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Internal Revenue Service

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# Employer's Supplemental Tax Guide

**(Supplement to Pub. 15,  
Employer's Tax Guide)**

For use in **2020**

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## Future Developments

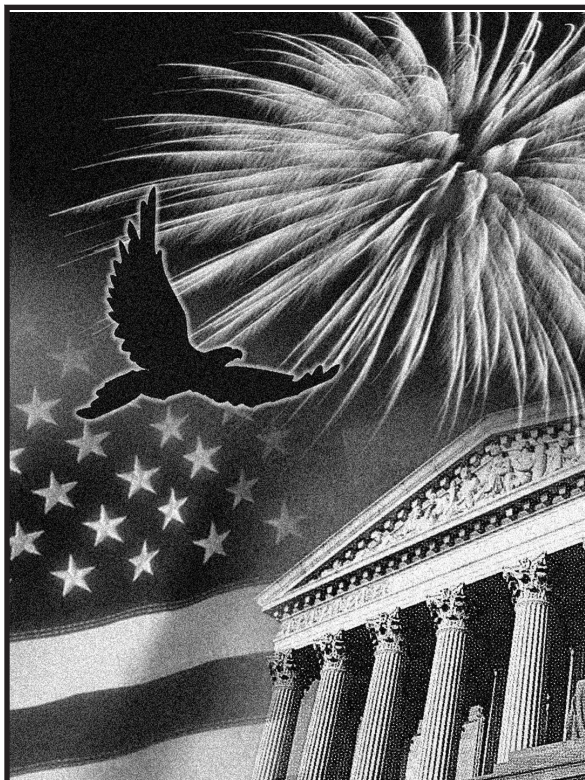
For the latest information about developments related to Pub. 15-A, such as legislation enacted after it was published, go to [IRS.gov/Pub15A](https://www.irs.gov/Pub15A).

## What's New

**2020 withholding tables.** The discussion on the alternative methods for figuring federal income tax withholding and the Tables for Withholding on Distributions of Indian Gaming Profits to Tribal Members are no longer included in Pub.15-A. This information is now included in Pub. 15-T, Federal Income Tax Withholding Methods, along with the Percentage Method and Wage Bracket Method withholding tables. However, the IRS is no longer providing the Formula Tables for Percentage Method Withholding (for Automated Payroll Systems); Wage Bracket Percentage Method Tables (for Automated Payroll Systems); or the Combined Federal Income Tax, Employee Social Security Tax, and Employee Medicare Tax Withholding Tables.

**New Form 1099-NEC.** There is a new Form 1099-NEC to report nonemployee compensation paid in 2020. The 2020 Form 1099-NEC will be due February 1, 2021. For nonemployee compensation paid in 2019, continue to use Form 1099-MISC, which is due January 31, 2020. This revision of Pub. 15-A will continue to reference Form 1099-MISC because that is the form that is filed in 2020.

**Social security and Medicare tax for 2020.** The social security tax rate is 6.2% each for the employee and employer, unchanged from 2019. The social security wage base limit is \$137,700.



Get forms and other information faster and easier at:

- [IRS.gov](https://www.irs.gov) (English)
- [IRS.gov/Korean](https://www.irs.gov/Korean) (한국어)
- [IRS.gov/Spanish](https://www.irs.gov/Spanish) (Español)
- [IRS.gov/Russian](https://www.irs.gov/Russian) (Русский)
- [IRS.gov/Chinese](https://www.irs.gov/Chinese) (中文)
- [IRS.gov/Vietnamese](https://www.irs.gov/Vietnamese) (Tiếng Việt)

The Medicare tax rate is 1.45% each for the employee and employer, unchanged from 2019. There is no wage base limit for Medicare tax.

Social security and Medicare taxes apply to the wages of household workers you pay \$2,200 or more in cash wages in 2020. Social security and Medicare taxes apply to election workers who are paid \$1,900 or more in cash or an equivalent form of compensation.

**Disaster tax relief.** Disaster tax relief is available for those impacted by disasters. For more information about disaster relief, go to [IRS.gov/DisasterTaxRelief](https://www.irs.gov/DisasterTaxRelief).

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## Reminders

**Moving expense reimbursements.** Section 11048 of P.L. 115-97, Tax Cuts and Jobs Act, suspends the exclusion for qualified moving expense reimbursements from your employee's income for tax years beginning after 2017 and before 2026. However, the exclusion is still available in the case of a member of the U.S. Armed Forces on active duty who moves because of a permanent change of station due to a military order. The exclusion applies only to reimbursement of moving expenses that the member could deduct if he or she had paid or incurred them without reimbursement. See *Moving Expenses* in Pub. 3, Armed Forces' Tax Guide, for the definition of what constitutes a permanent change of station and to learn which moving expenses are deductible.

**Work opportunity tax credit for qualified tax-exempt organizations hiring qualified veterans.** Qualified tax-exempt organizations that hire eligible unemployed veterans may be able to claim the work opportunity tax credit against their payroll tax liability using Form 5884-C. For more information, go to [IRS.gov/WOTC](https://www.irs.gov/WOTC).

**COBRA premium assistance credit.** Effective for tax periods beginning after 2013, the credit for COBRA premium assistance payments can't be claimed on Form 941, Employer's QUARTERLY Federal Tax Return (or Form 944, Employer's ANNUAL Federal Tax Return). Instead, after filing your Form 941 (or Form 944), file Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund (or Form 944-X, Adjusted Employer's ANNUAL Federal Tax Return or Claim for Refund) to claim the COBRA premium assistance credit. Filing a Form 941-X (or Form 944-X) before filing a Form 941 (or Form 944) for the return period may result in errors or delays in processing your Form 941-X (or Form 944-X). For more information, see the Instructions for Form 941 (or the Instructions for Form 944).

**No federal income tax withholding on disability payments for injuries incurred as a direct result of a terrorist attack directed against the United States.** Disability payments (including Social Security Disability Insurance (SSDI) payments) for injuries incurred as a direct result of a terrorist attack directed against the United States (or its allies) aren't included in income. Because federal income tax withholding is only required when a payment is includable in income, no federal income tax should be withheld from these payments. See Pub. 907, Tax Highlights for Persons With Disabilities.

**Definition of marriage.** A marriage of two individuals is recognized for federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of legal residence. Two individuals who enter into a relationship that is denominated as marriage under the laws of a foreign jurisdiction are recognized as married for federal tax purposes if the relationship would be recognized as marriage under the laws of at least one state, possession, or territory of the United States, regardless of legal residence. Individuals who have entered into a registered domestic partnership, civil union, or other similar relationship that isn't denominated as a marriage under the law of the state, possession, or territory of the United States where such relationship was entered into aren't lawfully married for federal tax purposes, regardless of legal residence.

**Certification program for professional employer organizations (PEOs).** The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 required the IRS to establish a voluntary certification program for PEOs. PEOs handle various payroll administration and tax reporting responsibilities for their business clients and are typically paid a fee based on payroll costs. To become and remain certified under the certification program, certified professional employer organizations (CPEOs) must meet various requirements described in sections 3511 and 7705 and related published guidance. Certification as a CPEO may affect the employment tax liabilities of both the CPEO and its customers. A CPEO is generally treated for employment tax purposes as the employer of any individual who performs services for a customer of the CPEO and is covered by a contract described in section 7705(e) (2) between the CPEO and the customer (CPEO contract), but only for wages and other compensation paid to the individual by the CPEO. To become a CPEO, the organization must apply through the IRS Online Registration System. For more information or to apply to become a CPEO, go to [IRS.gov/CPEO](https://www.irs.gov/CPEO). Also, see Revenue Procedure 2017-14, 2017-3 I.R.B. 426, available at [IRS.gov/irb/2017-03\\_IRB#RP-2017-14](https://www.irs.gov/irb/2017-03_IRB#RP-2017-14).

**Outsourcing payroll tax duties.** Generally, as an employer, you're responsible to ensure that tax returns are filed and deposits and payments are made, even if you contract with a third party to perform these acts. You remain responsible if the third party fails to perform any required action. Before you choose to outsource any of your payroll and related tax duties (that is, withholding, reporting, and paying over social security, Medicare, FUTA, and income taxes) to a third-party payer, such as a payroll service provider or reporting agent, go to [IRS.gov/OutsourcingPayrollDuties](https://www.irs.gov/OutsourcingPayrollDuties) for helpful information on this topic.

If a CPEO pays wages and other compensation to an individual performing services for you, and the services are covered by a contract described in section 7705(e)(2) between you and the CPEO (CPEO contract), then the CPEO is generally treated as the employer, but only for wages and other compensation paid to the individual by the CPEO. However, with respect to certain employees covered by a CPEO contract, you may also be treated as an employer of the employees and, consequently, may

also be liable for federal employment taxes imposed on wages and other compensation paid by the CPEO to such employees.

**Aggregate Form 941 filers.** Agents and CPEOs must complete Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, when filing an aggregate Form 941. Aggregate Forms 941 are filed by agents approved by the IRS under section 3504 of the Internal Revenue Code. To request approval to act as an agent for an employer, the agent files Form 2678 with the IRS. Aggregate Forms 941 are also filed by CPEOs approved by the IRS under section 7705. CPEOs file Form 8973, Certified Professional Employer Organization/Customer Reporting Agreement, to notify the IRS that they've started or ended a service contract with a client or customer.

**Aggregate Form 940 filers.** Agents and CPEOs must complete Schedule R (Form 940), Allocation Schedule for Aggregate Form 940 Filers, when filing an aggregate Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return. Aggregate Forms 940 are filed by agents acting on behalf of home care service recipients who receive home care services through a program administered by a federal, state, or local government. To request approval to act as an agent on behalf of home care service recipients, the agent files Form 2678 with the IRS. Aggregate Forms 940 are also filed by CPEOs approved by the IRS under section 7705. CPEOs file Form 8973 to notify the IRS that they've started or ended a service contract with a client or customer.

**You must receive written notice from the IRS to file Form 944.** If you've been filing Forms 941 (or Forms 941-SS, Employer's QUARTERLY Federal Tax Return—American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, or Formularios 941-PR, Planilla para la Declaración Federal TRIMESTRAL del Patrono), and believe your employment taxes for the calendar year will be \$1,000 or less, and you would like to file Form 944 instead of Forms 941, you must contact the IRS during the first calendar quarter of the tax year to request to file Form 944. You must receive written notice from the IRS to file Form 944 instead of Forms 941 before you may file this form. For more information on requesting to file Form 944, including the methods and deadlines for making a request, see the Instructions for Form 944.

**Employers can request to file Forms 941 instead of Form 944.** If you received notice from the IRS to file Form 944 but would like to file Forms 941 instead, you must contact the IRS during the first calendar quarter of the tax year to request to file Forms 941. You must receive written notice from the IRS to file Forms 941 instead of Form 944 before you may file these forms. For more information on requesting to file Forms 941, including the methods and deadlines for making a request, see the Instructions for Form 944.

