreported and overreported amounts on this form. The amount shown on line 20, if less than zero, may only be applied as a credit to your Form 941, Form 941-SS, or Form 944 for the tax period in which you are filing this form.
- ☐ 2. **Claim.** Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 20. Do not check this box if you are correcting ANY underreported amounts on this form.

Part 2: Complete the certifications.

- ☒ 3. I certify that I have filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.
- Note.** If you are correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5. If you are correcting overreported amounts, for purposes of the certifications on lines 4 and 5, Medicare tax does not include Additional Medicare Tax. Form 941-X cannot be used to correct overreported amounts of Additional Medicare Tax unless the amounts were not withheld from employee wages or an adjustment is being made for the current year.
4. If you checked line 1 because you are adjusting overreported amounts, check all that apply. You must check at least one box. I certify that:
- ☒ a. I repaid or reimbursed each affected employee for the overcollected federal income tax or Additional Medicare Tax for the current year and the overcollected social security tax and Medicare tax for current and prior years. For adjustments of employee social security tax and Medicare tax overcollected in prior years, I have a written statement from each affected employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. The adjustments of social security tax and Medicare tax are for the employer's share only. I could not find the affected employees or each affected employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, Medicare tax, or Additional Medicare Tax that I did not withhold from employee wages.
5. If you checked line 2 because you are claiming a refund or abatement of overreported employment taxes, check all that apply. You must check at least one box. I certify that:
- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security tax and Medicare tax. For claims of employee social security tax and Medicare tax overcollected in prior years, I have a written statement from each affected employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security tax and Medicare tax. For refunds of employee social security tax and Medicare tax overcollected in prior years, I also have a written statement from each affected employee stating that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I could not find the affected employees; or each affected employee did not give me a written consent to file a claim for the employee's share of social security tax and Medicare tax; or each affected employee did not give me a written statement that he or she has not claimed (or the claim was rejected) and will not claim a refund or credit for the overcollection.
- ☐ d. The claim is for federal income tax, social security tax, Medicare tax, or Additional Medicare Tax that I did not withhold from employee wages.

Return You Are Correcting ...

Check the type of return you are correcting:

- ☒ 941
- ☐ 941-SS

Check the ONE quarter you are correcting:

- ☐ 1: January, February, March
- ☒ 2: April, May, June
- ☐ 3: July, August, September
- ☐ 4: October, November, December

Enter the calendar year of the quarter you are correcting:

2016 (YYYY)

Enter the date you discovered errors:

07 / 08 / 2016
(MM / DD / YYYY)

Next ➞

For Paperwork Reduction Act Notice, see the instructions.

IRS.gov/form941x

Cat. No. 17025J

Form 941-X (Rev. 4-2015)

Name (not your trade name) ABC Tribe	Employer identification number (EIN) 89-1234567	Correcting quarter <u>2</u> (1, 2, 3, 4)
		Correcting calendar year (YYYY) 2016

Part 3: Enter the corrections for this quarter. If any line does not apply, leave it blank.

	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (If this amount is a negative number, use a minus sign.)	Column 4 Tax correction
6. Wages, tips and other compensation (Form 941, line 2)				Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Federal income tax withheld from wages, tips, and other compensation (Form 941, line 3)	173361 . 16	175391 . 26	-2030 . 10	Copy Column 3 here ▶ -2030 . 10
8. Taxable social security wages (Form 941 or 941-SS, line 5a, Column 1)				× .124* =
9. Taxable social security tips (Form 941 or 941-SS, line 5b, Column 1)				× .124* =
10. Taxable Medicare wages and tips (Form 941 or 941-SS, line 5c, Column 1)				× .029* =
11. Taxable wages & tips subject to Additional Medicare Tax withholding (Form 941 or 941-SS, line 5d; only for quarters beginning after December 31, 2012)				× .009* =
12. Section 3121(g) Notice and Demand – Tax due on unreported tips (Form 941 or 941-SS, line 5f (line 5e for quarters ending before January 1, 2013))				Copy Column 3 here ▶
13. Tax adjustments (Form 941 or 941-SS, lines 7–9)				Copy Column 3 here ▶
14. Special addition to wages for federal income tax				See instructions
15. Special addition to wages for social security taxes				See instructions
16. Special addition to wages for Medicare taxes				See instructions
17. Special addition to wages for Additional Medicare Tax				See instructions
18. Combine the amounts on lines 7–17 of Column 4				-2030 . 10
19a. COBRA premium assistance payments (see instructions)				See instructions
19b. Number of individuals provided COBRA premium assistance (see instructions)				
20. Total. Combine the amounts on lines 18 and 19a of Column 4				-2030 . 10

If line 20 is less than zero:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 for the tax period in which you are filing this form. (If you are currently filing a Form 944, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 20 is more than zero, this is the amount you owe. Pay this amount by the time you file this return. For information on how to pay, see *Amount You Owe* in the instructions.

Next ▶

Name (not your trade name) ABC Tribe	Employer identification number (EIN) 89-1234567	Correcting quarter <u>2</u> (1, 2, 3, 4)
		Correcting calendar year (YYYY) 2016

Part 4: Explain your corrections for this quarter.

- ☐ 21. Check here if any corrections you entered on a line include both underreported and overreported amounts. Explain both your underreported and overreported amounts on line 23.
- ☐ 22. Check here if any corrections involve reclassified workers. Explain on line 23.
23. You must give us a detailed explanation of how you determined your corrections. See the instructions.

16 new employees did not turn in the Form W-4 for a 2-month period. Therefore, federal income tax withholding was withheld at the highest rate. Additionally, 12 existing employees made changes to their Forms W-4 and returned them timely to the payroll office but were not processed timely by the payroll office. These forms were turned in to the supervisors on 03/01/2016.

Part 5: Sign here. You must complete all three pages of this form and sign it.

Under penalties of perjury, I declare that I have filed an original Form 941 or Form 941-SS and that I have examined this adjusted return or claim, including accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.



Sign your
name here

S. Smith

Print your
name here

S. Smith

Print your
title here

Payroll Supervisor

Date

07 / 08 / 2016

Best daytime phone

555-55-5555

Paid Preparer Use Only

Check if you are self-employed ☐

Preparer's name

PTIN

Preparer's signature

Date

Firm's name (or yours
if self-employed)

EIN

Address

Phone

City

State

ZIP code

Type of errors you are correcting	Form 941-X: Which process should you use?		
Underreported amounts ONLY	<p>Use the adjustment process to correct underreported amounts.</p> <ul style="list-style-type: none"> • Check the box on line 1. • Pay the amount you owe from line 20 by the time you file Form 941-X. 		
Overreported amounts ONLY	The process you use depends on when you file Form 941-X.	If you are filing Form 941-X MORE THAN 90 days before the period of limitations on credit or refund for Form 941 or Form 941-SS expires...	<p>Choose either the adjustment process or the claim process to correct the overreported amounts.</p> <p>Choose the adjustment process if you want the amount shown on line 20 credited to your Form 941, Form 941-SS, or Form 944 for the period in which you file Form 941-X. Check the box on line 1.</p> <p>OR</p> <p>Choose the claim process if you want the amount shown on line 20 refunded to you or abated. Check the box on line 2.</p>
		If you are filing Form 941-X WITHIN 90 days of the expiration of the period of limitations on credit or refund for Form 941 or Form 941-SS...	You must use the claim process to correct the overreported amounts. Check the box on line 2.
BOTH underreported and overreported amounts	The process you use depends on when you file Form 941-X.	If you are filing Form 941-X MORE THAN 90 days before the period of limitations on credit or refund for Form 941 or Form 941-SS expires...	<p>Choose either the adjustment process or both the adjustment process and the claim process when you correct both underreported and overreported amounts.</p> <p>Choose the adjustment process if combining your underreported amounts and overreported amounts results in a balance due or creates a credit that you want applied to Form 941, Form 941-SS, or Form 944.</p> <ul style="list-style-type: none"> • File one Form 941-X, and • Check the box on line 1 and follow the instructions on line 20. <p>OR</p> <p>Choose both the adjustment process and the claim process if you want the overreported amount refunded to you or abated.</p> <p>File two separate forms.</p> <p>1. For the adjustment process, file one Form 941-X to correct the underreported amounts. Check the box on line 1. Pay the amount you owe from line 20 by the time you file Form 941-X.</p> <p>2. For the claim process, file a second Form 941-X to correct the overreported amounts. Check the box on line 2.</p>
		If you are filing Form 941-X WITHIN 90 days of the expiration of the period of limitations on credit or refund for Form 941 or Form 941-SS...	<p>You must use both the adjustment process and the claim process.</p> <p>File two separate forms.</p> <p>1. For the adjustment process, file one Form 941-X to correct the underreported amounts. Check the box on line 1. Pay the amount you owe from line 20 by the time you file Form 941-X.</p> <p>2. For the claim process, file a second Form 941-X to correct the overreported amounts. Check the box on line 2.</p>

Chapter 14

Form 943, Agricultural Employees

Agricultural workers are subject to FICA tax if certain wage tests are met. Amounts paid to seasonal farm workers are excluded from FICA tax if specific provisions are met.

You are an employer of farm workers if your employees:

- Raise or harvest agricultural or horticultural products on a farm (including the raising and feeding of livestock)
- Work in connection with the operation, management, conservation, improvement or maintenance of your farm and its tools and equipment
- Provide services relating to salvaging timber, or clearing land of brush and other debris, left by a hurricane (also known as hurricane labor), if the major part of such service is performed on a farm
- Handle, process or package any agricultural or horticultural commodity if you produced over half of the commodity (for a group of up to 20 unincorporated operators, all of the commodity)
- Perform work related to cotton ginning, turpentine, gum resin products or the operation and maintenance of irrigation facilities

The term “farm” includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, as well as plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising or harvesting of agricultural or horticultural commodities and orchards.

Farm work does not include reselling activities that do not involve any substantial activity of raising agricultural commodities, such as a retail store or a greenhouse used primarily for display or storage. Refer to the How Do Employment Taxes Apply to Farm work? table within [Publication 51](#), (Circular A), *Agricultural Employer's Tax Guide*, to distinguish between farm and nonfarm activities.

Crew Leaders

A crew leader is a person who furnishes and pays workers to do farm work for a farm operator. A crew leader must pay the workers on his/her behalf, or for the farm operator and the crew leader must not have a written agreement with the farm operator stating that he or she is an employee. If you are a crew leader, you are an employer of farm workers.

Taxable Wages

Cash wages you pay to employees for farm work are subject to Social Security and Medicare taxes, if the wages meet the wage test (discussed below). They are also subject to income tax withholding. Additionally, they may also be liable for federal unemployment (FUTA) tax.

Cash wages include checks, money orders, etc. Do not count the value of food, lodging and other noncash items. For more information on what payments are considered taxable wages, see [Publication 15](#).

Wage Test

All cash wages you pay to an employee during the year for farm work are subject to Social Security and Medicare taxes and income tax withholding if:

- 1) You pay cash wages to an employee of \$150 or more in a year for farm work (count all cash wages paid on a time, piecework or other basis). The \$150 test applies separately to each

farm worker that you employ. If you employ a family of workers, each member is treated separately. Don't count wages paid by other employers. or

- 2) The total you pay for farm work (cash and noncash) to all your employees is \$2,500 or more during the year.