**Federal tax deposits must be made by electronic funds transfer (EFT).** You must use EFT to make all federal tax deposits. Generally, an EFT is made using the Electronic Federal Tax Payment System (EFTPS). If you don't want to use EFTPS, you can arrange for your tax

professional, financial institution, payroll service, or other trusted third party to make electronic deposits on your behalf. Also, you may arrange for your financial institution to initiate a same-day wire payment on your behalf. EFTPS is a free service provided by the Department of the Treasury. Services provided by your tax professional, financial institution, payroll service, or other third party may have a fee.

For more information on making federal tax deposits, see *How To Deposit* in Pub. 15. To get more information about EFTPS or to enroll in EFTPS, go to [EFTPS.gov](https://www.irs.gov/eftps), or call 800-555-4477 or 800-733-4829 (TDD). Additional information about EFTPS is also available in Pub. 966.

**Electronic filing and payment.** Businesses can enjoy the benefits of filing and paying their federal taxes electronically. Whether you rely on a tax professional or handle your own taxes, the IRS offers you convenient programs to make filing and payment easier.

Spend less time worrying about taxes and more time running your business. Use *e-file* and EFTPS to your benefit.

- For *e-file*, go to [IRS.gov/EmploymentEfile](https://www.irs.gov/employmentefile) for additional information. A fee may be charged to file electronically.
- For EFTPS, go to [EFTPS.gov](https://www.irs.gov/eftps) or call EFTPS Customer Service at 800-555-4477 or 800-733-4829 (TDD).

**Electronic submission of Forms W-4, W-4P, W-4S, and W-4V.** You may set up a system to electronically receive any or all of the following forms (and their Spanish versions, if available) from an employee or payee.

- Form W-4, Employee's Withholding Certificate.
- Form W-4P, Withholding Certificate for Pension or Annuity Payments.
- Form W-4S, Request for Federal Income Tax Withholding From Sick Pay.
- Form W-4V, Voluntary Withholding Request.

For each form that you establish an electronic submission system for, you must meet each of the following five requirements.

1. The electronic system must ensure that the information received by the payer is the information sent by the payee. The system must document all occasions of user access that result in a submission. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and submitting the form is the person identified on the form.
2. The electronic system must provide exactly the same information as the paper form.
3. The electronic submission must be signed with an electronic signature by the payee whose name is on the form. The electronic signature must be the final entry in the submission.
4. Upon request, you must furnish a hard copy of any completed electronic form to the IRS and a statement



that, to the best of the payer's knowledge, the electronic form was submitted by the named payee. The hard copy of the electronic form must provide exactly the same information as, but need not be a facsimile of, the paper form. For Form W-4, the signature must be under penalty of perjury, and must contain the same language that appears on the paper version of the form. The electronic system must inform the employee that he or she must make a declaration contained in the perjury statement and that the declaration is made by signing the Form W-4.

5. You must also meet all recordkeeping requirements that apply to the paper forms.

For more information, see:

- Regulations sections 31.3402(f)(5)-1(c) (for Form W-4), and
- Announcement 99-6 (for Forms W-4P, W-4S, and W-4V). You can find Announcement 99-6 on page 24 of Internal Revenue Bulletin 1999-4 at [IRS.gov/pub/irs-irbs/irb99-04.pdf](https://www.irs.gov/pub/irs-irbs/irb99-04.pdf).



*If you maintain an electronic Form W-4 system, you should provide a field for employees who are eligible and want to claim an exemption from withholding to certify that they are exempt instead of writing "Exempt" below Step 4(c). You should also include the two conditions that taxpayers are certifying that they meet: "you had no federal income tax liability in 2019 and you expect to have no federal income tax liability in 2020". Additionally, you should provide a field for nonresident aliens to enter nonresident alien status.*

**Additional employment tax information.** Go to [IRS.gov/EmploymentTaxes](https://www.irs.gov/EmploymentTaxes) for additional employment tax information.

**Telephone help.** You can call the IRS Business and Specialty Tax Line with your employment tax questions at 800-829-4933.

**Help for people with disabilities.** You may call 800-829-4059 (TDD/TTY for persons who are deaf, hard of hearing, or have a speech disability) with any employment tax questions. You may also use this number for assistance with unresolved tax problems.

**Furnishing Form W-2 to employees electronically.** You may set up a system to furnish Form W-2 electronically to employees. Each employee participating must consent (either electronically or by paper document) to receive his or her Form W-2 electronically, and you must notify the employee of all hardware and software requirements to receive the form. You may not send a Form W-2 electronically to any employee who doesn't consent or who has revoked consent previously provided.

To furnish Forms W-2 electronically, you must meet the following disclosure requirements and provide a clear and conspicuous statement of each requirement to your employees.

- The employee must be informed that he or she will receive a paper Form W-2 if consent isn't given to receive it electronically.

- The employee must be informed of the scope and duration of the consent.
- The employee must be informed of any procedure for obtaining a paper copy of his or her Form W-2 and whether or not the request for a paper statement is treated as a withdrawal of his or her consent to receiving his or her Form W-2 electronically.
- The employee must be notified about how to withdraw a consent and the effective date and manner by which the employer will confirm the withdrawn consent. The employee must also be notified that the withdrawn consent doesn't apply to the previously issued Forms W-2.
- The employee must be informed about any conditions under which electronic Forms W-2 will no longer be furnished (for example, termination of employment).
- The employee must be informed of any procedures for updating his or her contact information that enables the employer to provide electronic Forms W-2.
- The employer must notify the employee of any changes to the employer's contact information.

You must furnish electronic Forms W-2 by the same due date as the paper Forms W-2. For more information on furnishing Form W-2 to employees electronically, see Regulations section 31.6051-1(j).

**Pub. 5146 explains employment tax examinations and appeal rights.** Pub. 5146 provides employers with information on how the IRS selects employment tax returns to be examined, what happens during an exam, and what options an employer has in responding to the results of an exam, including how to appeal the results. Pub. 5146 also includes information on worker classification issues and tip exams.

**Photographs of missing children.** The IRS is a proud partner with the [National Center for Missing & Exploited Children® \(NCMEC\)](https://www.nccmec.org/). Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

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## Introduction

This publication supplements Pub.15. It contains specialized and detailed employment tax information supplementing the basic information provided in Pub.15. Pub. 15-B contains information about the employment tax treatment of various types of noncash compensation. Pub. 15-T contains the Percentage Method and Wage Bracket Method withholding tables, Tables for Withholding on Distributions of Indian Gaming Profits to Tribal Members, and a discussion on the alternative methods for figuring federal income tax withholding.

**Comments and suggestions.** We welcome your comments about this publication and your suggestions for future editions.

You can send us comments through [IRS.gov/FormComments](https://www.irs.gov/FormComments).

Or you can write to:

Internal Revenue Service  
Tax Forms and Publications  
1111 Constitution Ave. NW, IR-6526  
Washington, DC 20224

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax forms, instructions, and publications. We can't answer tax questions sent to the above address.

**Ordering forms and publications.** Visit [IRS.gov/FormsPubs](https://www.irs.gov/FormsPubs) to download forms, instructions, and publications. Otherwise, you can go to [IRS.gov/OrderForms](https://www.irs.gov/OrderForms) to order current and prior-year forms and instructions. Your order should arrive within 10 business days.

**Tax questions.** If you have a tax question not answered by this publication, check IRS.gov and [How To Get Tax Help](https://www.irs.gov/HowToGetTaxHelp) at the end of this publication.

## Useful Items

You may want to see:

### Publication

- 15-B** Employer's Tax Guide to Fringe Benefits
- 15-T** Federal Income Tax Withholding Methods
- 505** Tax Withholding and Estimated Tax
- 515** Withholding of Tax on Nonresident Aliens and Foreign Entities
- 583** Starting a Business and Keeping Records
- 1635** Employer Identification Number: Understanding Your EIN

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# 1. Who Are Employees?

Before you can know how to treat payments that you make to workers for services, you must first know the business relationship that exists between you and the person performing the services. The person performing the services may be:

- An independent contractor,
- A common-law employee,
- A statutory employee, or
- A statutory nonemployee.

This discussion explains these four categories. A later discussion, [Employee or Independent Contractor](#) in section 2, points out the differences between an independent contractor and an employee and gives examples from various types of occupations.

If an individual who works for you isn't an employee under the common-law rules (see [section 2](#)), you generally

don't have to withhold federal income tax from that individual's pay. However, in some cases you may be required to withhold under the backup withholding requirements on these payments. See Pub. 15 for information on backup withholding.

## Independent Contractors

People such as doctors, veterinarians, and auctioneers who work in an independent trade, business, or profession in which they offer their services to the public, are generally not employees. However, whether such people are employees or independent contractors depends on the facts in each case. The general rule is that an individual is an independent contractor if you, the person for whom the services are performed, have the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

## Common-Law Employees

Under common-law rules, anyone who performs services for you is generally your employee if you have the right to control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. For a discussion of facts that indicate whether an individual providing services is an independent contractor or employee, see [section 2](#).

If you have an employer-employee relationship, it makes no difference how it is labeled. The substance of the relationship, not the label, governs the worker's status. It doesn't matter whether the individual is employed full time or part time.

For employment tax purposes, no distinction is made between classes of employees. Superintendents, managers, and other supervisory personnel are all employees. An officer of a corporation is generally an employee; however, an officer who performs no services or only minor services, and neither receives nor is entitled to receive any pay, isn't considered an employee. A director of a corporation isn't an employee with respect to services performed as a director.

You generally have to withhold and pay income, social security, and Medicare taxes on wages that you pay to common-law employees. However, the wages of certain employees may be exempt from one or more of these taxes. See [Employees of Exempt Organizations](#) (section 3) and [Religious Exemptions and Special Rules for Ministers](#) (section 4).

**Additional information.** For more information about the treatment of special types of employment, the treatment of special types of payments, and similar subjects, see Pub. 15 or Pub. 51, Agricultural Employer's Tax Guide.

## Statutory Employees

If workers are independent contractors under the common-law rules, such workers may nevertheless be treated as employees by statute, (also known as “statutory employees”) for certain employment tax purposes. This would happen if they fall within any one of the following four categories and meet the three conditions described next under [Social security and Medicare taxes](#).

1. A driver who distributes beverages (other than milk) or meat, vegetable, fruit, or bakery products; or who picks up and delivers laundry or dry cleaning, if the driver is your agent or is paid on commission.
2. A full-time life insurance sales agent whose principal business activity is selling life insurance or annuity contracts, or both, primarily for one life insurance company.
3. An individual who works at home on materials or goods that you supply and that must be returned to you or to a person you name, if you also furnish specifications for the work to be done.
4. A full-time traveling or city salesperson who works on your behalf and turns in orders to you from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments. The goods sold must be merchandise for resale or supplies for use in the buyer's business operation. The work performed for you must be the salesperson's principal business activity. See [Salesperson](#) in section 2.