Example 1: A tribe is the owner of a local mushroom farm. The tribe paid their employees to plant mushrooms. John was paid \$95, Tom was paid \$175 and Kirk \$900. The tribe had no other employees on the farm. Wages paid to Tom and Kirk were subject to FICA tax because they met the \$150 or more requirement. John's wages were not subject to FICA because he did not meet the wage requirement.

Exceptions: The \$150 and \$2,500 test do not apply to:

Wages you pay to a farm worker who receives less than \$150 in annual cash wages are not subject to Social Security and Medicare taxes, or income tax withholding, even if you pay \$2,500 or more in that year to all your farm workers, if the farm worker:

- a) Is employed in agriculture as a hand-harvest laborer,
- b) Is paid piece rates in an operation that is usually paid on a piece-rate basis in the region of employment,
- c) Commutes daily from his or her home to the farm, and
- d) Had been employed in agriculture less than 13 weeks in the preceding calendar year.

Amounts you pay to these seasonal farm workers, however, count toward the \$2,500-or-more test to determine whether wages you pay to other farm workers are subject to Social Security and Medicare taxes.

Example 2: A tribe, a local avocado grower, hired Marion, a high school student, to harvest a new crop of avocados. Marion, who had never harvested avocados before, was paid by the pound as is customary in the industry. Marion was transported by a bus provided by the tribe from her home to the farm. She was given instructions by the tribe on where and how to harvest the avocados. The tribe inspected and approved the avocados that Marion harvested. Marion earned \$125.

The amount earned by Marion is not subject to FICA tax based on the provision of Code Section 3121(a)(8)(B). This exception to FICA tax applies regardless of the fact that the worker had the status of common law employee.

Employers of Both Farm and Nonfarm Workers

If you employ both farm and nonfarm workers, you must treat employment taxes for the farm workers (Form 943) separately from employment taxes for the nonfarm workers (Form 941 and Form 944). Form 943 taxes and Form 941/944 taxes are not combined for applying any of the deposit schedule rules.

Due Date of Form 943

Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*, should be filed with the IRS by January 31. However, if you deposited all Form 943 taxes when due, you may file Form 943 in February; check the Form 943 instructions for the specific date.

Depositing Taxes

You are required to make federal tax deposits by electronic funds transfer (EFT). Generally, an EFT is made using the Electronic Federal Tax Payment System (EFTPS). If you do not want to use EFTPS, you can arrange for your financial institution, payroll service or other trusted third-party to make electronic deposits for you. Also, you may arrange for your financial institution to initiate a same-day wire payment for you. EFTPS is a free service provided by the Department of Treasury. EFT services provided by your financial institution, payroll service or other third-party may have a fee. To get more information about EFTPS or to enroll in EFTPS, visit www.eftps.gov or call 800-555-4477.

You must deposit both the employer and employee shares of Social Security and Medicare taxes and federal income tax withheld.

Making Payment with Form 943

Make a payment with your Form 943 only if:

- 1) You report less than a \$2,500 tax liability for the year (Form 943, line 11) and you pay in full with a return that is filed on time, or
- 2) You are a monthly schedule depositor making a payment in accordance with the Accuracy of Deposits Rule. (See [Publication 51](#) Section 7, Depositing Taxes, for more details.) This amount may be \$2,500 or more.

Otherwise, you must deposit the amount at an authorized financial institution or by using EFT. Do not use the Form 943V payment voucher to make federal tax deposits.

Caution: If you pay an amount with Form 943 that should have been deposited, you may be subject to a penalty.

For more information about depositing Social Security, Medicare and income taxes withheld, see Publication 51 Section 7, Depositing Taxes. Publication 51 also contains information about penalties that may apply if deposits are not made on time and/or if the Form 943 is not filed timely.

Where to File

Regardless of the location of the tribal government, file Form 943 at:

Return without payment

Department of Treasury
Internal Revenue Service
Ogden, UT 84201-0008

Return with payment

Internal Revenue Service
P.O. Box 37943
Harford, CT 06176-7943

See [Publication 51](#) for more complete information on agricultural workers. There are special rules for Social Security and Medicare withholding on agricultural workers. Refer to Section 4, Social Security and Medicare taxes, and Section 13, Federal Income Tax Withholding Methods, for withholding methods.

Correcting Form 943

Corrections to a previously filed Form 943 must be made on Form 943-X, *Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund*. Form 943-X is a stand-alone form corresponding to, and relates line-by-line with, the employment tax return it is correcting. You will be able to file Form 943-X when an error is discovered, rather than having to wait to file it at the end of the year with the next employment tax return. You **must**:

- Correct the error using Form 943-X.
- File a separate Form 943-X for each prior year you are correcting.
- File Form 943-X separately. Do not file with the Form 943.
- Explain the error being corrected on Form 943-X, indicate when the error was discovered and provide the applicable certifications.

Report the correction of underreported and overreported amounts for the same tax period on a single Form 943-X unless you are requesting a refund or abatement. If you are requesting a refund or abatement and are correcting both underreported and overreported amounts, file one Form 943-X correcting the underreported amounts only and a second Form 943-X correcting the overreported amounts.

Use Form 843, *Claim for Refund and Request for Abatement*, to request a refund or abatement of assessed interest or penalties. Do not request a refund or abatement of assessed interest or penalties on Form 943 or Form 943-X.

Follow the chart on the back of Form 943-X for help in choosing whether to use the adjustment process or the claim process.

Continue to report current year adjustments for fraction of cents, third-party sick pay, tips and group-term life insurance on Form 943, line 10.

References

- [Publication 51](#), (Circular A), *Agricultural Employer's Tax Guide*
- [Publication 15](#), (Circular E), *Employer's Tax Guide*
- [Form 943](#), *Employer's Annual Tax Return for Agricultural Employees*
- [Form 943-X](#), *Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund*

Chapter 15

Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return

Beginning January 1, 2000, Indian tribes are not required to file Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, as long as they participate in the State Unemployment Tax Act (SUTA). This is due to the Consolidated Appropriations Act, 2001 (CAA) that was signed in to law on December 21, 2000 (Public Law No. 106-554).

Services rendered by employees of a federally recognized Indian tribal government employer (including any subdivision, subsidiary or business enterprise wholly owned by the tribe) are exempt from FUTA tax and no Form 940 is required. However, the tribe must have participated in the state unemployment system for the full year and be in compliance with state unemployment law.

This applies to all enterprises wholly owned by an Indian tribe whether or not they might compete with similar private businesses. This also includes entities that are jointly owned by two or more tribes providing they are wholly owned. If an enterprise is jointly owned by an Indian tribe and another entity that is not tribally owned, then this entity would not be exempt from paying FUTA. In other words, the enterprise must be owned 100 percent by the tribe or tribes. There are certain services that may be excluded from the required coverage. See [Publication 15](#) or [Publication 15-A](#) for a list of these exceptions.

States must give Indian tribes the option to elect the reimbursement method rather than paying the SUTA tax (tax contribution method). Employers electing the reimbursement option are required to reimburse the Unemployment Fund on a dollar-for-dollar basis for benefits paid to their former employees and charged to their accounts. This requirement applies to benefit payments that are calculated based on remuneration paid to employees on or after the date the election becomes effective.

If a tribe wishes to use the reimbursement option, each of its subdivisions, subsidiaries and wholly-owned business enterprises will need to make a separate election as to whether to use the reimbursement method. Some entities may find the tax contribution method more advantageous to its particular enterprise.

Two or more wholly-owned tribal enterprises can elect the benefit reimbursement option as a group for sharing the cost of benefits paid to former employees. The members of the group will be severally and jointly liable for reimbursement.

States may enact safeguards (including requiring the tribe to post a payment bond) to ensure that tribes using the reimbursement method make the required payments to the state. For state specific information on unemployment benefits, employment assistance or employer information, visit the [Office of Workforce Security](#) website.

However, whether a tribe uses the reimbursement method or the tax contribution method to pay SUTA, if the tribe fails to make required payments to the state's unemployment fund or payments of penalty or interest, then the state may terminate the tribe from the program. This would result in tribal employees not being covered for unemployment insurance.

States are not required to terminate coverage due to nonpayment. This is generally done only as a last resort because termination of coverage punishes workers who have no control over whether their employers satisfy their unemployment compensation obligations.

The law requires states to notify the IRS and the U.S. Department of Labor when the state terminates the tribe from coverage due to nonpayment.

Once the IRS is notified that the tribe is in noncompliance with the state, the tribe will become liable for FUTA taxes and will be required to file Form 940 with the IRS.

Form 940 is an annual return, due on January 31 of the subsequent year. However, if you deposited all FUTA tax when due, you have ten additional days to file. If the due date falls on a Saturday, Sunday or legal holiday, the due date will be the next business day.

The FUTA tax rate for 2015 and 2016 is 6 percent and to the first \$7,000 of wages you pay each employee during the year. Only the employer pays the FUTA tax. Do not collect or deduct it from your employees' wages.

Although Form 940 covers a calendar year, you may have to make deposits of the tax before filing the return. Deposit FUTA tax quarterly if the FUTA tax exceeds \$500. For more information on FUTA taxes and for assistance with filing Form 940, see [Publication 15](#) and [Publication 15-A](#).

Note: When a tribe is required to file Form 940 due to failure to meet state unemployment program requirements, tribal employees will not be eligible for unemployment compensation benefits, even though the tax per the Form 940 is paid. In essence, the tribe's employees will not receive unemployment compensation benefits when they otherwise would be eligible.

Unemployment Insurance

The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined by state law) and meet other eligibility requirements of state law.

- Unemployment insurance payments (benefits) are intended to provide temporary financial assistance to unemployed workers who meet the requirements of state law.
- Each state administers a separate unemployment insurance program within guidelines established by federal law.
- Eligibility for unemployment insurance, benefit amounts and the length of time benefits are available are determined by the state law under which unemployment insurance claims are established.
- In the majority of states, benefit funding is based solely on a tax imposed on employers. (Three states require minimal employee contributions.)

To find out whether you, as the employer, will owe state unemployment tax, contact your state's unemployment tax agency. For a list of state unemployment tax agencies, visit the [U.S. Department of Labor's website](#).

What are Unemployment Compensation Wages?

Wages subject to unemployment compensation (UC) vary from state to state because each state has a different method for computing UC. States may base the UC on a wage base and an experience rate.

A state experience rate is the rate at which the state taxes your payroll for UC. This rate may be adjusted from time to time based on the number and length of claims for unemployment compensation that your former employees make against the fund. If you don't know your rate, contact your state employment security agency. Each state may have a different wage base upon which the UC is computed. This rate can vary from year to year. It may also vary, depending on the duties performed.

Example: A state's current wage base subject to UC is \$10,100. The UC program has assigned the tribe an experience rate of 1 percent, based on the employment history of the tribe. The tribe would pay a maximum of $\$10,100 \times .01$ or \$101 per year for each employee subject to UC.

What if Wages are not Paid in Cash?

If you pay your employees in some form other than cash or a readily negotiable instrument (such as a check), you pay them "in-kind." Payments in-kind may be in the form of goods, lodging, food, clothing or services. Generally, wages paid in-kind are treated the same as wages paid in money. The value of a wage payment in-kind is its fair market price on the day the payment is made.