**Social security and Medicare taxes.** You must withhold social security and Medicare taxes from the wages of statutory employees if all three of the following conditions apply.

- The service contract states or implies that substantially all the services are to be performed personally by them.
- They don't have a substantial investment in the equipment and property used to perform the services (other than an investment in facilities for transportation, such as a car or truck).
- The services are performed on a continuing basis for the same payer.

**Federal unemployment (FUTA) tax.** For FUTA tax (the unemployment tax paid under the Federal Unemployment Tax Act), the term “employee” means the same as it does for social security and Medicare taxes, except that it doesn't include statutory employees defined in *categories 2 and 3* above. Any individual who is a statutory employee described under *category 1 or 4* above is also an employee for FUTA tax purposes and subject to FUTA tax.

**Income tax.** Don't withhold federal income tax from the wages of statutory employees.

**Reporting payments to statutory employees.** Furnish Form W-2 to a statutory employee, and check “Statutory employee” in box 13. Show your payments to the em-

ployee as “other compensation” in box 1. Also, show social security wages in box 3, social security tax withheld in box 4, Medicare wages in box 5, and Medicare tax withheld in box 6. The statutory employee can deduct his or her trade or business expenses from the payments shown on Form W-2. The statutory employee reports earnings on line 1 of Schedule C (Form 1040 or 1040-SR), Profit or Loss From Business, and also deducts business expenses on Schedule C (Form 1040 or 1040-SR).

**H-2A agricultural workers.** On Form W-2, don't check box 13 (Statutory employee), as H-2A workers aren't statutory employees.

## Statutory Nonemployees

There are three categories of statutory nonemployees: direct sellers, licensed real estate agents, and certain companion sitters. Direct sellers and licensed real estate agents are treated as self-employed for all federal tax purposes, including income and employment taxes, if:

- Substantially all payments for their services as direct sellers or real estate agents are directly related to sales or other output, rather than to the number of hours worked, and
- Their services are performed under a written contract providing that they won't be treated as employees for federal tax purposes.

**Direct sellers.** Direct sellers include persons falling within any of the following three groups.

1. Persons engaged in selling (or soliciting the sale of) consumer products in the home or place of business other than in a permanent retail establishment.
2. Persons engaged in selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis prescribed by regulations, for resale in the home or at a place of business other than in a permanent retail establishment.
3. Persons engaged in the trade or business of delivering or distributing newspapers or shopping news (including any services directly related to such delivery or distribution).

Direct selling includes activities of individuals who attempt to increase direct sales activities of their direct sellers and who earn income based on the productivity of their direct sellers. Such activities include providing motivation and encouragement; imparting skills, knowledge, or experience; and recruiting.

**Licensed real estate agents.** This category includes individuals engaged in appraisal activities for real estate sales if they earn income based on sales or other output.

**Companion sitters.** Companion sitters are individuals who furnish personal attendance, companionship, or household care services to children or to individuals who are elderly or disabled. A person engaged in the trade or



business of putting the sitters in touch with individuals who wish to employ them (that is, a companion sitting placement service) won't be treated as the employer of the sitters if that person doesn't receive or pay the salary or wages of the sitters and is compensated by the sitters or the persons who employ them on a fee basis. Companion sitters who aren't employees of a companion sitting placement service are generally treated as self-employed for all federal tax purposes. However, the companion sitter may be an employee of the individual for whom the sitting services are performed; see Pub. 926.

## Misclassification of Employees

**Consequences of treating an employee as an independent contractor.** If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you're liable for employment taxes for that worker and the relief provision, discussed next, won't apply. See section 2 in Pub. 15 for more information.

**Relief provision.** 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 periods beginning after 1977.

**Technical service specialists.** This relief provision doesn't apply for a technical services specialist you provide to another business under an arrangement between you and the other business. A technical service specialist is an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.

This limit on the application of the rule doesn't affect the determination of whether such workers are employees under the common-law rules. The common-law rules control whether the specialist is treated as an employee or an independent contractor. However, if you directly contract with a technical service specialist to provide services for your business and not for another business, you may still be entitled to the relief provision.

**Test proctors and room supervisors.** The consistent treatment requirement doesn't apply to services performed after December 31, 2006, by an individual as a test proctor or room supervisor assisting in the administration of college entrance or placement examinations if the individual:

- Is performing the services for a section 501(c) organization exempt from tax under section 501(a) of the code, and
- Isn't otherwise treated as an employee of the organization for employment taxes.

**Voluntary Classification Settlement Program (VCSP).** Employers who are currently treating their workers (or a class or group of workers) as independent contractors or other nonemployees and want to voluntarily reclassify

their workers as employees for future tax periods may be eligible to participate in the VCSP if certain requirements are met. File Form 8952 to apply for the VCSP. For more information, go to [IRS.gov/VCSP](https://www.irs.gov/VCSP).

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## 2. Employee or Independent Contractor?

An employer must generally withhold federal income taxes, withhold and pay over social security and Medicare taxes, and pay unemployment tax on wages paid to an employee. An employer doesn't generally have to withhold or pay over any federal taxes on payments to independent contractors.

### Common-Law Rules

To determine whether an individual is an employee or an independent contractor under the common-law, the relationship of the worker and the business must be examined. In any employee-independent contractor determination, all information that provides evidence of the degree of control and the degree of independence must be considered.

Facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control, and the type of relationship of the parties. These facts are discussed next.

**Behavioral control.** Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of:

***Instructions that the business gives to the worker.***

An employee is generally subject to the business' instructions about when, where, and how to work. All of the following are examples of types of instructions about how to do work.

- When and where to do the work.
- What tools or equipment to use.
- What workers to hire or to assist with the work.
- Where to purchase supplies and services.
- What work must be performed by a specified individual.
- What order or sequence to follow.

The amount of instruction needed varies among different jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. A business may lack the knowledge to instruct some highly specialized professionals; in other cases, the task may require little or no instruction. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.

**Training that the business gives to the worker.** An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

**Financial control.** Facts that show whether the business has a right to control the business aspects of the worker's job include:

**The extent to which the worker has unreimbursed business expenses.** Independent contractors are more likely to have unreimbursed expenses than are employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services that they perform for their employer.

**The extent of the worker's investment.** An independent contractor often has a significant investment in the facilities or tools he or she uses in performing services for someone else. However, a significant investment isn't necessary for independent contractor status.

**The extent to which the worker makes his or her services available to the relevant market.** An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.

**How the business pays the worker.** An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. An independent contractor is often paid a flat fee or on a time and materials basis for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.

**The extent to which the worker can realize a profit or loss.** An independent contractor can make a profit or loss.

**Type of relationship.** Facts that show the parties' type of relationship include:

- Written contracts describing the relationship the parties intended to create.
- Whether or not the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.
- **The permanency of the relationship.** If you engage a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that your intent was to create an employer-employee relationship.
- **The extent to which services performed by the worker are a key aspect of the regular business of the company.** If a worker provides services that are a key aspect of your regular business activity, it is

more likely that you'll have the right to direct and control his or her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This would indicate an employer-employee relationship.

**IRS help.** If you want the IRS to determine whether or not a worker is an employee, file Form SS-8 with the IRS.

## Industry Examples

The following examples may help you properly classify your workers.

### Building and Construction Industry

**Example 1.** Jerry Jones has an agreement with Wilma White to supervise the remodeling of her house. She didn't advance funds to help him carry on the work. She makes direct payments to the suppliers for all necessary materials. She carries liability and workers' compensation insurance covering Jerry and others that he engaged to assist him. She pays them an hourly rate and exercises almost constant supervision over the work. Jerry isn't free to transfer his assistants to other jobs. He may not work on other jobs while working for Wilma. He assumes no responsibility to complete the work and will incur no contractual liability if he fails to do so. He and his assistants perform personal services for hourly wages. Jerry Jones and his assistants are employees of Wilma White.

**Example 2.** Milton Manning, an experienced tile setter, orally agreed with a corporation to perform full-time services at construction sites. He uses his own tools and performs services in the order designated by the corporation and according to its specifications. The corporation supplies all materials, makes frequent inspections of his work, pays him on a piecework basis, and carries workers' compensation insurance on him. He doesn't have a place of business or hold himself out to perform similar services for others. Either party can end the services at any time. Milton Manning is an employee of the corporation.

**Example 3.** Wallace Black agreed with the Sawdust Co. to supply the construction labor for a group of houses. The company agreed to pay all construction costs. However, he supplies all the tools and equipment. He performs personal services as a carpenter and mechanic for an hourly wage. He also acts as superintendent and foreman and engages other individuals to assist him. The company has the right to select, approve, or discharge any helper. A company representative makes frequent inspections of the construction site. When a house is finished, Wallace is paid a certain percentage of its costs. He isn't responsible for faults, defects of construction, or wasteful operation. At the end of each week, he presents the company with a statement of the amount that he has spent, including the payroll. The company gives him a check for that amount from which he pays the assistants, although he isn't personally liable for their wages. Wallace



Black and his assistants are employees of the Sawdust Co.

**Example 4.** Bill Plum contracted with Elm Corporation to complete the roofing on a housing complex. A signed contract established a flat amount for the services rendered by Bill Plum. Bill is a licensed roofer and carries workers' compensation and liability insurance under the business name, Plum Roofing. He hires his own roofers who are treated as employees for federal employment tax purposes. If there is a problem with the roofing work, Plum Roofing is responsible for paying for any repairs. Bill Plum, doing business as Plum Roofing, is an independent contractor.

**Example 5.** Vera Elm, an electrician, submitted a job estimate to a housing complex for electrical work at \$16 per hour for 400 hours. She is to receive \$1,280 every 2 weeks for the next 10 weeks. This isn't considered payment by the hour. Even if she works more or less than 400 hours to complete the work, Vera Elm will receive \$6,400. She also performs additional electrical installations under contracts with other companies that she obtained through advertisements. Vera is an independent contractor.

## Trucking Industry

**Example.** Rose Trucking contracts to deliver material for Forest, Inc., at \$140 per ton. Rose Trucking isn't paid for any articles that aren't delivered. At times, Jan Rose, who operates as Rose Trucking, may also lease another truck and engage a driver to complete the contract. All operating expenses, including insurance coverage, are paid by Jan Rose. All equipment is owned or rented by Jan and she is responsible for all maintenance. None of the drivers are provided by Forest, Inc. Jan Rose, operating as Rose Trucking, is an independent contractor.

## Computer Industry

**Example.** Steve Smith, a computer programmer, is laid off when Megabyte, Inc., downsizes. Megabyte agrees to pay Steve a flat amount to complete a one-time project to create a certain product. It isn't clear how long that it will take to complete the project, and Steve isn't guaranteed any minimum payment for the hours spent on the program. Megabyte provides Steve with no instructions beyond the specifications for the product itself. Steve and Megabyte have a written contract, which provides that Steve is considered to be an independent contractor, is required to pay federal and state taxes, and receives no benefits from Megabyte. Megabyte will file Form 1099-MISC, Miscellaneous Income, to report the amount paid to Steve. Steve works at home and isn't expected or allowed to attend meetings of the software development group. Steve is an independent contractor.

## Automobile Industry

**Example 1.** Donna Lee is a salesperson employed on a full-time basis by Bob Blue, an auto dealer. She works 6 days a week and is on duty in Bob's showroom on certain

assigned days and times. She appraises trade-ins, but her appraisals are subject to the sales manager's approval. Lists of prospective customers belong to the dealer. She is required to develop leads and report results to the sales manager. Because of her experience, she requires only minimal assistance in closing and financing sales and in other phases of her work. She is paid a commission and is eligible for prizes and bonuses offered by Bob. Bob also pays the cost of health insurance and group-term life insurance for Donna. Donna is an employee of Bob Blue.

**Example 2.** Sam Sparks performs auto repair services in the repair department of an auto sales company. He works regular hours and is paid on a percentage basis. He has no investment in the repair department. The sales company supplies all facilities, repair parts, and supplies; issues instructions on the amounts to be charged, parts to be used, and the time for completion of each job; and checks all estimates and repair orders. Sam is an employee of the sales company.

**Example 3.** An auto sales agency furnishes space for Helen Bach to perform auto repair services. She provides her own tools, equipment, and supplies. She seeks out business from insurance adjusters and other individuals and does all of the body and paint work that comes to the agency. She hires and discharges her own helpers, determines her own and her helpers' working hours, quotes prices for repair work, makes all necessary adjustments, assumes all losses from uncollectible accounts, and receives, as compensation for her services, a large percentage of the gross collections from the auto repair shop. Helen is an independent contractor and the helpers are her employees.

## Attorney

**Example.** Donna Yuma is a sole practitioner who rents office space and pays for the following items: telephone, computer, on-line legal research linkup, fax machine, and photocopier. Donna buys office supplies and pays bar dues and membership dues for three other professional organizations. Donna has a part-time receptionist who also does the bookkeeping. She pays the receptionist, withholds and pays federal and state employment taxes, and files a Form W-2 each year. For the past 2 years, Donna has had only three clients, corporations with which there have been long-standing relationships. Donna charges the corporations an hourly rate for her services, sending monthly bills detailing the work performed for the prior month. The bills include charges for long distance calls, on-line research time, fax charges, photocopies, postage, and travel, costs for which the corporations have agreed to reimburse her. Donna is an independent contractor.

## Taxicab Driver

**Example.** Tom Spruce rents a cab from Taft Cab Co. for \$150 per day. He pays the costs of maintaining and operating the cab. Tom Spruce keeps all fares that he receives from customers. Although he receives the benefit

of Taft's two-way radio communication equipment, dispatcher, and advertising, these items benefit both Taft and Tom Spruce. Tom Spruce is an independent contractor.

## Salesperson

To determine whether salespersons are employees under the usual common-law rules, you must evaluate each individual case. If a salesperson who works for you doesn't meet the tests for a common-law employee, discussed earlier in this section, you don't have to withhold federal income tax from his or her pay (see [Statutory Employees](#) in section 1). However, even if a salesperson isn't an employee under the usual common-law rules for income tax withholding, his or her pay may still be subject to social security, Medicare, and FUTA taxes as a statutory employee.

To determine whether a salesperson is an employee for social security, Medicare, and FUTA tax purposes, the salesperson must meet all eight elements of the statutory employee test. A salesperson is a statutory employee for social security, Medicare, and FUTA tax purposes if he or she:

1. Works full time for one person or company except, possibly, for sideline sales activities on behalf of some other person;
2. Sells on behalf of, and turns his or her orders over to, the person or company for which he or she works;
3. Sells to wholesalers, retailers, contractors, or operators of hotels, restaurants, or similar establishments;
4. Sells merchandise for resale, or supplies for use in the customer's business;
5. Agrees to do substantially all of this work personally;
6. Has no substantial investment in the facilities used to do the work, other than in facilities for transportation;
7. Maintains a continuing relationship with the person or company for which he or she works; and
8. Isn't an employee under common-law rules.

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## 3. Employees of Exempt Organizations

Many nonprofit organizations are exempt from federal income tax. Although they don't have to pay federal income tax themselves, they must still withhold federal income tax from the pay of their employees. However, there are special social security, Medicare, and FUTA tax rules that apply to the wages that they pay their employees.

**Section 501(c)(3) organizations.** Nonprofit organizations that are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code include any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, foster-

ing national or international amateur sports competition, or for the prevention of cruelty to children or animals. These organizations are usually corporations and are exempt from federal income tax under section 501(a).

**Social security and Medicare taxes.** Wages paid to employees of section 501(c)(3) organizations are subject to social security and Medicare taxes unless one of the following situations applies.

- The organization pays an employee less than \$100 in a calendar year.
- The organization is a church or church-controlled organization opposed for religious reasons to the payment of social security and Medicare taxes and has filed Form 8274 to elect exemption from social security and Medicare taxes. The organization must have filed for exemption before the first date on which a quarterly employment tax return (Form 941) or annual employment tax return (Form 944) would otherwise be due.

An employee of a church or church-controlled organization that is exempt from social security and Medicare taxes must pay self-employment tax if the employee is paid \$108.28 or more in a year. However, an employee who is a member of a qualified religious sect can apply for an exemption from the self-employment tax by filing Form 4029. See [Members of recognized religious sects opposed to insurance](#) in section 4.

**FUTA tax.** An organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code is also exempt from FUTA tax. This exemption can't be waived. Don't file Form 940 to report wages paid by these organizations or pay the tax.



*An organization wholly owned by a state or its political subdivision should contact the appropriate state official for information about reporting and getting social security and Medicare coverage for its employees.*

**Other than section 501(c)(3) organizations.** Nonprofit organizations that aren't section 501(c)(3) organizations may also be exempt from federal income tax under section 501(a) or section 521. However, these organizations aren't exempt from withholding federal income, social security, or Medicare tax from their employees' pay, or from paying FUTA tax. Two special rules for social security, Medicare, and FUTA taxes apply.

1. If an employee is paid less than \$100 during a calendar year, his or her wages aren't subject to social security and Medicare taxes.
2. If an employee is paid less than \$50 in a calendar quarter, his or her wages aren't subject to FUTA tax for the quarter.

The above rules don't apply to employees who work for pension plans and other similar organizations described in section 401(a).

**Excise tax on excess executive compensation.** Certain tax-exempt organizations may be subject to an excise tax on excess executive compensation. For more information, see the Instructions for Form 4720.

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## 4. Religious Exemptions and Special Rules for Ministers

Special rules apply to the treatment of ministers for social security and Medicare tax purposes. An exemption from social security and Medicare taxes is available for ministers and certain other religious workers and members of certain recognized religious sects. For more information on getting an exemption, see Pub. 517.

**Ministers.** Ministers are individuals who are duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination. They are given the authority to conduct religious worship, perform sacerdotal functions, and administer ordinances and sacraments according to the prescribed tenets and practices of that religious organization.

Ministers are employees if they perform services in the exercise of ministry and are subject to your will and control. The common-law rules discussed in [section 1](#) and [section 2](#) should be applied to determine whether a minister is your employee or is self-employed. Whether the minister is an employee or self-employed, the earnings of a minister aren't subject to federal income, social security, and Medicare tax withholding. However, even if the minister is a common-law employee, the earnings as reported on the minister's Form 1040 or 1040-SR are subject to self-employment tax and federal income tax. You don't withhold these taxes from wages earned by a minister, but if the minister is your employee, you may agree with the minister to voluntarily withhold tax to cover the minister's liability for self-employment tax and federal income tax. For more information, see Pub. 517.

**Form W-2.** If your minister is an employee, report all taxable compensation as wages in box 1 on Form W-2. Include in this amount expense allowances or reimbursements paid under a nonaccountable plan, discussed in section 5 of Pub. 15. Don't include a parsonage allowance (excludable housing allowance) in this amount. You may report a designated parsonage or rental allowance (housing allowance) and a utilities allowance, or the rental value of housing provided in a separate statement or in box 14 on Form W-2. Don't show on Form W-2, Form 941, or Form 944 any amount as social security or Medicare wages, or any withholding for social security or Medicare taxes. If you withheld federal income tax from the minister under a voluntary agreement, this amount should be shown in box 2 on Form W-2 as federal income tax withheld. For more information on ministers, see Pub. 517.

**Exemptions for ministers and others.** Certain ordained ministers, Christian Science practitioners, and members of religious orders who haven't taken a vow of poverty may apply to exempt their earnings from self-em-

ployment tax on religious grounds. The application must be based on conscientious opposition because of personal considerations to public insurance that makes payments in the event of death, disability, old age, or retirement, or that makes payments toward the cost of, or provides services for, medical care, including social security and Medicare benefits. The exemption applies only to qualified services performed for the religious organization. See Revenue Procedure 91-20, 1991-1 C.B. 524, for guidelines to determine whether an organization is a religious order or whether an individual is a member of a religious order.

To apply for the exemption, the employee should file Form 4361. See Pub. 517 for more information about claiming an exemption from self-employment tax using Form 4361.

**Members of recognized religious sects opposed to insurance.** If you belong to a recognized religious sect or to a division of such sect that is opposed to insurance, you may qualify for an exemption from the self-employment tax. To qualify, you must be conscientiously opposed to accepting the benefits of any public or private insurance that makes payments because of death, disability, old age, or retirement, or makes payments toward the cost of, or provides services for, medical care (including social security and Medicare benefits). If you buy a retirement annuity from an insurance company, you won't be eligible for this exemption. Religious opposition based on the teachings of the sect is the only legal basis for the exemption. In addition, your religious sect (or division) must have existed since December 31, 1950.

**Self-employed.** If you're self-employed and a member of a recognized religious sect opposed to insurance, you can apply for exemption by filing Form 4029 to waive all social security and Medicare benefits.

**Employees.** The social security and Medicare tax exemption available to the self-employed who are members of a recognized religious sect opposed to insurance is also available to their employees who are members of such a sect. This applies to partnerships only if each partner is a member of the sect. This exemption for employees applies only if both the employee and the employer are members of such a sect, and the employer has an exemption. To get the exemption, the employee must file Form 4029.

An employee of a church or church-controlled organization that is exempt from social security and Medicare taxes can also apply for an exemption on Form 4029.