References

- [Publication 15](#), *(Circular E), Employer's Tax Guide*
- [Publication 15-A](#), *Employer's Supplemental Tax Guide*
- [Form 940](#), *Employer's Annual Federal Unemployment (FUTA) Tax Return*, and [Instructions](#)
- [Consolidated Appropriations Act 2001](#)

Chapter 16

Form 945, Annual Return of Withheld Federal Income Tax

Purpose of Form 945

Use Form 945 to report withheld federal income tax from nonpayroll payments. Nonpayroll payments include:

- Pensions (including distributions from tax-favored retirement plans, for example, Section 401(k), Section 403(b) and governmental Section 457(b) plans) and annuities;
- Military retirement;
- Gambling winnings;
- Indian gaming profits;
- Voluntary withholding on certain government payments;
- Voluntary withholding on dividends and other distributions by an Alaska Native Corporation; and
- Backup withholding.

Report all federal income tax withholding from nonpayroll payments or distributions annually on one Form 945. Do not file more than one Form 945 for any calendar year.

All federal income tax withholding reported on Forms 1099 (for example, Form 1099-MISC, *Miscellaneous Income*) or Form W-2G, *Certain Gambling Winnings*, must be reported on Form 945. Don't report federal income tax withholding from wages on Form 945.

All employment taxes and federal income tax withholding reported on Form W-2, must be reported on Form 941, *Employer's Quarterly Federal Tax Return*, Form 944, *Employer's Annual Federal Tax Return*, or Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*.

Due Date for Filing Form 945

If you withhold federal income tax (including backup withholding) from nonpayroll payments, you must file Form 945. You do not have to file Form 945 for those years in which you do not have a nonpayroll tax liability.

Form 945 is generally due by the last of the first calendar month after the calendar year ends (for 2016, file Form 945 by January 31, 2017). However, if you made deposits on time in full payment of the taxes for the year, you are allowed an additional 10 days to file the return. Your return will be considered timely filed if it is properly addressed and mailed first-class or sent by an IRS-designated private delivery service on or before the due date. See [Publication 15](#) for more information on IRS-designated private delivery services.

Where to File Form 945

Regardless of the location of the tribal government file Form 945 at:

Return without payment

Department of Treasury
Internal Revenue Service
Ogden, UT 84201-0042

Return with payment

Internal Revenue Service
P.O. Box 37945
Harford, CT 06176-7945

Depositing Withheld Taxes

Deposit all nonpayroll (Form 945) withheld federal income tax, including backup withholding, by EFT. Combine all Form 945 taxes for deposit purposes. Do not combine deposits for Forms 941, 943 or 944 with deposits for Form 945.

Generally, the deposit rules that apply to Form 941 also apply to Form 945. However, because Form 945 is an annual return, the rules for determining your deposit schedule (discussed below) are different from those for Form 941. See section 11 of [Publication 15](#) for a detailed discussion of the deposit rules.

Determining Your Deposit Schedule

There are two deposit schedules—monthly or semiweekly— for determining when you must deposit withheld federal income tax. These schedules tell you when a deposit is due after a tax liability arises (that is, you make a payment subject to federal income tax withholding, including backup withholding). Before the beginning of each calendar year, you must determine which of the two deposit schedules you must use.

For 2016, you are a monthly schedule depositor for Form 945 if the total tax reported on your 2014 Form 945 (line 3) was \$50,000 or less. If the total tax reported for 2014 was more than \$50,000, you are a semiweekly schedule depositor (use Form 945-A to record semiweekly tax liabilities).

Next-Day Deposit Rule

If you are a monthly schedule depositor and accumulate a \$100,000 liability or more on any day during a calendar month, your deposit schedule changes on the next day to semiweekly for the remainder of the year and for the following year. For more information, see the \$100,000 Next-Day Deposit Rule in section 11 of [Publication 15](#).

Correcting Form 945

Use Form 945-X to correct administrative errors only on a previously filed Form 945. An administrative error occurs if the federal income tax (including backup withholding) you reported on Form 945 is not the amount you actually withheld from payees. For example, if the total federal income tax you withheld was incorrectly reported on Form 945 due to a mathematical or transposition error, this would be an administrative error.

When you discover an error on a previously filed Form 945, you must:

- Correct that error using Form 945-X.
- File a separate Form 945-X for each Form 945 that you are correcting.
- File Form 945-X separately. Do not file Form 945-X with Form 945.

Report the correction of underreported and overreported amounts for the same year on a single Form 945-X, unless you are requesting a refund or abatement. If you are requesting a refund or abatement, file one Form 945-X correcting the underreported amounts and a second Form 945-X correcting the overreported amounts.

References

- [Publication 15](#), *(Circular E), Employer's Tax Guide*
- [Form 945](#), *Annual Return of Withheld Federal Income Tax*
- [Form 945-A](#), *Annual Record of Federal Tax Liability*
- [Instructions](#) for Form 945
- [Form 945-X](#), *Adjusted Annual Return of Withheld Federal Income Tax or Claim for Refund*

Chapter 17

Wage Reports

For the latest information about developments related to Forms W-2 and W-3 and their instructions, such as legislation enacted after they were published, go to www.irs.gov/w2.

Form W-2, *Wage and Tax Statement*

Every employer engaged in a trade or business who pays remuneration, including noncash payments of \$600 or more for the year (all amounts if any income, Social Security or Medicare tax was withheld) for services performed by an employee must file a Form W-2 for each employee (even if the employee is related to the employer) from whom:

- Income, Social Security or Medicare tax was withheld
- 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*](#)

Form W-2 must show total wages and other compensation paid (even if not subject to withholding); total wages subject to Social Security and Medicare taxes; allocated tips (if any) and amounts deducted for income, Social Security and Medicare taxes.

Due Date of Form W-2

The due date for filing Forms W-2 with the SSA is now January 31 regardless of whether you file using paper forms or electronically.

Extensions of time to file Form W-2 with the SSA are no longer automatic. For filings due on or after January 1, 2017, 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. This does not affect extensions of time to furnish Forms W-2 to employees.

If an employee's employment ends before the close of the year, the employee may request the form earlier. You must give the employee a Form W-2 within 30 days of the employee's request or final payment, whichever is later.

You should keep any undeliverable employee copies of Form W-2 (Copies B and C) as part of your records for four years.

If you file 250 or more Forms W-2 for the year, you are required to file them electronically.

Social Security Numbers

Do not truncate Social Security numbers shown on Forms W-2 (for example, xxx-xx-4567); the complete Social Security numbers are required.

Form W-3, *Transmittal of Wage and Tax Statements*

Each year, you must file Form W-3 to transmit copy A of Forms W-2 to the Social Security Administration (SSA) by the last day of February (paper) or the last day of March (electronic) after the calendar year for which the Forms W-2 are prepared. The SSA will process these forms and provide the IRS with the income tax data that it needs from those forms.

The Form W-3 is required to be filed electronically if you file 250 or more Forms W-2 for the year.

Paper Forms W-2 (copy A) and W-3 (entire page) should be mailed to:

Social Security Administration

Data Operations Center
Wilkes-Barre, PA 18769-0001

Note: The totals on the Form W-3 you file should equal the totals from all Forms 941 filed for the same year.

Business Services Online (BSO)

The SSA has enhanced its secure [BSO website](#) to make it easier to register and navigate. Use BSO's online fill-in forms to create, save and submit Forms W-2 and W-2c to the SSA electronically. BSO lets you print copies of these forms to file with state or local governments, distribute to your employees and keep for your records. BSO generates Form W-3 automatically based on your Forms W-2. You also can use BSO to upload wage files to the SSA, check on the status of previously submitted wage reports and take advantage of other convenient services for employers and businesses.

For additional information about SSA's BSO website, see the discussion in [Chapter 18](#) of this publication.

Correcting Forms W-2 and W-3

If there is an error made on Forms W-2 or W-3, make the correction by filing Form W-2c, *Corrected Wage and Tax Statement*, and Form W-3c, *Transmittal of Corrected Wage and Tax Statements*.

See [Forms W-2 and W-3 Instructions](#), *Special Situations for Forms W-2c and W-3c* section, for further information.

Common Errors on Forms W-2

Forms W-2 provide information to your employees, the SSA, the IRS and state and local governments. Avoid making the following errors, which cause processing delays. Do not:

- 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.
- Enter the employee's name in box e any way other than the employee's first name and middle initial in the first box, surname in the second box and suffix (such as "Jr.") in the third box (optional).
- Cut, fold or staple Copy A paper forms mailed to SSA.
- Download Copy A of Forms W-2 or Form W-3 from [IRS.gov](#) and file with SSA.

Remember: Amounts reported on Forms W-2, W-3 and 941/943/944 may not match for valid reasons. If they do not match, determine that the reasons are valid. Keep your reconciliation in case you receive a Combined Annual Wage Reporting (CAWR) discrepancy notice.

Reconciling Forms W-2, W-3 and 941 (or Form 943/944)

When there are discrepancies between amounts reported on Form 941 (or annual Forms 943 or 944) filed with the IRS and Forms W-2 and W-3 filed with the SSA, the IRS must contact you to resolve the discrepancies.

Amounts reported on the four quarterly Forms 941 (or annual Forms 943 or 944) that should agree with the Forms W-2 and Form W-3 filed with the SSA are:

- Federal income tax withholding,
- Social Security wages and Social Security tips, and
- Medicare wages and tips

If the totals do not agree, investigate and correct the discrepancy.

The CAWR is the system that permits an employer to file a single statement to report its employees' earnings. Both the IRS and SSA use the information reported by employers to ensure that the proper amount of taxes has been paid and reported. CAWR cases are identified by the SSA when it appears that the amounts do not agree with the Forms 941, 943, W-2 and W-3, or for not filing any or all of the required Forms W-2.

If you receive a CAWR discrepancy notice, you should review your copies of Forms 941 (or annual Forms 943 or 944), W-2 and W-3 that you filed and perform a complete review to find the error. Send a complete explanation of the error and what you did to make the necessary corrections (including any corrected forms) to the address noted on the CAWR discrepancy notice. If you have questions about a CAWR discrepancy, please contact your assigned ITG specialist or local ITG manager.

To reduce the discrepancies between amounts reported on Forms W-2, W-3 and Forms 941/943:

- Be sure the amounts on Form W-3 match the total amounts from Forms W-2.
- Reconcile Form W-3 with your four quarterly Forms 941 (or annual Forms 943 or 944) by comparing amounts reported for income tax withholding, Social Security wages, Medicare wages and tips and Social Security tips.
- The amounts for Social Security and Medicare taxes on the four quarterly Forms 941 (or annual Forms 943 or 944) should be approximately twice the amounts shown on Form W-3. This is because the amounts on the Forms 941 represent both the employee and employer share of FICA while the Forms W-2 only represents the employee share.

References

- **Publication 15**, *(Circular E), Employer's Tax Guide*
- **Form W-2**, *Wage and Tax Statement*
- **Form W-3**, *Transmittal of Wage and Tax Statements*
- **Instructions** for Forms W-2 and W-3

Chapter 18

Electronic Filing Requirements for Form W-2, Wage and Tax Statements

Form W-2, Wage and Tax Statement

Forms W-2 are filed with the Social Security Administration (SSA). Employers are required to file Forms W-2 to report wages, tips, Social Security, Medicare tax and federal income tax withholdings, and other items with regard to an employee's annual wages. The SSA provides Form W-2 information to the IRS.

Social Security Business Services Online (BSO) is a suite of business services enabling organizations and authorized individuals to conduct business with, and submit confidential information to, the SSA. It allows registered users to submit a wage file, create, save, print and submit Forms W2 and W-2c electronically, view status, error and notice information, acknowledge notices, request a one-time 15-day extension and verify names and Social Security numbers of employees. Other services include Electronic Records Express, which enables users to upload electronic records to support the processing of disability claims. You must be a registered BSO user to use these services. To get a User ID and Password, you must visit SSA's website.

When employers file **250 or more Forms W-2** for a given year, they are required to file them with the SSA electronically. The employer must provide a paper copy of Form W-2 to employees, and retain a copy of the paper document for their own records. They should also retain copies of electronic files transmitted.

Electronic submission of Forms W-2 and W-3 is considered the best practice and is recommended by the Social Security Administration.

Before year-end, you should register with the SSA either online or by telephoning 800-772-6270 Monday through Friday from 5 a.m. to 1 a.m. Eastern time. It is preferable to register in December for new registrations and submitting test files. Register early so you'll be ready when the filing season begins.

The SSA has **Employer Services Liaison Officers** (ESLO) in regional offices across the country that can help you.

The SSA must confirm your identity before issuing a User ID and password. They also have to know how to contact you if the need arises. You will be asked to provide your name as it appears on your Social Security card, Social Security number, date of birth, mailing address, work telephone number, fax number (optional), email address (optional), company name, employer identification number (EIN) and company telephone number. Your SSN, date of birth and EIN will be verified against SSA records.

Once the information is verified, a User ID will be issued immediately.

The first time you log on to the system, you will be asked to create and enter your personal password. You can change your password at any time, and you are required to change it at least once every 365 days for security purposes.

The SSA will notify the tribe of the electronic registration.

If the tribe wishes to participate in the verification of Social Security numbers online, access to this service involves a more rigorous process and requires pre-authorization from the tribal entity/employer. If access is requested, the employer will be notified via first class mail within two weeks and will include an activation code, which is needed to activate the service.

Commercial Software Packages

Most commercial software packages for payroll programs have detailed instructions for year-end closing and procedures for transmitting data electronically. You will also need to consult with your software developers to determine if they have compatible state W-2 electronic products if you are required to file W-2s with your state. You will also want to verify with your state if they support the EFW2 format used by the SSA.

Requests for Waiver of Requirement

Under the Treasury Regulations Section 301.6011-2(c)(2), the Commissioner of Internal Revenue may waive the electronic requirements on a written showing of hardship by the filer. In determining whether hardship has been shown, the principal factor is the amount, if any, by which the cost of filing returns electronically exceeds the cost of filing returns on paper forms. A request for waiver must be filed at least 45 days before the filing of the first return for which a waiver is requested. The filer must send the request to the IRS using [Form 8508](#), *Request for Waiver from Filing Information Returns Electronically*.

Accuracy

Accurate reporting of employees' Form W-2 information directly affects the eligibility for and amount of any Social Security and Medicare benefits payable to employees and their families. That is why we continually emphasize the importance of recording the right name, SSN and wages for each employee. Accurate reporting can also prevent penalty assessments for inaccurate or late filing.

Frequently Asked Questions

1. Who should I call if I have problems with the SSA registration process?

Call 800-772-6270 Monday through Friday between 7:00 a.m. and 7:00 p.m. Eastern Time.

2. What if I have 250 or more Form W-2s and I submit paper forms to the SSA?

The IRS may penalize you.

3. Where can I find AccuWage?

By accessing www.ssa.gov/employer/accuwage/index/html.

4. When is my filing deadline to the SSA?

A paper copy of Form W-2 must be provided to the employee by January 31 of each year.

The due date for filing Forms W-2 with the SSA is now January 31, regardless of whether you file using paper forms or electronically.

5. Can I correct W-2 information that has already been processed?

You can submit corrections to the Form W-2 processed information electronically, or using paper Forms W-3c and W-2c. If there are 250 or more corrections, you must transmit the corrections electronically.

6. I believe my Social Security payments reported to IRS on Form 941 and my Form W-2 reports filed with SSA last year may not balance. What should I do?

Check your records. If your Form W-2 reports need to be corrected, you should file Forms W-3c and W-2c with SSA. If your Form W-2 reports were correct as filed, then you should file Form 941-X with IRS to correct your previous Form 941.

References

- [Instructions](#) for Forms W-2 and W-3
- [Social Security Business Services Online Electronic W-2 Filing Handbook](#)
- [Social Security Number Verification Service](#) 800-772-6270
- SSNVS information line for technical questions 888-772-2970 – 7:00 a.m. – 7:00 p.m. Eastern Time, Monday - Friday
- Social Security specifications for [Filing Forms W2 Electronically](#)
- Social Security [Business Services Online](#)
- [Form 8508](#), *Request for Waiver from Filing Information Returns Electronically*

Chapter 19

Reporting Payments to Independent Contractors

File Form **1099-MISC**, *Miscellaneous Income*, for each person to whom you have paid during the year:

- At least \$10 in royalties (see the instructions for box 2) or broker payments in lieu of dividends or tax-exempt interest (see the instructions for box 8);
- At least \$600 in:
 - 1) rents (box 1);
 - 2) services performed by someone who is not your employee (including parts and materials) (box 7);
 - 3) prizes and awards (see instructions for boxes 3 and 7);
 - 4) other income payments (box 3);
 - 5) medical and health care payments (box 6);
 - 6) crop insurance proceeds (box 10);
 - 7) cash payments for fish (or other aquatic life) you purchase from anyone engaged in the trade or business of catching fish (box 7);
 - 8) generally, the cash paid from a notional principal contract to an individual, partnership or estate (box 3);
 - 9) payments to an attorney (box 7); or
 - 10) any fishing boat proceeds (box 5).
- In addition, use Form 1099-MISC to report that you made direct sales of at least \$5,000 of consumer products to a buyer for resale anywhere other than a permanent retail establishment (box 9).

You must also file Form 1099-MISC for each person from whom you have withheld any federal income tax (report in box 4) under the backup withholding rules regardless of the amount of the payment.

Reportable Payments to Corporations

The following payments made to corporations generally must be reported on Form 1099-MISC:

- Medical and health care payments (box 6)
- Fish purchases for cash (box 7)
- Attorneys' fees (box 7)
- Gross proceeds paid to an attorney (box 14)
- Substitute payments in lieu of dividends or tax-exempt interest (box 8)
- Payments by a federal executive agency for services (vendors) (box 7)

See [Instructions for 1099-MISC](#) and [General Instructions for Certain Information Returns](#) for additional filing requirements.

Due Date for Form 1099-MISC

For calendar years beginning on or after January 1, 2016, Form 1099-MISC must be filed on or before January 31 of the following calendar year, when you are reporting nonemployee compensation payments in box 7. Otherwise, file by February 28, if you file on paper, or by March 31, if you file electronically.

Where to File if Paper Filing:

If your principal business, office or agency, or legal residence in the case of an individual, is located in	Use the following address
Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, West Virginia	Department of the Treasury Internal Revenue Service Center Austin, TX 73301
Alaska, California, Colorado, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, 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 Kansas City, MO 64999

Electronic Filing Option

You can file electronically through the Filing Information Returns Electronically System (**FIRE System**); however, you must have software that can produce a file in the proper format; refer to **Publication 1220 Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G**, for more information on how to prepare and upload files when using the FIRE System. The FIRE System does not provide a fill-in form option for information return reporting. The FIRE System operates 24 hours a day, 7 days a week.

Backup Withholding “B” Processes

Under the provisions of Internal Revenue Code Section 3406(b), persons (payers) making certain payments to payees must withhold and pay to the IRS a specified percentage of 28 percent under certain conditions (described below).

Backup withholding will apply if:

- The payee fails to furnish his or her taxpayer identification number (TIN) to you
- The IRS notifies you to impose backup withholding because the payee furnished an incorrect TIN (CP2100 or CP2100A)
- The IRS notifies you to begin backup withholding because of payee underreporting

Failure to follow the backup withholding rules can result in penalties to the payer for filing incorrect information returns. The payer may also become liable for any uncollected amounts.

Which Payments May be Subject to Backup Withholding?

Backup withholding can apply to most kinds of payments that are reported on Form 1099, some of these payments include:

- Rents, profits or other gains (Form 1099-MISC)
- Commissions, fees or other payments for work you do as an independent contractor (Form 1099-MISC)
- Reportable gross proceeds paid to attorneys (Form 1099-MISC)
- Payments by fishing boat operators, but only the part that is in money and that represents a share of the proceeds of the catch (Form 1099-MISC)
- Royalty payments (Form 1099-MISC)

The current backup withholding rate is 28 percent on the total gross payments.

First and Second Annual Solicitation Requirements

A solicitation is a request for a payee's correct TIN. You must make the request to satisfy the backup withholding requirements and to avoid a penalty for filing another information return with a missing or an incorrect TIN. The payee must furnish a certified TIN (initial solicitation) on [Form W-9, Request for Taxpayer Identification Number](#), with respect to payments of interest, dividends and amounts subject to broker reporting. For other payments, the payee may provide the TIN in any manner.

Missing TINs

For all payees you must make the initial solicitation when the payee opens the account or when the transaction occurs. If the payee does not provide a TIN when you initially ask for it, you must begin backup withholding. In addition, to avoid a penalty for filing an incorrect information return, you must make a first annual solicitation by December 31 of the year in which the account is opened (for accounts opened before December) or January 31 of the following year (for accounts opened during the preceding December). If the payee does not provide a TIN after the first annual solicitation, you must make the second annual solicitation by December 31 of the year following the calendar year in which the account was opened.

For Incorrect TINs

You must make up to two annual solicitations in response to a CP2100 or CP2100A Notice. You must send a B Notice within 15 business days after you receive one of these notices. If you receive a Proposed Penalty Notice (972CG) but not a CP2100 or CP2100A Notice, you must make your annual solicitation by December 31 of the year you received the Proposed Penalty Notice.

However, if you already sent a B Notice in the calendar year in response to a CP2100 or CP2100A Notice, you do not have to send another solicitation in response to the Proposed Penalty Notice. If the IRS notifies you in the next calendar year that a TIN is still incorrect, you must make a second annual solicitation within 15 business days after you receive the second CP2100 or CP2100A Notice.

What is a CP2100 or CP2100A Notice?

A CP2100 or CP2100A Notice informs payers that they may be responsible for backup withholding. It is accompanied by a listing of missing, incorrect or not currently issued payee TINs. Filers with 250 or more error documents receive a CP2100; filers with less than 250 error documents will receive a CP2100A.