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## 5. Wages and Other Compensation

Pub. 15 provides a general discussion of taxable wages. Pub. 15-B discusses fringe benefits. The following topics supplement those discussions.



## Relocating for Temporary Work Assignments

If an employee is given a temporary work assignment away from his or her regular place of work, certain travel expenses reimbursed or paid directly by the employer in accordance with an accountable plan (see section 5 in Pub. 15) may be excludable from the employee's wages. Generally, a temporary work assignment in a single location is one that is realistically expected to last (and does in fact last) for 1 year or less. If the employee's new work assignment is indefinite, any living expenses reimbursed or paid by the employer (other than qualified moving expenses paid to a member of the U.S. Armed Forces on active duty who moves because of a permanent change of station due to a military order) must be included in the employee's wages as compensation. For the travel expenses to be excludable:

- The new work location must be outside of the city or general area of the employee's regular work place or post of duty,
- The travel expenses must otherwise be allowed as a deduction by the employee, and
- The expenses must be for the period during which the employee is at the temporary work location.

If you reimburse or pay any personal expenses of an employee during his or her temporary work assignment, such as expenses for home leave for family members or for vacations, these amounts must be included in the employee's wages. See chapter 1 of Pub. 463, Travel, Entertainment, Gift, and Car Expenses, and section 5 of Pub. 15 for more information. These rules generally apply to temporary work assignments both inside and outside of the United States.

## Employee Achievement Awards

Don't withhold federal income, social security, or Medicare taxes on the fair market value of an employee achievement award if it is excludable from your employee's gross income. To be excludable from your employee's gross income, the award must be tangible personal property given to an employee for length of service or safety achievement, awarded as part of a meaningful presentation, and awarded under circumstances that don't indicate that the payment is disguised compensation. Excludable employee achievement awards also aren't subject to FUTA tax.

The exclusion doesn't apply to awards of cash, cash equivalents, gift cards, gift coupons, or gift certificates (other than arrangements granting only the right to select and receive tangible personal property from a limited assortment of items preselected or preapproved by you). The exclusion also doesn't apply to vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, and other similar items.

**Limits.** The most that you can exclude for the cost of all employee achievement awards to the same employee for

the year is \$400. A higher limit of \$1,600 applies to qualified plan awards. Qualified plan awards are employee achievement awards under a written plan that doesn't discriminate in favor of highly compensated employees. An award can't be treated as a qualified plan award if the average cost per recipient of all awards under all of your qualified plans is more than \$400.

If during the year an employee receives awards not made under a qualified plan and also receives awards under a qualified plan, the exclusion for the total cost of all awards to that employee can't be more than \$1,600. The \$400 and \$1,600 limits can't be added together to exclude more than \$1,600 for the cost of awards to any one employee during the year.

## Scholarship and Fellowship Payments

Only amounts that you pay as a qualified scholarship to a candidate for a degree may be excluded from the recipient's gross income. A qualified scholarship is any amount granted as a scholarship or fellowship that is used for:

- Tuition and fees required to enroll in, or to attend, an educational institution, or
- Fees, books, supplies, and equipment that are required for courses at the educational institution.

The exclusion from income doesn't apply to the portion of any amount received that represents payment for teaching, research, or other services required as a condition of receiving the scholarship or tuition reduction. These amounts are reportable on Form W-2. However, the exclusion will still apply for any amount, despite any service condition attached to the amount, received under the National Health Service Corps Scholarship Program; the Armed Forces Health Professions Scholarship and Financial Assistance Program; and a comprehensive student work-learning-service program operated by a work college, as defined in section 448(e) of the Higher Education Act of 1965.

Any amounts that you pay for room and board aren't excludable from the recipient's gross income. A qualified scholarship isn't subject to social security, Medicare, and FUTA taxes, or federal income tax withholding. For more information, see Pub. 970, Tax Benefits for Education.

## Outplacement Services

If you provide outplacement services to your employees to help them find new employment (such as career counseling, resume assistance, or skills assessment), the value of these benefits may be income to them and subject to all withholding taxes. However, the value of these services won't be subject to any employment taxes if:

- You derive a substantial business benefit from providing the services (such as improved employee morale or business image) separate from the benefit that you would receive from the mere payment of additional compensation, and

- The employee would be able to deduct the cost of the services as employee business expenses if he or she had paid for them.

However, if you receive no additional benefit from providing the services, or if the services aren't provided on the basis of employee need, then the value of the services is treated as wages and is subject to federal income tax withholding and social security and Medicare taxes. Similarly, if an employee receives the outplacement services in exchange for reduced severance pay (or other taxable compensation), then the amount the severance pay is reduced is treated as wages for employment tax purposes.

## Withholding for Idle Time

Payments made under a voluntary guarantee to employees for idle time (any time during which an employee performs no services) are wages for the purposes of social security, Medicare, and FUTA taxes, and federal income tax withholding.

## Back Pay

Treat back pay as wages in the year paid and withhold and pay employment taxes as required. If back pay was awarded by a court or government agency to enforce a federal or state statute protecting an employee's right to employment or wages, special rules apply for reporting those wages to the Social Security Administration. These rules also apply to litigation actions and settlement agreements or agency directives that are resolved out of court and not under a court decree or order. Examples of pertinent statutes include, but aren't limited to, the National Labor Relations Act, Fair Labor Standards Act, Equal Pay Act, and Age Discrimination in Employment Act. See Pub. 957, Reporting Back Pay and Special Wage Payments to the Social Security Administration, and Form SSA-131, Employer Report of Special Wage Payments, for details.

## Supplemental Unemployment Compensation Benefits

If you pay, under a plan, supplemental unemployment compensation benefits to a former employee, all or part of the payments may be taxable and subject to federal income tax withholding, depending on how the plan is funded. Amounts that represent a return to the employee of amounts previously subject to tax aren't taxable and aren't subject to withholding. You should withhold federal income tax on the taxable part of the payments made, under a plan, to an employee who is involuntarily separated because of a reduction in force, discontinuance of a plant or operation, or other similar condition. It doesn't matter whether the separation is temporary or permanent.

There are special rules that apply in determining whether supplemental unemployment compensation benefits are excluded from wages for social security, Medicare, and FUTA tax purposes. To be excluded from wages for such purposes, the benefits must meet the following requirements.

- Benefits are paid only to unemployed former employees who are laid off by the employer.
- Eligibility for benefits depends on meeting prescribed conditions after termination.
- The amount of weekly benefits payable is based upon state unemployment benefits, other compensation allowable under state law, and the amount of regular weekly pay.
- The right to benefits doesn't accrue until a prescribed period after termination.
- Benefits aren't attributable to the performance of particular services.
- No employee has any right to the benefits until qualified and eligible to receive benefits.
- Benefits may not be paid in a lump sum.

Withholding on taxable supplemental unemployment compensation benefits must be based on the withholding certificate (Form W-4) that the employee gave to you.

For more information, see Revenue Ruling 90-72, 1990-36 I.R.B. 13.

## Golden Parachute Payments

A golden parachute payment, in general, is a payment made under a contract entered into by a corporation and key personnel. Under the agreement, the corporation agrees to pay certain amounts to its key personnel in the event of a change in ownership or control of the corporation. Payments to employees under golden parachute contracts are subject to social security, Medicare, and FUTA taxes, and federal income tax withholding. See Regulations section 1.280G-1 for more information.

No deduction is allowed to the corporation for any excess parachute payment. To determine the amount of the excess parachute payment, you must first determine if there is a parachute payment for purposes of section 280G. A parachute payment for purposes of section 280G is any payment that meets all of the following.

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

3. The payment is contingent on a change in ownership of the corporation, the effective control of the corporation, or the ownership of a substantial portion of the assets of the corporation.
4. The payment has an aggregate present value of at least three times the individual's base amount. The base amount is the average annual compensation for service includible in the individual's gross income over the most recent 5 taxable years.

An excess parachute payment amount is the excess of any parachute payment over the base amount. For more information, see Regulations section 1.280G-1. The recipient of an excess parachute payment is subject to a 20% nondeductible excise tax. If the recipient is an employee, the 20% excise tax is to be withheld by the corporation.

**Example.** An officer of a corporation receives a golden parachute payment of \$400,000. This is more than three times greater than his or her average compensation of \$100,000 over the previous 5-year period. The excess parachute payment is \$300,000 (\$400,000 minus \$100,000). The corporation can't deduct the \$300,000 and must withhold the excise tax of \$60,000 (20% of \$300,000).

**Reporting golden parachute payments.** Golden parachute payments to employees must be reported on Form W-2. See the General Instructions for Forms W-2 and W-3 for details. For nonemployee reporting of these payments, see *Box 7. Nonemployee Compensation* in the Instructions for Form 1099-MISC.

**Exempt payments.** Payments by most small business corporations and payments under certain qualified plans are exempt from the golden parachute rules. See section 280G(b)(5) and (6) for more information.

## Interest-Free and Below-Market-Interest-Rate Loans

In general, if an employer lends an employee more than \$10,000 at an interest rate less than the current applicable federal rate (AFR), the difference between the interest paid and the interest that would be paid under the AFR is considered additional compensation to the employee. This rule applies to a loan of \$10,000 or less if one of its principal purposes is the avoidance of federal tax.

This additional compensation to the employee is subject to social security, Medicare, and FUTA taxes, but not to federal income tax withholding. Include it in compensation on Form W-2 (or Form 1099-MISC for an independent contractor). The AFR is established monthly and published by the IRS each month in the Internal Revenue Bulletin. You can get these rates by visiting IRS.gov and entering "AFR" in the search box. For more information, see section 7872 and its related regulations.

## Leave Sharing Plans

If you establish a leave sharing plan for your employees that allows them to transfer leave to other employees for medical emergencies, the amounts paid to the recipients of the leave are considered wages. These amounts are includible in the gross income of the recipients and are subject to social security, Medicare, and FUTA taxes, and federal income tax withholding. Don't include these amounts in the wages of the transferors. These rules apply only to leave sharing plans that permit employees to transfer leave to other employees for medical emergencies.

In addition, you may establish a leave-sharing plan that allows your employees to deposit leave in an employer-sponsored leave bank for use by other employees who have been adversely affected by a major disaster. Under such programs, the IRS won't assert that a leave donor who deposits leave in the employer sponsored leave bank under a major disaster leave-sharing program has income, wages, compensation or rail wages for the deposited leave, if the plan treats the employer's payments to the leave recipient as wages or compensation for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), the Railroad Retirement Act (RRTA), the Railroad Unemployment Repayment Tax (RURT), and the federal income tax withholding, unless excluded by another provision of law. See Notice 2006-59, 2006-28 I.R.B. 60, available at [IRS.gov/irb/2006-28\\_IRB#NOT-2006-59](https://www.irs.gov/irb/2006-28_IRB#NOT-2006-59) for what constitutes a major disaster and other rules.