What to Do if You Receive a CP2100 or CP2100A Notice

- Compare the listing(s) with your records.
- For missing TINs: Determine if you are already backup withholding on the account. If you are not, begin backup withholding immediately. You must make up to three solicitations for the TIN (initial, first annual, second annual) to avoid a penalty for failing to include a TIN on the Information Return.
- For incorrect TINs: Compare the accounts on the listing with your business records. If they agree, send the appropriate B Notice to the payee. If an account does not agree, this could be the result of a recent update, an error in the information you submitted or an IRS processing error. If this is what happened, the only thing you should do is correct or update your records.

Reminder: You do not have to call or write the IRS to say that you made the correction or update.

If you have any questions about backup withholding, information reporting, Forms 1099, or the CP2100 or CP2100A Notices and listings, you may call:

The Information Reporting Program Customer Service Section

Toll-Free Telephone: 866-455-7438

Hours: 8:30 a.m. - 4:30 p.m. Monday - Friday EST

See [Publication 1281](#), *Backup Withholding for Missing and Incorrect Name/TIN(s)* for additional information and copies of the first and second annual solicitation notices for your use.

References

- [Publication 1220](#), *Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G*
- [Publication 1281](#), *Backup Withholding for Missing and Incorrect Name/TIN(s)*
- [Instructions for 1099-MISC](#)
- [General Instructions for Certain Information Returns](#)
- [Form W-9](#), *Request for Taxpayer Identification Number*

Chapter 20

Records Retention

Fires, natural disasters, equipment failure and human error may cause records to be lost or destroyed. The extent to which payroll records can be reconstructed depends primarily on backups, storage and cataloging of archived records.

Reconstructed records are no substitute for maintenance of original records, as they are never as accurate or complete as the originals. An extensive effort to reconstruct records is sometimes required. However, a reconstruction may lack the authenticity and credibility of original records to regulators, state agencies, federal agencies or the courts. Reconstructed records, simply put, are better than nothing.

Backup of Records

Instructions on how to back up your accounting and payroll records can be found in accounting and bookkeeping textbooks, from the manufacturer of your payroll system and many other sources. The form of backup will depend on the system you use to maintain your records. For instance, a manual payroll system creates physical copies of payroll entries. A computerized system will use your computer's hard-drive or another electronic medium for storage.

However you decide to back up your payroll records, it is important to follow instructions, and to test a backup copy from time to time to ensure that you are copying the intended files. Backups of either manual or computerized systems should be made routinely, checked for accuracy and stored in a safe place.

Storage

The site you select for storage of records should be carefully chosen. You will want your backup copies to be reasonably secure from physical damage including fire, flood, theft, insects, rodents, temperature and humidity. While paper documents may seem more sensitive to these hazards, you will want to provide the same safeguards for your computerized records.

You also want to ensure privacy of your records by restricting access to those persons with a "need to know." Payroll records contain a great deal of personal information and employees depend on their employers to keep this information confidential. Employee names, addresses and Social Security numbers, in addition to items like notices of employee levies, garnishments and child support payments should always be kept secure.

Record Retention

Keep all records of employment taxes for at least four years. These should be available for IRS review. Your records should include:

- Your EIN
- Amounts and dates of all wage, annuity and pension payments
- Amounts of tips reported to you by your employees
- Records of allocated tips
- The fair market value of in-kind wages paid
- Names, addresses, Social Security numbers and occupations of employees and recipients
- Any employee copies of Forms W-2 and W-2c returned to you as undeliverable
- Dates of employment for each employee

- Periods for which employees and recipients were paid while absent due to sickness or injury and the amount and weekly rate of payments you or third party payers made to them
- Copies of employees' and recipients' income tax withholding allowance certificates (Forms W-4, W-4P, W-4(SP), W-4S and W-4V)
- Dates and amounts of tax deposits you made and acknowledgment numbers for deposits made by EFTPS or EFT
- Copies of returns filed and confirmation numbers if filed electronically or proof of filing (such as postage mail receipt)
- Records of fringe benefits and expense reimbursements provided to your employees, including substantiation

Original records should be well labeled and organized. Because payroll records “close out” at year-end, a new file should be started for each employee for each year. Some payroll records such as Form W-4, garnishments, court ordered deductions for child support and others, may span more than one calendar year. A copy of the original document should be made for the prior year file. Keep the original in the new file folder for the employee.

All payroll reconciliation work papers generated in your payroll office should be retained. Often payroll reconciliations coincide with the payroll deposits you make with the bank, over the telephone or online using EFTPS. You will want to keep all the work papers, receipts, recordation of telephone or online deposits, photocopies of checks written for payroll deposits, copies of the front and back of canceled checks written for payroll deposits and any IRS correspondence. These records will be useful when you prepare your quarterly payroll reports.

Copies for Easy Access

Sometimes, the IRS will send correspondence about payroll tax deposits or payroll tax reports. This correspondence may have a short response time. It is recommended you keep accessible copies of payroll deposits and payroll reports for the past two years. (This should be an extra copy in addition to the ones you are going to take to storage).

Preparing Hard Copy Files for Storage

After you file year-end payroll reports Forms W-2 and W-3, you will prepare files for storage. It is well worth the time to organize, label and place the files (whether electronic or hard copy) in some sort of storage container. If you store large quantities of records, it is helpful to label the box with a list of contents and the calendar year. For instance, you may have a storage box labeled “Payroll Records – 2016.” You should also attach a packing list to inventory the contents of each box.

Preparing Computerized Copies for Storage

After you follow established procedures for backing up your computerized payroll records, test the media on which they are stored. You want to ensure that you copied the correct information and there are no glitches or errors to prevent you from reloading it if the need arises.

A secure, off-site location is generally recommended for storage of backups to your computerized records. They should be well labeled and write-protected so no one can accidentally write over your valuable back up.

For additional information regarding storing and safeguarding taxpayer data, refer to [Publication 4557, *Safeguarding Taxpayer Data*](#).

Reconstruction

After taking steps to prepare complete and accurate records and storing them according to established procedures, something unexpected may happen to cause your records to be lost or destroyed.

Every effort should be made to find lost records, or partial records that may have “survived” a disaster. If partial records are recovered, they are the best place to begin a reconstruction.

A reconstruction of records is best approached in reverse order. In other words, begin with the end of the year and work backward. The following steps may help in the reconstruction process:

- 1) Determine exactly what has been lost.
- 2) Determine if you lost the only copy of an item.
- 3) For those items where you lost the only copy, rank the relative importance of the lost items, starting with those of highest importance.
- 4) Make a list of the items you determine warrant the time and expense of reconstruction.
- 5) Determine if there is a state, federal or other agency from which you can request a copy of a lost report. For instance, you can request either a transcript or a photocopy of a filed return from the IRS. Either can be certified as an actual copy and can take the place of your copy of a lost return. Transcripts are available at no cost.
- 6) For items of public record, contact your local courthouse for a copy.
- 7) For bank records, contact your bank. It could be expensive to get copies of canceled checks, but they are available.

You will want to evaluate the need for the records in relation to the cost of reconstruction. For assistance with IRS records, you should contact your Indian Tribal Governments specialist.

References

- [Publication 15](#), *(Circular E), Employer’s Tax Guide*
- [Publication 4557](#), *Safeguarding Taxpayer Data*

Chapter 21

Penalties

The best way to avoid penalties is to understand what can be done to reduce or eliminate them before they are ever assessed. In an effort to assist, we have created a [“Helpful Hints to Avoid Penalties”](#) guide. Hopefully, the suggestions outlined in this guide will reduce penalty assessments, but if a penalty is asserted, the guide also outlines the steps to address it.

The goal of each payroll or accounting department is compliance with the different filing, paying and depositing requirements. There may be times when this doesn’t happen.

The following penalties may be assessed for failure to comply with filing and payment requirements:

Failure to File – a penalty of 5 percent (of the tax required to be shown on a return) may be imposed for each month or part of a month that a return is not filed (not to exceed 25 percent).

Failure to Pay – a penalty of .05 percent may be imposed per month of the amount of tax shown on the return not timely paid (not to exceed 25 percent).

Dishonored Payments – Any form of payment that is dishonored and returned from a financial institution is subject to a penalty of \$25 or 2 percent of the payment, whichever is more. However, the penalty on dishonored payments of \$24.99 or less is an amount equal to the payment. For example, a dishonored payment of \$18 is charged a penalty of \$18.

Failure to File Correct Information Returns (by the Due Date) – You may be required to file information returns to report certain types of payments made during the year (for example, Forms 1099-MISC, W-2, etc.). If you fail to file a correct information return by the due date and cannot show reasonable cause, you may be subject to a penalty as provided under Code Section 6721, *Failure to File Correct Information Returns*. Section 6721 imposes a penalty **per return** for each of the following infractions related to information returns:

- Fail to file timely,
- Fail to include all information required to be shown,
- Include incorrect information,
- File on paper forms when you are required to file electronically,
- Report an incorrect TIN,
- Fail to report a TIN, or
- Fail to file paper forms that are machine readable.

The amount of the penalty is based on when you file the correct information return. Penalties are indexed for inflation. The Code Section 6721 penalty rates are:

Code Section 6721-Large Business with Gross Receipts of More than \$5 Million

Time of filing	Returns due before Jan. 1, 2011	Returns due on or after Jan. 1, 2011 and before Jan. 1, 2016	Returns due on or after Jan. 1, 2016 (w/ inflation adjustments)
Not more than 30 days late	\$15 per return / \$75,000 maximum	\$30 per return / \$250,000 maximum	\$50 per return / \$529,500 maximum
31 days late - August 1	\$30 per return / \$150,000 maximum	\$60 per return / \$500,000 maximum	\$100 per return / \$1,589,000 maximum
After August 1	\$50 per return / \$250,000 maximum	\$100 per return / \$1,500,000 maximum	\$260 per return / \$3,178,500 maximum
Intentional Disregard	\$100 per return / no limitation	\$250 per return / no limitation	\$520 per return / no limitation

Code Section 6721-Small Business with Gross Receipts of \$5 million or Less

Time of filing	Returns due before Jan. 1, 2011	Returns due on or after Jan. 1, 2011 and before Jan. 1, 2016	Returns due on or after Jan. 1, 2016 (w/ inflation adjustments)
Not more than 30 days late	\$15 per return / \$25,000 maximum	\$30 per return / \$75,000 maximum	\$50 per return / \$185,000 maximum
31 days late - August 1	\$30 per return / \$50,000 maximum	\$60 per return / \$200,000 maximum	\$100 per return / \$529,500 maximum
After August 1	\$50 per return / \$100,000 maximum	\$100 per return / \$500,000 maximum	\$260 per return / \$1,059,500 maximum
Intentional Disregard	\$100 per return / no limitation	\$250 per return / no limitation	\$520 per return / no limitation

Note: Increased penalty amounts may apply in the case of certain failures due to intentional disregard.

Failure to Furnish Correct Payee Statements (Information Returns)

If you fail to furnish a correct information return by the due date and cannot show reasonable cause, you may be subject to a penalty as provided under Code Section 6722, *Failure to Furnish Correct Information Returns*. Section 6722 imposes a penalty **per return** for each of the following infractions related to information returns:

- Furnish a payee statement on or before the due date to the person to whom the statement must be furnished,
- Furnish all information required, or
- Furnish correct information.

The amount of the penalty is based on when you file the correct information return. Penalties are indexed for inflation. The Code Section 6722 penalty rates are:

Code Section 6722-Large Business with Gross Receipts of More than \$5 Million

Time of filing	Returns due before Jan. 1, 2011	Returns due on or after Jan. 1, 2011 and before Jan. 1, 2016	Returns due on or after Jan. 1, 2016 (w/ inflation adjustments)
Not more than 30 days late	\$50 per return / \$100,000 maximum	\$30 per return / \$250,000 maximum	\$50 per return / \$529,500 maximum
31 days late - August 1	\$50 per return / \$100,000 maximum	\$60 per return / \$500,000 maximum	\$100 per return / \$1,589,000 maximum
After August 1	\$50 per return / \$100,000 maximum	\$100 per return / \$1,500,000 maximum	\$260 per return / \$3,178,500 maximum
Intentional Disregard	\$100 per return / no limitation	\$250 per return / no limitation	\$520 per return / no limitation

Code Section 6722-Small Business with Gross Receipts of \$5 million or Less

Time of filing	Returns due before Jan. 1, 2011	Returns due on or after Jan. 1, 2011 and before Jan. 1, 2016	Returns due on or after Jan. 1, 2016 (w/ inflation adjustments)
Not more than 30 days late	\$50 per return / \$100,000 maximum	\$30 per return / \$75,000 maximum	\$50 per return / \$185,000 maximum
31 days late - August 1	\$50 per return / \$100,000 maximum	\$60 per return / \$200,000 maximum	\$100 per return / \$529,500 maximum
After August 1	\$50 per return / \$100,000 maximum	\$100 per return / \$500,000 maximum	\$260 per return / \$1,059,500 maximum
Intentional Disregard	\$100 per return / no limitation	\$250 per return / no limitation	\$520 per return / no maximum

Note: Increased penalty amounts may apply in the case of certain failures due to intentional disregard.

Failure to Make Federal Tax Deposits on Time in an Authorized Government Depository -

Penalties may apply if you do not make required deposits on time, make deposits for less than the required amount or if you do not use EFTPS or EFT when required. For amounts not properly or timely deposited, the penalty rates are:

2 percent - Deposits made 1 to 5 days late

5 percent - Deposits made 6 to 15 days late

10 percent - Deposits made 16 or more days late (Also applies to amounts paid within 10 days of the date of the first notice the IRS sent asking for the tax due)

10 percent - Deposits made at an unauthorized financial institution, paid directly to the IRS or paid with your tax return (unless otherwise excepted)

10 percent - Amounts subject to electronic deposit

5 percent - Amounts still unpaid more than 10 days after the date of the first notice the IRS sent asking for the tax due or the day on which you receive notice and demand for immediate payment, whichever is earlier

Failure to Collect and Pay Over Trust Fund Taxes – If federal income, Social Security and Medicare taxes to be withheld are not withheld or are not deposited or paid to the United States Treasury, the trust fund recovery penalty may apply. This penalty is the full amount of the unpaid trust fund tax. It may be imposed on all persons who are determined by the IRS to be

responsible for collecting, accounting for and paying over these taxes. Refer to [Chapter 22](#) for further information on the trust fund recovery penalty.

Penalty Relief

If a penalty is assessed and you do not think the assessment is correct or you still have questions, the law allows the IRS to remove or reduce the penalties if you can show you acted reasonably and in good faith, or relied on the incorrect advice of an IRS employee.

Upon receipt of your assessment notice, you may send IRS a signed statement explaining why you believe the penalty should be removed or reduced. Please be sure to explain in detail what caused the problem. Your statement will be reviewed and you will be notified if your explanation is accepted.

Please refer to [Notice 746](#), *Information About Your Notice, Penalty and Interest*, for detailed information on why penalties are assessed and in what amounts, and the removal of penalties. Contact your Indian Tribal Governments specialist for further assistance.

How are Penalties Paid?

If you receive a notice of penalty, it will include instructions to send payment with the voucher at the bottom of the notice. Electronic payment options are available on [IRS.gov/Payments](https://www.irs.gov/payments). If you have questions regarding the payment of penalties, please call your Indian Tribal Governments specialist.

References

- [Publication 15](#), *(Circular E), Employer's Tax Guide*
- [Notice 746](#), *Information About Your Notice, Penalty and Interest*
- [Helpful Hints to Avoid Penalties](#)

Chapter 22

IRS Notices and Letters

Understanding Your Notice or Letter

The IRS will mail you a notice or letter that will explain the reason for the contact and give you instructions on how to handle the issue.

Why was I Notified by the IRS?

The IRS sends notices and letters if:

- You have a balance due
- You are due a larger or smaller refund
- We have a question about your tax return
- We need to verify your identity
- We need additional information
- We changed your return
- We need to notify you of delays in processing your return

Do Not Ignore the Notice or Letter

You can respond to most IRS notices and letters quickly and easily. If you ignore the notice or letter, the IRS may take enforcement action (see [Chapter 23](#), *The Collection Process*, for more information).

Read the Notice or Letter and Follow Instructions

Each notice or letter contains a lot of valuable information, so it is very important that you read it carefully. The notice or letter will tell you if you need to take any corrective action or provide additional information. Be sure to follow the instructions provided if corrective action or additional information is requested.

If, after reviewing the letter or notice, you believe there is an error, write to the IRS office that sent it to you within the time frame given. You should also provide photocopies of any records that may help correct the error. You may also call the number listed on your notice or bill for assistance. If you are correct, IRS will make the necessary adjustment to your account and send you a corrected notice.

Respond

If your notice or letter requires a response by a specific date, there are two main reasons you will want to comply:

- To minimize additional interest and penalty charges
- To preserve your appeal rights if you do not agree

Correction Notice

If the IRS changed or corrected your tax return, compare the information provided in the notice or letter with the information in your original return.

- If you agree, you don't need to reply unless a payment is due.
- If you don't agree, it's important that you respond. Follow the instructions on the notice for the best way to respond to IRS. You may be able to call to resolve the issue. Have a copy of your tax return and the notice with you when you call. If you choose to write to IRS, be sure to include

information and any documents you want considered. Also, write your Social Security number, employer identification number or individual taxpayer identification number on each page of the letter you send. Mail your reply to the address shown on the notice. Allow at least 30 days for a response.

Pay

If you agree with the information provided in the notice or letter, pay as much as you can, even if you cannot pay the full amount you owe. The EFTPS is the best way for you to pay your federal taxes. However, if you decide to pay by mail, in order to make sure your payment credits properly to your account, be sure to return the tear-off stub on your bill and use the return envelope, if provided. Please ensure that you:

- Make your check or money order payable to the United States Treasury
- Enter the employer identification number
- Enter the tax year and form number
- Ensure that your name, address and telephone number are on the payment
- Do NOT send cash

Keep a Copy of Your Notice or Letter

It's important to keep a copy of all notices or letters with your tax records. You may need these documents at a later date.

Contact Us

Most correspondence can be handled without calling or visiting an IRS office if you follow the instructions in your letter or notice. The IRS provides a contact phone number on the top right-hand corner of the notice or letter. Typically, you only need to contact us if you do not agree with the information, if we requested additional information, if you have a balance due or if you have additional questions not addressed in the original notice or letter. You can also write to us at the address in the notice or letter. If you write, allow at least 30 days for our response.

If you need assistance with your notice or letter, call your [ITG specialist](#), who can help you address issues and provide guidance on how to resolve issues identified in the notice or letter you received

Location of the Notice or Letter Number

You can find the notice (CP) or letter (LTR) number on either the top or the bottom right-hand corner of your correspondence. You can find more information about your notice or letter received by visiting [IRS Notice or Letter: Business Filers](#) and entering the notice or letter number in the search box.

When the Notice or Letter Looks Suspicious

The IRS does not initiate contact with taxpayers by email, text messages or social media channels to request personal or financial information. This includes requests for PIN numbers, passwords or similar access information for credit cards, banks or other financial accounts.

Phishing is a scam typically carried out through unsolicited email or websites that pose as legitimate sites and lure unsuspecting victims to provide personal and financial information.

Report all unsolicited email claiming to be from the IRS or an IRS-related function to phishing@irs.gov. If you've experienced any monetary losses due to an IRS-related incident, please report it to the [Treasury Inspector General Administration](#) and file a complaint with the Federal Trade Commission through their [Complaint Assistant](#) to make the information available to investigators.

Taxpayer Advocate Service

The [Taxpayer Advocate Service](#) (TAS) is your voice at the IRS. TAS is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels or who believe that an IRS system or procedure is not working as it should. They ensure that you are treated fairly, and know and understand your rights. If you are having tax problems and have not been able to resolve them with the IRS, you may be eligible for free TAS assistance if you:

- Are experiencing economic harm or significant cost (including fees for professional representation),
- Have experienced a delay of more than 30 days to resolve your tax issue, or
- Have not received a response or resolution to the problem by the date that the IRS promised.

The service is free, confidential, tailored to meet your needs and is available for businesses as well as individuals. There is at least one local Taxpayer Advocate in each state, as well as in Puerto Rico and the District of Columbia. Because they are part of the IRS, Advocates know the tax system and how to navigate it. If you qualify, you will receive personalized service from a knowledgeable Advocate who will:

- Listen to your situation,
- Help you understand what needs to be done to resolve it, and
- Stay with you every step of the way until your problem is resolved.

You can reach the Taxpayer Advocate Service by:

- Calling toll-free 877-777-4778 or TTY/TTD 800-829-4059.
- Writing or calling your local Taxpayer Advocate, whose address and phone number are listed in the government listings in your local telephone directory and in [Publication 1546](#), *Taxpayer Advocate Service – We are Here to Help You*
- Filing [Form 911](#), *Request for Taxpayer Advocate Service Assistance*, or
- Requesting that an IRS employee complete Form 911 for you.

References

- [Publication 15](#), *(Circular E), Employer's Tax Guide*
- [Notice 746](#), *Information About Your Notice, Penalty and Interest*
- [Publication 1546](#), *Taxpayer Advocate Service - We are Here to Help You*
- [Form 911](#), *Request for Taxpayer Advocate Service Assistance*

Chapter 23

The Collection Process

The Collection Process: What to Do When You Owe Taxes

It is highly recommended that you have one designated office for each entity to receive and review all IRS notices. It's important to pay attention to the time frame stated in the notice and to respond to the notice promptly. This internal control will alleviate notices being lost or misdirected.

When employment tax returns are filed, IRS checks to see if the math is accurate and if the correct amount of tax has been paid or timely deposited. If you have not paid all you owe, IRS will send a bill called a Notice of Tax Due and Demand for Payment. The bill includes the taxes, plus penalties and interest. We encourage you to pay your bill by check or money order as quickly as possible. If you received a bill for unpaid taxes, you should pay the entire amount, or tell IRS right away why you cannot. If you received a tax notice or if you would like to know if there are any outstanding tax debts, contact your Indian Tribal Governments specialist for further assistance.

If you do not pay the taxes you owe and if you make no effort to pay them, IRS can ask you to take action to pay your taxes, such as selling or mortgaging assets or getting a loan. If you still make no effort to pay your bill or to work out a payment plan, IRS may also take more serious action, such as seizing bank accounts or other assets.

If You Cannot Pay in Full, There is Still Something You Can Do...

Publication 594, *The IRS Collection Process*, tells you the steps the IRS may take to collect your balance due account.