## Nonqualified Deferred Compensation Plans

### Income Tax and Reporting

Section 409A provides that all amounts deferred under a nonqualified deferred compensation (NQDC) plan for all tax years are currently includible in gross income (to the extent the amounts deferred are not subject to a substantial risk of forfeiture and not previously included in gross income) and subject to additional taxes, unless certain requirements are met pertaining to, among other things, elections to defer compensation and distributions under an NQDC plan. Section 409A also includes rules that apply to certain trusts or similar arrangements associated with NQDC plans if the trusts or arrangements are located outside of the United States, are restricted to the provision of benefits in connection with a decline in the financial health of the plan sponsor, or contributions are made to the trust during certain periods such as when a qualified plan of the service recipient is underfunded. Employers must withhold federal income tax (but not the additional Section 409A taxes) on any amount includible in gross income under section 409A. Income included under section 409A from an NQDC plan must be reported on Form W-2 or on Form 1099-MISC, whichever applies. Amounts deferred during the year under an NQDC plan subject to section 409A may also be reported on the Form W-2 or



Form 1099-MISC, but this is not required. For more information, see the Instructions for Forms W-2 and W-3 and the Instructions for Form 1099-MISC. These reporting rules don't affect the application or reporting of social security, Medicare, or FUTA taxes.

The provisions don't prevent the inclusion of amounts in income or wages under other provisions of the Internal Revenue Code or common-law principles, such as when amounts are actually or constructively received or irrevocably contributed to a separate fund. For more information about nonqualified deferred compensation plans, see Regulations sections 1.409A-1 through 1.409A-6. Notice 2008-113 provides guidance on the correction of certain operation failures of an NQDC plan. Notice 2008-113, 2008-51 I.R.B. 1305, is available at [IRS.gov/irb/2008-51\\_IRB#NOT-2008-113](https://www.irs.gov/irb/2008-51_IRB#NOT-2008-113). Also see Notice 2010-6, 2010-3 I.R.B. 275, available at [IRS.gov/irb/2010-03\\_IRB#NOT-2010-6](https://www.irs.gov/irb/2010-03_IRB#NOT-2010-6) and Notice 2010-80, 2010-51 I.R.B. 853, available at [IRS.gov/irb/2010-51\\_IRB#NOT-2010-80](https://www.irs.gov/irb/2010-51_IRB#NOT-2010-80).

**Social security, Medicare, and FUTA taxes.** Employer contributions to nonqualified deferred compensation (NQDC) plans, as defined in the applicable regulations, are treated as wages subject to social security, Medicare, and FUTA taxes when the services are performed or the employee no longer has a substantial risk of forfeiting the right to the deferred compensation, whichever is later.

Amounts deferred are subject to social security, Medicare, and FUTA taxes at that time unless the amount that is deferred can't be reasonably ascertained; for example, if benefits are based on final pay. If the value of the future benefit is based on any factors that aren't yet reasonably ascertainable, you may choose to estimate the value of the future benefit and withhold and pay social security, Medicare, and FUTA taxes on that amount. You'll have to determine later, when the amount is reasonably ascertainable, whether any additional taxes are required. If taxes aren't paid before the amounts become reasonably ascertainable, when the amounts become reasonably ascertainable they are subject to social security, Medicare, and FUTA taxes on the amounts deferred plus the income attributable to those amounts deferred. For more information, see Regulations sections 31.3121(v)(2)-1 and 31.3306(r)(2)-1.

**Section 83(i) election to defer income on equity grants (qualified stock).** An arrangement under which an employee may receive qualified stock (as defined in section 83(i)(2)) isn't treated as an NQDC plan with respect to such employee solely because of such employee's election, or ability to make an election, to defer recognition of income under section 83(i).

## Tax-Sheltered Annuities

Employer payments made by a public educational institution or a tax-exempt organization to purchase a tax-sheltered annuity for an employee (annual deferrals) are included in the employee's social security and Medicare wages, if the payments are made because of a salary

reduction agreement. However, they aren't included in box 1 on Form W-2 in the year the deferrals are made and aren't subject to federal income tax withholding. See Regulations section 31.3121(a)(5)-2 for the definition of a salary reduction agreement.

## Contributions to a Simplified Employee Pension (SEP)

An employer's SEP contributions to an employee's individual retirement arrangement (IRA) are excluded from the employee's gross income. These excluded amounts aren't subject to social security, Medicare, or FUTA taxes, or federal income tax withholding. However, any SEP contributions paid under a salary reduction agreement (SARSEP) are included in wages for purposes of social security, Medicare, and FUTA taxes. See Pub. 560 for more information about SEPs.

**Salary reduction simplified employee pensions (SARSEP) repealed.** You may not establish a SARSEP after 1996. However, SARSEPs established before January 1, 1997, may continue to receive contributions.

## SIMPLE Retirement Plans

Employer and employee contributions to a savings incentive match plan for employees (SIMPLE) retirement account (subject to limitations) are excludable from the employee's income and are exempt from federal income tax withholding. An employer's nonelective (2%) or matching contributions are exempt from social security, Medicare, and FUTA taxes. However, an employee's salary reduction contributions to a SIMPLE are subject to social security, Medicare, and FUTA taxes. For more information about SIMPLE retirement plans, see Pub. 560.

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## 6. Sick Pay Reporting

Special rules apply to the reporting of sick pay payments to employees. How these payments are reported depends on whether the payments are made by the employer or a third party, such as an insurance company.

Sick pay is usually subject to social security, Medicare, and FUTA taxes. For exceptions, see [Social Security, Medicare, and FUTA Taxes on Sick Pay](#), later in this section. Sick pay may also be subject to either mandatory or voluntary federal income tax withholding, depending on who pays it.

### Sick Pay

Sick pay generally means any amount paid under a plan because of an employee's temporary absence from work due to injury, sickness, or disability. It may be paid by either the employer or a third party, such as an insurance company. Sick pay includes both short- and long-term benefits. It is often expressed as a percentage of the employee's regular wages.

## Payments That Aren't Sick Pay

Sick pay doesn't include the following payments.

1. **Disability retirement payments.** Disability retirement payments aren't sick pay and aren't discussed in this section. Those payments are subject to the rules for federal income tax withholding from pensions and annuities. See [section 8](#).
2. **Workers' compensation.** Payments because of a work-related injury or sickness that are made under a workers' compensation law aren't sick pay and aren't subject to employment taxes. But see *Payments in the nature of workers' compensation—public employees* next.
3. **Payments in the nature of workers' compensation—public employees.** State and local government employees, such as police officers and firefighters, sometimes receive payments due to an injury in the line of duty under a statute that isn't the general workers' compensation law of a state. If the statute limits benefits to work-related injuries or sickness and doesn't base payments on the employee's age, length of service, or prior contributions, the statute is "in the nature of" a workers' compensation law. Payments under a statute in the nature of a workers' compensation law aren't sick pay and aren't subject to employment taxes. For more information, see Regulations section 31.3121(a)(2)-1.
4. **Medical expense payments.** Payments under a definite plan or system for medical and hospitalization expenses, or for insurance covering these expenses, aren't sick pay and aren't subject to employment taxes.
5. **Payments unrelated to absence from work.** Accident or health insurance payments unrelated to absence from work aren't sick pay and aren't subject to employment taxes. These include payments for:
  - a. Permanent loss of a member or function of the body,
  - b. Permanent loss of the use of a member or function of the body, or
  - c. Permanent disfigurement of the body.

**Example.** Donald was injured in a car accident and lost an eye. Under a policy paid for by Donald's employer, Delta Insurance Co. paid Donald \$20,000 as compensation for the loss of his eye. Because the payment was determined by the type of injury and was unrelated to Donald's absence from work, it isn't sick pay and isn't subject to federal employment taxes.

## Sick Pay Plan

A sick pay plan is a plan or system established by an employer under which sick pay is available to employees generally or to a class or classes of employees. This doesn't include a situation in which benefits are provided

on a discretionary or occasional basis with merely an intention to aid particular employees in time of need.

You have a sick pay plan or system if the plan is in writing or is otherwise made known to employees, such as by a bulletin board notice or your long and established practice. Some indications that you have a sick pay plan or system include references to the plan or system in the contract of employment, employer contributions to a plan, or segregated accounts for the payment of benefits.

**Definition of employer.** The employer for whom the employee normally works, a term used in the following discussion, is either the employer for whom the employee was working at the time that the employee became sick or disabled or the last employer for whom the employee worked before becoming sick or disabled, if that employer made contributions to the sick pay plan on behalf of the sick or disabled employee.

**Note.** Contributions to a sick pay plan through a cafeteria plan (by direct employer contributions or salary reduction) are employer contributions unless they are after-tax employee contributions (that is, included in taxable wages).

## Third-Party Payers of Sick Pay

**Employer's agent.** An employer's agent is a third party that bears no insurance risk and is reimbursed on a cost-plus-fee basis for payment of sick pay and similar amounts. A third party may be your agent even if the third party is responsible for determining which employees are eligible to receive payments. For example, if a third party provides administrative services only, the third party is your agent. If the third party is paid an insurance premium and isn't reimbursed on a cost-plus-fee basis, the third party isn't your agent. Whether an insurance company or other third party is your agent depends on the terms of their agreement with you.

A third party that makes payments of sick pay as your agent isn't considered the employer and generally has no responsibility for employment taxes. This responsibility remains with you. However, under an exception to this rule, the parties may enter into an agreement that makes the third-party agent responsible for employment taxes. In this situation, the third-party agent should use its own name and EIN (rather than your name and EIN) for the responsibilities that it has assumed.

**Third party not employer's agent.** A third party that makes payments of sick pay other than as an agent of the employer is liable for federal income tax withholding (if requested by the employee) and the employee part of the social security and Medicare taxes.

The third party is also liable for the **employer** part of the social security and Medicare taxes, and the FUTA tax, unless the third party transfers this liability to the employer for whom the employee normally works. This liability is transferred if the third party takes the following steps.

1. Withholds the **employee** part of social security and Medicare taxes from the sick pay payments.

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

**Multi-employer plan timing rule.** A special rule applies to sick pay payments made to employees by a third-party insurer under an insurance contract with a multi-employer plan established under a collectively bargained agreement. If the third-party insurer making the payments complies with steps 1 and 2, earlier, and gives the plan (rather than the employer) the required timely notice described in step 3, earlier, then the plan (not the third-party insurer) must pay the **employer** part of the social security and Medicare taxes and the FUTA tax. Similarly, if within 6 business days of the plan's receipt of notification, the plan gives notice to the employer for whom the employee normally works, the employer (not the plan) must pay the **employer** part of the social security and Medicare taxes and the FUTA tax.