If you cannot pay all your taxes now, pay as much as you can. Paying now reduces the amount of interest and penalty owed on the account. Then, immediately call or write the IRS Indian Tribal Governments office, or visit the nearest IRS office to explain your situation. They will assist you with resolving the account.

If you are unable to pay what you owe, you should contact the IRS as soon as possible. The IRS may be able to offer you a number of payment solutions including:

- **Extension of time to pay** – You may be eligible for a short extension of time to pay of up to 120 days. You should request an extension if you would be able to pay the taxes in full within the extended time frame.
- **Installment agreement** – Installment agreements paid by direct deposit from a bank account or payroll deduction from wages will help avoid agreement default by ensuring timely payments and will reduce the burden of mailing payments and save postage costs.
- **Delaying collection** – If the IRS determines that you are unable to pay, it may delay collection until your financial condition improves.
- **Offer in Compromise** – You may be able to settle your tax bill for less than the amount you owe by submitting an Offer in Compromise. However, the criteria for accepting an offer are strict and relatively few offers are accepted each year.

What if You Believe Your Bill is Wrong?

If you believe your bill is wrong, let IRS know as soon as possible. Call the number on your bill or contact the IRS Indian Tribal Governments office in your area for assistance.

To help us correct the problem, gather a copy of the bill along with copies of any records, tax returns and canceled checks, etc., that will help us understand why you believe your bill is wrong. If we find you are correct, we will adjust your account.

Before any action that is explained in this section is taken, you have the opportunity to voluntarily pay what is owed. But if you do not pay your taxes in full and do not contact IRS to let them know why you cannot pay or why you disagree with our decision to take enforcement action, the law requires IRS to take action. IRS may:

- **File a lien** against property (make a legal claim to property as security or payment for a tax debt)
- **Serve a levy** on property (legally seize property to satisfy a tax debt)
- **Assess a trust fund recovery penalty** for employment taxes

These enforced collection actions are the means by which the Notice and Demand for Tax Payment is enforced. [Publication 1660](#), *Collection Appeal Rights*, and [Publication 5](#), *Your Appeal Rights and How to Prepare a Protest if You Don't Agree*, give detailed information about the appeals process.

Liens

Liens give a legal claim to property as security or payment for a tax debt. A *Notice of Federal Tax Lien* may be filed only after:

- We assess the liability,
- We send you a Notice and Demand for Payment (a bill that tells how much is owed in taxes), and
- You neglect or refuse to pay the debt within 10 days after we notify you about it.

Once these requirements are met, a lien is created for the amount of the tax debt. Filing this notice publicly notifies other possible creditors that the federal government has a claim against the debtor's property, including property acquired after the lien is filed.

Liens can be attached to all property or rights to property, including an employer's accounts receivable.

Levies

A levy is a legal seizure of property to satisfy a tax debt. Levies are different from liens. A lien is a claim used as security for the tax debt, while a levy actually takes the property to satisfy the tax debt.

If the taxes are not paid, or arrangements are not made to settle the debt, the IRS may seize and sell any type of real or personal property.

Generally, these three requirements must be met before a levy action is taken:

- Tax is assessed and a Notice and Demand for Payment is issued,
- Someone neglects or refuses to pay the tax, and
- A *Final Notice of Intent to Levy and Notice of Your Right to a Hearing* (levy notice) was issued at least 30 days before the levy.

Trust Fund Recovery Penalty

To encourage prompt payment of withheld income and employment taxes, including Social Security taxes, railroad retirement taxes or collected excise taxes, Congress passed a law that provides for the trust fund recovery penalty. (These taxes are called trust fund taxes because you actually hold the employee's money in trust until you make a federal tax deposit in that amount.)

If IRS plans to assess the trust fund recovery penalty, it will send you a letter stating that you have been determined to be a responsible person. You have 60 days after you receive the letter to appeal the proposal. If you do not respond to the letter, IRS will assess the penalty against you as a responsible person and send you a *Notice and Demand for Payment*. Also, IRS can apply this penalty whether or not you are out of business.

A responsible person is a person or group of people who has the duty to perform and the power to direct the collecting, accounting and paying of trust fund taxes.

This person may be:

- An officer or an employee of a corporation,
- A tribal council member,
- A member or employee of a partnership,
- A corporate director or shareholder,
- A member of a board of trustees of a nonprofit organization,
- Another person with authority and control over funds to direct their disbursement, or
- Another corporation.

Assessing the Trust Fund Recovery Penalty

IRS may assess the penalty against anyone:

- Who is responsible for collecting or paying withheld income and employment taxes, or for paying collected excise taxes, and
- Who willfully fails or neglects to collect or pay them.

For willfulness to exist, the responsible person must:

- Have been aware or should have been aware of the unpaid taxes, and
- Have used the funds to keep the business going or allowed available funds to be paid to other creditors.

The amount of the penalty is equal to the unpaid balance of the trust fund tax. The penalty is computed based on:

- The unpaid income taxes withheld, plus
- The employee's portion of the withheld FICA taxes.

For collected taxes, the penalty is based on the unpaid amount of collected excise taxes.

Once IRS asserts this penalty, it can take collection action against your personal assets. For instance, IRS can file a federal tax lien or take levy or seizure action.

You can avoid the trust fund recovery penalty by making sure that all employment taxes are collected, accounted for and paid to the IRS when required.

References

- [Publication 594](#), *The IRS Collection Process*
- [Publication 1660](#) *Collection Appeal Rights*
- [Publication 5](#), *Your Appeal Rights and How to Prepare a Protest if You Don't Agree*

Glossary of Terms

Consolidated Appropriations Act.....	CAA
Combined Annual Wage Reporting	CAWR
Cash or Deferred Arrangement.....	CODA
Electronic Data Transfer.....	EDT
Electronic Filing	E-FILE
Electronic Federal Tax Payment System	EFTPS
Electronic Funds Transfer	EFT
Employer Identification Number.....	EIN
Earned Income Tax Credit	EITC
Employee Retirement Income Security Act	ERISA
Federal Insurance Contributions Act	FICA
Federal Tax Deposit	FTD
Federal Unemployment Tax Act.....	FUTA
U.S. Immigration and Customs Enforcement Service	ICE
Individual Retirement Account	IRA
Old-Age, Survivors, and Disability Insurance	OASDI
Salary Reduction Simplified Employee Pension.....	SARSEP
Self-Employment Contributions Act.....	SECA
Simplified Employee Pension	SEP
Savings Incentive Match Plan for Employees	SIMPLE
State Unemployment Tax Act	SUTA
Social Security Administration	SSA
Social Security Number	SSN
Taxpayer Advocate Service.....	TAS
Unemployment Compensation	UC

Attachment A

Revenue Ruling 59-354

Revenue Ruling 59-354

SECTION 61 – Gross Income Defined

1959-2 Cumulative Bulletin 24; July 1959

26 CFR 1.61-2: Compensation for services, including fees, commissions, and similar items (Also Sections 3121, 3306, 3401; 31.3121(a)-1, 31.3306(b)-1, 31.3401(a)-1.)

Although includible in gross income under section 61 of the Internal Revenue Code of 1954, amounts paid to members of Indian tribal councils for services performed by them as council members do not constitute “wages” for the purposes of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act and the collection of income tax at source on wages.

Amounts paid to other salaried employees of such Indian councils and to employees of private tribal business enterprises constitute “wages” subject to the Federal employment taxes, including the withholding of income tax under section 3402 of the Internal Revenue Code of 1954.

Advice has been requested whether the salaries of members of Indian tribal councils are subject to Federal income tax and Federal employment taxes and whether the tribal councils are liable for the withholding and payment of such taxes.

The constitution and bylaws of the various Indian tribes provide that the members of the council are elected from among the full tribal membership; that their duties include representing the tribe in business dealings with the United States Government and the public generally; that the council is a policy determining group; and that the members also have some duties to perform in legislative and executive capacities for the tribe. Their duties appear to be similar to the duties of a city council.

Section 61(a) of the Internal Revenue of 1954 defines the term “gross income” to include “income derived from any source whatever.”

Exemption from the payment of Federal income tax may not be implied and, if exemption of Indians from the payment of such tax exists, it must derive plainly from the Federal tax statutes or from treaties or agreements with the Indian tribes concerned or some Act of Congress dealing with their affairs. See Revenue Ruling 54-456, C.B. 1954-2, 49. Accordingly, Indians are required to include in gross income all income they receive which has not been specifically exempted in some manner from Federal income tax.

There is no provision in the Federal income tax laws, which would exempt Indians, as such, from income taxation. Accordingly, unless income of an Indian derived from a particular source is otherwise exempt; such income will be subject to tax in his hands the same as it would be in the hands of any other taxpayer. Similarly, all remuneration received by an Indian for services performed as an employee for his employer which constitutes “wages,” as that term is defined in the Federal employment tax statutes, is subject to the taxes imposed by such statutes.

Where a business enterprise of an Indian tribe is organized and operated by the tribe itself, such enterprise is considered a private tribal activity and services performed in its employ constitute employment. In this connection, see Revenue Ruling 56-110, Cumulative Bulletin 1956-1, 488.

A review of many court decisions and legislative enactments pertaining to Indian tribes indicates that the powers vested in any tribe or tribal council by existing law, within the meaning of section 16 of the Wheeler-Howard Act, 25 U.S.C. 476, precludes a conclusion that services performed

by members of such councils in their capacities as council members constitute employment for Federal employment tax purposes. Accordingly, it is held that the amounts paid to members of tribal councils for services performed by them as council members do not constitute “wages” for purposes of the Federal Insurance Contributions Act, Federal Unemployment Tax Act and the collection of income tax at source on wages (chapters 21, 23 and 24, respectively, Subtitle C, Internal Revenue Code of 1954).

It is held further that services performed by other salaried employees of tribal councils and by employees of tribal business enterprises constitute employment and their wages are subject to the Federal employment taxes, including the withholding of income tax under section 3402 of the Code. The tribal councils are responsible for the withholding of taxes where applicable and for the payment of any taxes owing with respect to the wages paid to such employees

Attachment B

Revenue Ruling 63-136

Note: The following ruling was issued prior to the enactment of the Tribal General Welfare Exclusion Act of 2014. This document should be interpreted in light of that Act and caution should be applied when applying this ruling to your situation. If uncertain, consult with your ITG specialist.

Revenue Ruling 63-136

SECTION 61 –Gross Income Defined

1963-2 Cumulative Bulletin 19; January 1, 1963

26 CFR 1.61-1: Gross income.

Benefit payments made to individuals undergoing training or retraining under either the Area Redevelopment Act or the Manpower Development and Training Act of 1962 are not includible in the gross incomes of the recipients.

Advice has been requested whether benefit payments received by individuals undergoing training or retraining under the Area Redevelopment Act, 75 Stat. 47-63, or the Manpower Development and Training Act of 1962, 76 Stat. 23-33, are includible in the gross incomes of the recipients.

The Area Redevelopment Act provides for certain types of Federal assistance to areas of substantial and persistent unemployment and underemployment, which have been designated redevelopment areas, for the purpose of aiding such areas in financing their redevelopment.

The purpose of the Manpower Development and Training Act of 1962 is to deal with the problems of unemployment resulting from technological developments and structural changes in the economy.

Both of these Acts authorize the Secretary of Labor to enter into agreements under which payments are made to the several states for the purpose of enabling them, as agents of the United States, to make weekly payments to individuals selected for training or retraining under one of the Acts. Payments made under either of the Acts are equal to the amount of the average weekly unemployment compensation payment payable for a week of total unemployment by the state making such payment. Both Acts also provide that no retraining payment may be made to any person for any week for which he has received, or is seeking, unemployment compensation under any Federal or state unemployment compensation law; however, these provisions do not prevent a person from receiving training or retraining benefits for any week for which it is later determined that he was not eligible to receive unemployment compensation.

The Manpower Development and Training Act of 1962 authorizes the payment of benefits to persons undergoing on-the-job training. However, the amount of any payment which would otherwise be made to such a person is reduced by an amount which bears the same ratio to the payment as the number of compensated hours per week bears to forty hours. That Act also authorizes additional payments for transportation and subsistence in the case of persons whose training is provided in facilities which are not within commuting distance of their regular place of residence.

Revenue Ruling 55-652, C.B. 1955-2, 21, and I.T. 3230, C.B. 1938-2, 136, hold that unemployment compensation payments made by a state or Federal agency are not subject to

Federal income tax in the hands of the recipients. A similar position has been taken with respect to other payments which were made in the interest of the general welfare. See Revenue Ruling 57-102, C.B. 1957-1, 26, which holds that benefit payments received by a blind person from the State of Pennsylvania constitute disbursements from a general welfare fund in the interest of the general public and are not includible in the gross income of the recipients. See also Revenue Ruling 131, C.B. 1953-2, 112, and I.T. 3447, C.B. 1941-1, 191.

Benefit payments made under the Area Redevelopment Act and the Manpower Development and Training Act of 1962 are intended to aid the recipients in their efforts to acquire new skills that will enable them to obtain better employment opportunities, and, as such, fall in the same category as other unemployment relief payments made for the promotion of the general welfare.

Accordingly, it is held that such payments are not includible in the gross incomes of the recipients.

Attachment C

Revenue Ruling 2000-6

Revenue Ruling 2000-6

SECTION 6041 – Information at Source

2001-1 Cumulative Bulletin 512; February 7, 2000

26 CFR 1.6041-2: Return of information as to payments to employees. (Also Sections 3121, 3401, 6051); (Also Section 1.6041-1.)

Issue

How do the information reporting requirements of §§ 6041(a) and 6051(a) of the Internal Revenue Code apply to election workers?

Facts

Election workers are individuals who are generally employed to perform services for state and local governments (governments) at election booths in connection with national, state, or local elections. Governments typically pay election workers a set fee for each day of work. Election workers' wages are includible in gross income as compensation for services. Section 61(a)(1). An individual employed as an election worker may also perform services for the government in another capacity.

A state and the Social Security Administration may agree to extend social security coverage to services of employees of the state or its political subdivisions under § 218 of the Social Security Act (§ 218 agreement). A § 218 agreement may cover the services of election workers. If so, the § 218 agreement may specify the level of fees the election workers must receive to be entitled to coverage. Information about a state's § 218 agreement can be obtained from the State Social Security Administrator.

Situation 1: Government A pays V \$ 200 in a calendar year for services as an election worker. A does not employ V in any other capacity. The services of A's election workers are not covered by a § 218 agreement. V is not covered by a retirement plan maintained by A.

Situation 2: Government B pays W \$ 200 in a calendar year for services as an election worker. B does not employ W in any other capacity. The services of B's election workers are covered by a § 218 agreement if their remuneration is \$ 100 or more in a calendar year. W is not covered by a retirement plan maintained by B.

Situation 3: Government C pays X \$ 1,100 in calendar year 2000 for services as an election worker. C does not employ X in any other capacity. The services of C's election workers are not covered by a § 218 agreement. X is not covered by a retirement plan maintained by C.

Situation 4: Government D pays Y \$ 200 in a calendar year for services as an election worker. D also employed Y in another capacity, in which Y earned wages of \$ 300 that are subject to income tax withholding. The services of D's election workers are not covered by a § 218 agreement. Y is not covered by a retirement plan maintained by D.

Situation 5: Government E pays Z \$ 200 in a calendar year for services as an election worker. E also employed Z in another capacity, in which Z earned wages of \$ 500 that are subject to income tax withholding. The services of E's election workers are not covered by a § 218 agreement. Z is not covered by a retirement plan maintained by E.

Law

Taxes under the Federal Insurance Contribution Act (FICA) apply to “wages” as defined in § 3121(a). That section provides that the term wages includes only remuneration for “employment.” Section 3121(b)(7)(F)(iv) provides that the services of an election worker are not employment for FICA purposes if the worker’s remuneration is less than \$ 1,000. For calendar years beginning on or after January 1, 2000, the amount is indexed for inflation. The applicable amount for the year 2000 is \$ 1,100. Because service performed by an election worker for calendar year 2000 for an amount less than \$ 1,100 is excluded from employment for FICA purposes, that amount is not wages for FICA purposes unless covered under a § 218 agreement.

Similarly, section 3121(u)(2)(B)(ii)(V) provides that the services of an election worker are not employment for purposes of the Medicare tax portion of the FICA if the worker’s remuneration is less than \$ 1,000 in a calendar year. For calendar years beginning on or after January 1, 2000, the amount is indexed for inflation. The applicable amount for the year 2000 is \$ 1,100. For services performed before January 1, 1995, the § 3121(u)(2)(B)(ii)(V) exclusion was for remuneration of less than \$ 100. Rev. Rul. 88-36, 1988-1 C.B. 343, A2, provides that an election worker is subject to Medicare tax unless the remuneration paid to the worker in a calendar year is less than \$ 100.

Section 3401(a) provides that, for purposes of income tax withholding, the term “wages” means all remuneration (other than fees paid to a public official) for services performed by an employee for an employer. Section 31.3401(a)-2(b)(2) of the Employment Tax Regulations states that amounts paid to precinct workers for services performed at election booths are “in the nature of fees paid to public officials” and not subject to income tax withholding.

6041(a) and 6051(a) both impose a duty to file information reports of compensation paid to workers.

Section 6041(a) provides:

All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income ... of \$ 600 or more in any taxable year ... shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

Under § 1.6041-1(b)(1) of the Income Tax Regulations, the term “all persons engaged in a trade or business,” as used in § 6041(a), includes organizations the activities of which are not for the purpose of gain or profit.

The general rule stated in § 1.6041-1(a)(2) is that the required return is made on Forms 1096 and 1099, except that § 1.6041-1(a)(2)(ii) provides that compensation paid to an employee by an employer shall be reported on Forms W-3 and W-2 under the provisions of § 1.6041-2 (relating to return of information as to payments to employees).

Under § 1.6041-2(a)(1), payments of wages not subject to income tax withholding must be reported on Form W-2 if the total of those payments and the amount of the employee’s wages subject to income tax withholding, if any, is \$ 600 or more in a calendar year. For example, if a payment of \$ 700 was made to an employee and \$ 400 thereof represents wages subject to withholding under section 3402 and the remaining \$ 300 represents compensation not subject

to withholding, such wages and compensation must both be reported on Form W-2. If the employee has no wages subject to income tax withholding, the employer is required to file Form W-2 for that employee if payments to that employee equal \$ 600 or more in a calendar year.

Section 1.6041-2(a)(1) provides that, at the election of the employer, components of amounts required to be reported on Form W-2 pursuant to this subparagraph may be reported on more than one Form W-2. Thus the amounts paid to an individual for services as an election worker may be reported on a separate W-2 from amounts paid to the individual for service in another capacity, even though the amounts are aggregated to determine whether reporting applies.

Section 6051(a) imposes a reporting requirement on the following two categories of payors of remuneration:

Every person required to deduct and withhold from an employee a tax under section 3101 [employee FICA tax] or 3402 [income tax withholding] ... or every employer engaged in a trade or business who pays remuneration for services performed by an employee... .

Section 6051(a) does not require reporting of compensation that is not subject to withholding of FICA tax or income tax.

Section 6051(c) provides that the Secretary may prescribe by regulations the reporting of additional items. No regulations requiring employers to furnish additional information have been published.

Analysis

Compensation of an election worker is not subject to income tax withholding. Sections 3401(a) and 31.3401(a)-2(b)(2). If an election worker's compensation is less than \$ 1,100 for calendar year 2000, it is generally not subject to FICA tax. Sections 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V). However, under a state's § 218 agreement, an election worker's compensation may be subject to both the old-age, survivors and disability insurance (OASDI) and the Medicare portions of the FICA tax at a level below \$ 1,100 for calendar year 2000.

Section 6041(a) applies to payments of compensation that are not subject to withholding of FICA or income tax. If an election worker's compensation is not subject to withholding of FICA tax, the § 6041(a) reporting requirement applies to payments that aggregate \$ 600 or more in any taxable year. Under § 1.6041-2(a)(1), compensation subject to income tax withholding is taken into account in determining whether the \$ 600 reporting requirement applies.

Section 6051(a) requires reporting of compensation subject to either FICA tax or income tax withholding. No reporting is required by §§ 6051(a) and 31.6051-1(a) and (b) for items of income that are not subject to withholding of FICA tax or income tax. If an election worker's compensation is subject to withholding of FICA tax, reporting is required by § 6051(a), regardless of the amount of compensation.

Holdings

The reporting requirements applicable to governments that employ election workers are as follows:

Situation 1: Neither FICA tax nor income tax withholding applies to the \$ 200 paid to V. The reporting requirements of § 6041(a) apply. Because V earns fees that are less than \$ 600, Government A is not required to issue Form W-2 to V.

Situation 2: FICA tax, but not income tax withholding, applies to the \$ 200 paid to W because the fees exceed the \$ 100 threshold in the § 218 agreement. Government B must follow the

reporting requirements of § 6051(a), reporting on Form W-2 the fees of \$ 200 and the FICA tax withheld.

Situation 3: FICA tax, but not income tax withholding, applies to the \$ 1,100 paid to X for calendar year 2000. Government C must follow the reporting requirements of § 6051(a), reporting on Form W-2 the fees of \$ 1,100 and the FICA tax withheld.

Situation 4: Neither FICA tax nor income tax withholding applies to the \$ 200 paid to Y for services as an election worker, but the \$ 300 payment is subject to income tax withholding. Government D must follow the reporting requirements of § 6051(a), reporting on Form W-2 the \$ 300 payment and the income tax withheld. Section 6041(a) does not require reporting of the \$ 200 payment because the total of the two payments is less than \$ 600 for the calendar year.

Situation 5: Neither FICA tax nor income tax withholding applies to the \$ 200 paid to Z for services as an election worker, but the \$ 500 payment is subject to income tax withholding. Government E must follow the reporting requirements of §§ 6041(a) and 6051(a), reporting on Form W-2 both the \$ 200 and the \$ 500 payments and the amount of income tax withheld.

Effect on Other Revenue Ruling(s)

This ruling modifies Rev. Rul. 88-36, A2, to reflect the increase in the amount of remuneration applicable for purposes of the Medicare tax exclusion under § 3121(u)(2)(B)(ii)(V), currently \$ 1,100 for calendar year 2000.