**Reliance on information supplied by the employer.** A third party that pays sick pay should request information from the employer to determine amounts that aren't subject to employment taxes. Unless the third party has reason not to believe the information, it may rely on that information for the following items.

- The total wages paid to the employee during the calendar year.
- The last month in which the employee worked for the employer.
- The employee contributions to the sick pay plan made with after-tax dollars.

The third party shouldn't rely on statements regarding these items made by the employee.

## Social Security, Medicare, and FUTA Taxes on Sick Pay

**Employer.** If you pay sick pay to your employee, you must generally withhold employee social security and Medicare taxes from the sick pay. You must timely deposit employee and employer social security and Medicare taxes, and FUTA tax. There are no special deposit rules for sick pay. See section 11 of Pub. 15 for more information on the deposit rules.

**Amounts not subject to social security, Medicare, or FUTA taxes.** The following payments, whether made by the employer or a third party, aren't subject to social security, Medicare, or FUTA taxes (different rules apply to federal income tax withholding).

- **Payments after an employee's death or disability retirement.** Social security, Medicare, and FUTA taxes don't apply to amounts paid under a definite plan or system, as defined under [Sick Pay Plan](#), earlier in this section, on or after the termination of the employment relationship because of death or disability retirement. However, even if there is a definite plan or system, amounts paid to a former employee are subject to social security, Medicare, and FUTA taxes if they would have been paid even if the employment relationship hadn't terminated because of death or disability retirement. For example, a payment to a disabled former employee for unused vacation time would have been made whether or not the employee retired on disability. Therefore, the payment is wages and is subject to social security, Medicare, and FUTA taxes.
- **Payments after calendar year of employee's death.** Sick pay paid to the employee's estate or survivor after the calendar year of the employee's death isn't subject to social security, Medicare, or FUTA taxes. Also, see [Amounts not subject to federal income tax withholding](#), later in this section.

**Example.** Sandra became entitled to sick pay on November 21, 2019, and died on December 31, 2019. On January 10, 2020, Sandra's sick pay for the period from December 24 through December 31, 2019, was paid to her survivor. The payment isn't subject to social security, Medicare, or FUTA taxes.

- **Payments to an employee entitled to disability insurance benefits.** Payments to an employee when the employee is entitled to disability insurance benefits under section 223(a) of the Social Security Act aren't subject to social security and Medicare taxes. This rule applies only if the employee became entitled to the Social Security Act benefits before the calendar year in which the payments are made, and the employee performs no services for the employer during the period for which the payments are made. However, these payments are subject to FUTA tax.
- **Payments that exceed the applicable wage base.** Social security and FUTA taxes don't apply to payments of sick pay that, when combined with the regular wages and sick pay previously paid to the employee during the year, exceed the applicable wage base. Because there is no Medicare tax wage base, this exception doesn't apply to Medicare tax. For 2020, the social security tax wage base is \$137,700 and the FUTA tax wage base is \$7,000.

**Example.** If an employee receives \$130,000 in wages from an employer in 2020 and also receives \$10,000 of sick pay, only the first \$7,700 (\$137,700 – \$130,000) of the sick pay is subject to social security tax. All of the sick pay is subject to Medicare tax. None of the sick pay is subject to FUTA tax. See



[Example of Figuring and Reporting Sick Pay](#), later in this section.

- **Payments after 6 months absence from work.** Social security, Medicare, and FUTA taxes don't apply to sick pay paid more than 6 calendar months after the last calendar month in which the employee worked.

**Example 1.** Ralph's last day of work before he became entitled to receive sick pay was December 11, 2019. He was paid sick pay for 9 months before his return to work on September 16, 2020. Sick pay paid to Ralph after June 30, 2020, isn't subject to social security, Medicare, or FUTA taxes.

**Example 2.** The facts are the same as in Example 1, except that Ralph worked 1 day during the 9-month period, on February 11, 2020. Because the 6-month period begins again in March, only the sick pay paid to Ralph after August 31, 2020, is exempt from social security, Medicare, and FUTA taxes.

- **Payments attributable to employee contributions.** Social security, Medicare, and FUTA taxes don't apply to payments, or parts of payments, attributable to employee contributions to a sick pay plan made with after-tax dollars. Contributions to a sick pay plan made on behalf of employees with employees' pre-tax dollars under a cafeteria plan are **employer** contributions.

**Group policy.** If both the employer and the employee contributed to the sick pay plan under a group insurance policy, figure the taxable sick pay by multiplying total sick pay by the percentage of the policy's cost that was contributed by the employer for the 3 policy years before the calendar year in which the sick pay is paid. If the policy has been in effect fewer than 3 years, use the cost for the policy years in effect or, if in effect less than 1 year, a reasonable estimate of the cost for the first policy year.

**Example.** Alan is employed by Edgewood Corporation. Because of an illness, he was absent from work for 3 months during 2020. Key Insurance Company paid Alan \$2,000 sick pay for each month of his absence under a policy paid for by contributions from both Edgewood and its employees. All of the employees' contributions were paid with after-tax dollars. For the 3 policy years before 2020, Edgewood paid 70% of the policy's cost and its employees paid 30%. Because 70% of the sick pay paid under the policy is due to Edgewood's contributions, \$1,400 ( $\$2,000 \times 70\%$ ) of each payment made to Alan is taxable sick pay. The remaining \$600 of each payment that is due to employee contributions isn't taxable sick pay and isn't subject to employment taxes. Also, see [Example of Figuring and Reporting Sick Pay](#), later in this section.

## Income Tax Withholding on Sick Pay

The requirements for federal income tax withholding on sick pay and the methods for figuring it differ depending on whether the sick pay is paid by:

- The employer,

- An agent of the employer (defined earlier in this section), or
- A third party that isn't the employer's agent.

**Employer or employer's agent.** Sick pay paid by you or your agent is subject to mandatory federal income tax withholding. An employer or agent paying sick pay generally determines the federal income tax to be withheld based on the employee's Form W-4. The employee can't choose how much federal income tax will be withheld by giving you or your agent a Form W-4S. Sick pay paid by an agent is treated as supplemental wages. If the agent doesn't pay regular wages to the employee, the agent may choose to withhold federal income tax at a flat 22% rate, rather than at the wage withholding rate. See section 7 in Pub. 15 for guidance on withholding employment taxes from supplemental wages, including the rules for withholding federal income tax when wages to an individual exceed \$1 million during the year.

**Third party not an agent.** Sick pay paid by a third party that isn't your agent isn't subject to mandatory federal income tax withholding. However, an employee may elect to have federal income tax withheld by submitting Form W-4S to the third party.

If Form W-4S has been submitted, the third party should withhold federal income tax on all payments of sick pay made 8 or more days after receiving the form. The third party may, at its option, withhold federal income tax before 8 days have passed.

The employee may request on Form W-4S to have a specific whole dollar amount withheld. However, if the requested withholding would reduce any net payment below \$10, the third party shouldn't withhold any federal income tax from that payment. The minimum amount of withholding that the employee can specify is \$4 per day, \$20 per week, or \$88 per month based on the payroll period.

Withhold from all payments at the same rate whether full or partial payments. For example, if \$25 is withheld from a regular full payment of \$100, then \$20 (25%) should be withheld from a partial payment of \$80.

**Amounts not subject to federal income tax withholding.** The following amounts, whether paid by you or a third party, aren't wages and aren't subject to federal income tax withholding.

- **Payments after the employee's death.** Sick pay paid to the employee's estate or survivor at any time after the employee's death isn't subject to federal income tax withholding, regardless of who pays it.
- **Payments attributable to employee contributions.** Payments, or parts of payments, attributable to employee contributions made to a sick pay plan with after-tax dollars aren't subject to federal income tax withholding. For more information, see the corresponding discussion under [Amounts not subject to social security, Medicare, or FUTA taxes](#), earlier in this section.

## Depositing and Reporting

This section discusses who is liable for depositing social security, Medicare, FUTA, and withheld federal income taxes on sick pay. These taxes must be deposited under the same rules that apply to deposits of taxes on regular wage payments. See Pub. 15 for information on the deposit rules.

This section also explains how sick pay should be reported on Forms W-2, W-3, 940, and 941 (or Form 944).

### Sick Pay Paid by Employer or Agent

If you or your agent (defined earlier in this section) make sick pay payments, you deposit taxes and file Forms W-2, W-3, 940, and 941 (or Form 944) under the same rules that apply to regular wage payments.

However, any agreement between the parties may require your agent to carry out responsibilities that would otherwise have been borne by you. In this situation, your agent should use its own name and EIN (rather than yours) for the responsibilities that it has assumed.

**Reporting sick pay on Form W-2.** You may either combine the sick pay with other wages and prepare a single Form W-2 for each employee, or you may prepare separate Forms W-2 for each employee, one reporting sick pay and the other reporting regular wages. A Form W-2 must be prepared even if all of the sick pay is nontaxable (see Box 12 below). All Forms W-2 must be given to the employees by January 31.

The Form W-2 filed for the sick pay must include the employer's name, address, and EIN; the employee's name, address, and SSN; and the following information.

Box 1 – The amount of sick pay the employee must include in income.

Box 2 – The amount of any federal income tax withheld from the sick pay.

Box 3 – The amount of sick pay subject to employee social security tax.

Box 4 – The amount of employee social security tax withheld from the sick pay.

Box 5 – The amount of sick pay subject to employee Medicare tax.

Box 6 – The amount of employee Medicare tax (including Additional Medicare Tax, if applicable) withheld from the sick pay.

Box 12 (Code J) – Show any sick pay that was paid by a third-party and wasn't includible in income (and not shown in boxes 1, 3, and 5) because the employee contributed to the sick pay plan. Don't include nontaxable disability payments made directly to a state.

Box 13 – Check the "Third-party sick pay" box **only** if the amounts were paid by a third party.

### Sick Pay Paid by Third Party

The depositing and reporting rules for a third party that isn't your agent depend on whether liability has been transferred as discussed under [Third party not employer's agent](#), earlier in this section.

To figure the due dates and amounts of its deposits of employment taxes, a third party should combine:

- The liability for the wages paid to its own employees, and
- The liability for payments it made to all employees of all its clients. This doesn't include any liability transferred to the employer.

**Liability not transferred to the employer.** If the third party doesn't satisfy the requirements for transferring liability for FUTA tax and the **employer** part of the social security and Medicare taxes, the third party reports the sick pay on its own Form 940 and Form 941 or Form 944. In this situation, the employer has no tax responsibilities for sick pay.

The third party must deposit social security, Medicare, FUTA, and withheld federal income taxes using its own name and EIN. The third party must give each employee to whom it paid sick pay a Form W-2 by January 31 of the following year. The Form W-2 must include the third party's name, address, and EIN instead of the employer information.

**Liability transferred to the employer.** Generally, if a third party satisfies the requirements for transferring liability for the **employer** part of the social security and Medicare taxes and for the FUTA tax, the following rules apply.

**Deposits.** The third party must make deposits of withheld employee social security and Medicare taxes and withheld federal income tax using its own name and EIN. You must make deposits of the **employer** part of the social security and Medicare taxes and the FUTA tax using your name and EIN. In applying the deposit rules, your liability for these taxes begins when you receive the third party's notice of sick pay payments.

**Form 941 or Form 944.** The third party and you must each file Form 941 or Form 944. The discussion that follows only explains how to report sick pay on Form 941. If you file Form 944, use the lines on that form that correspond to the lines on Form 941 that are discussed here.

Form 941, line 8, must contain a special adjusting entry for social security and Medicare taxes. These entries are required because the total tax liability for social security and Medicare taxes (employee and employer parts) is split between you and the third party.

- **Employer.** You must include third-party sick pay on Form 941, lines 2, 5a, 5c, and 5d (if applicable). There should be no sick pay entry on line 3 because the third party withheld federal income tax, if any. After completing line 6, subtract on line 8 the **employee** part of social security and Medicare taxes withheld and deposited by the third party.

- **Third party.** The third party must include on Form 941 the **employee** part of the social security and Medicare taxes (and federal income tax, if any) it withheld. The third party doesn't include on line 2 any sick pay paid as a third party but does include on line 3 any federal income tax withheld. On line 5a, column 1, the third party enters the total amount it paid subject to social security taxes. This amount includes both wages paid to its own employees and sick pay paid as a third party. The third party completes lines 5c and 5d (if applicable), column 1, in a similar manner. On line 8, the third party subtracts the **employer** part of the social security and Medicare taxes that you must pay.

**Form 940.** You, not the third party, must prepare Form 940 for sick pay.

**Form 8922, Third-Party Sick Pay Recap.** The third party (or in certain cases, the employer) must file Form 8922 to report sick pay paid by a third party for or on behalf of employers for whom services are normally performed. Form 8922 doesn't show the names of individuals who received the third-party sick pay but the total amounts paid in the calendar year to all employees whose sick pay wages are required to be reported on Form 8922.

Third-party sick pay is reported on Form 8922 if the liability for the **employer** part of social security tax and Medicare tax has been shifted by the third party or insurer paying the sick pay to the employer for whom services are normally rendered. Whether the third party or employer reports the sick pay on Form 8922 depends on which entity is filing Forms W-2 reporting the sick pay paid to individual employees receiving the sick pay. The third party reports the sick pay on Form 8922 if the employer is filing Forms W-2 reporting the third party sick pay under the name and EIN of the employer. However, if the third party is filing Forms W-2 with respect to the sick pay under the name and EIN of the third party, the employer files Form 8922 reporting the sick pay.

If the third party is paying all employment taxes, including the **employer** part of social security tax and Medicare tax, with respect to the sick pay, the third party files Forms W-2 using its name and EIN as employer with respect to the sick pay for each employee receiving sick pay and reports social security and Medicare taxes and federal income tax withholding on its Form 941. Neither the third party nor the employer reports the sick pay on Form 8922.

Third parties that are agents with respect to the payment of sick pay (because they have no insurance risk) are required to report sick pay on Form 8922 only if the agency agreement between the employer and the agent imposes the following requirements.

The agreement must require the agent to:

- Withhold and pay the **employee** part of social security tax and Medicare tax and income tax withholding on the sick pay, and
- Report the withheld amounts on Form 941 using the agent's name and EIN.

The agreement must require the employer to:

- Pay and report the **employer** part of social security tax and Medicare tax on a Form 941 using the employer's name and EIN and report the sick pay on Form W-2.

**Optional rule for Form W-2.** You and the third party may choose to enter into a legally binding agreement designating the third party to be your agent for purposes of preparing Forms W-2 reporting sick pay. The agreement must specify what part, if any, of the payments under the sick pay plan is excludable from the employees' gross incomes because it is attributable to their contributions to the plan. If you enter into an agreement, the third party prepares the actual Forms W-2, not Form 8922 as discussed above, for each employee who receives sick pay from the third party. If the optional rule is used:

- The third party doesn't provide you with the sick pay statement described next, and
- You (not the third party) files Form 8922. Form 8922 is needed to reconcile the sick pay shown on your Forms 941 or Form 944.

**Sick pay statement.** The third party must furnish you with a sick pay statement by January 15 of the year following the year in which the sick pay was paid. The statement must show the following information about each employee who was paid sick pay.

- The employee's name.
- The employee's SSN (if social security, Medicare, or income tax was withheld).
- The sick pay paid to the employee.
- Any federal income tax withheld.
- Any **employee** part of social security tax withheld.
- Any **employee** part of Medicare tax withheld.

## Example of Figuring and Reporting Sick Pay

**Note.** The following example is for wages paid in 2019.

Dave, an employee of Edgewood Corporation, was seriously injured in a car accident on January 1, 2019. Dave's last day of work was December 31, 2018. The accident wasn't job related.

Key, an insurance company that wasn't an agent of the employer, paid Dave \$2,000 sick pay each month for 10 months, beginning in January 2019. Dave submitted a Form W-4S to Key, requesting \$210 be withheld from each payment for federal income tax. Dave received no payments from Edgewood, his employer, from January 2019 through October 2019. Dave returned to work on November 1, 2019.

For the policy year in which the car accident occurred, Dave paid a part of the premiums for his coverage, and Edgewood paid the remaining part. The plan was, therefore, a "contributory plan." During the 3 policy years before the calendar year of the accident, Edgewood paid 70% of



the total of the net premiums for its employees' insurance coverage, and its employees paid 30%.

**Social security and Medicare taxes.** For social security and Medicare tax purposes, taxable sick pay was \$8,400 (\$2,000 per month × 70% = \$1,400 taxable portion per payment; \$1,400 × 6 months = \$8,400 total taxable sick pay). Only the six \$2,000 checks received by Dave from January through June are included in the calculation. The check received by Dave in July (the seventh check) was received more than 6 months after the month in which Dave last worked.

Of each \$2,000 payment Dave received, 30% (\$600) isn't subject to social security and Medicare taxes because the plan is contributory and Dave's after-tax contribution is considered to be 30% of the premiums during the 3 policy years before the calendar year of the accident.

**FUTA tax.** Of the \$8,400 taxable sick pay (figured the same as for social security and Medicare taxes), only \$7,000 is subject to the FUTA tax because the FUTA tax contribution base is \$7,000.

**Federal income tax withholding.** Of each \$2,000 payment, \$1,400 (\$2,000 × 70%) is subject to voluntary federal income tax withholding. In accordance with Dave's Form W-4S, \$210 was withheld from each payment.

**Liability transferred.** For the first 6 months following the last month in which Dave worked, Key was liable for social security, Medicare, and FUTA taxes on any payments that constituted taxable wages. However, Key could have shifted the liability for the **employer** part of the social security and Medicare taxes (and for the FUTA tax) during the first 6 months by withholding Dave's part of the

social security and Medicare taxes, timely depositing the taxes, and notifying Edgewood of the payments.

If Key shifted liability for the **employer** part of the social security and Medicare taxes to Edgewood and provided Edgewood with a sick pay statement, Key wouldn't prepare a Form W-2 for Dave. However, Key would file Form 8922. Key and Edgewood must each prepare Forms 941. Edgewood must also report the sick pay and withholding for Dave on Forms W-2, W-3, and 940.

As an alternative, the parties could have followed the optional rule described under [Optional rule for Form W-2](#), earlier in this section. Under this rule, Key would prepare Form W-2 even though liability for the **employer** part of the social security and Medicare taxes had been shifted to Edgewood. Also, Key wouldn't prepare a sick pay statement, and Edgewood, not Key, would file Form 8922 reflecting the sick pay shown on Edgewood's Forms 941.

**Liability not transferred.** If Key didn't shift liability for the **employer** part of the social security and Medicare taxes to Edgewood, Key would prepare Forms W-2 and W-3 as well as Forms 941 and 940. In this situation, Edgewood wouldn't report the sick pay.

**Payments received after 6 months.** The payments received by Dave in July through October aren't subject to social security, Medicare, or FUTA taxes, because they were received more than 6 months after the last month in which Dave worked (December 2018). However, Key must continue to withhold federal income tax from each payment because Dave furnished Key with a Form W-4S. Also, Key must prepare Forms W-2 and W-3, unless it has furnished Edgewood with a sick pay statement. If the sick pay statement was furnished, then Edgewood must prepare Forms W-2 and W-3.

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

\*See the instructions earlier if operating under the [Optional rule for Form W-2](#).

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## 7. Special Rules for Paying Taxes

### Common Paymaster

If two or more related corporations employ the same individual at the same time and pay this individual through a common paymaster that is one of the corporations, the corporations are considered to be a single employer. They have to pay, in total, no more in social security tax than a single employer would pay.

Each corporation must pay its own part of the employment taxes and may deduct only its own part of the wages. The deductions won't be allowed unless the corporation reimburses the common paymaster for the wage and tax payments. See Regulations section 31.3121(s)-1 for more information. The common paymaster is responsible for filing information and tax returns and issuing Forms W-2 with respect to wages it is considered to have paid as a common paymaster.

### Agent With an Approved Form 2678

Employers and payers must use Form 2678 to request approval for an agent to file returns and make deposits or payments of their employment or other withholding taxes. See Revenue Procedure 2013-39, 2013-52 I.R.B. 830, available at [IRS.gov/irb/2013-52\\_IRB#RP-2013-39](https://www.irs.gov/irb/2013-52_IRB#RP-2013-39); Revenue Procedure 84-33, 1984-1 C.B. 502; and the General Instructions for Forms W-2 and W-3 for procedures and reporting requirements. Form 2678 doesn't apply to FUTA taxes reportable on Form 940 unless the employer is a home care service recipient receiving home care services through a program administered by a federal, state, or local government agency.

Agents filing an aggregate Form 940 must file Schedule R (Form 940). Agents filing an aggregate Form 941 must file Schedule R (Form 941).

### Reporting Agents

**Electronic filing of Forms 940, 941, and 944.** Reporting agents may file Forms 940, 941, and 944 electronically. For details, see Pub. 3112, IRS *e-file* Application and Participation. For information on electronic filing of Forms 940, 941, and 944, see Revenue Procedure 2007-40, 2007-26 I.R.B. 1488, available at [IRS.gov/irb/2007-26\\_IRB#RP-2007-40](https://www.irs.gov/irb/2007-26_IRB#RP-2007-40). For more information on electronic filing, go to [IRS.gov/EmploymentEfile](https://www.irs.gov/employmentefile) or call 866-255-0654.



*For more information on third-party payer arrangements, including agents with an approved Form 2678, reporting agents, and CPEOs, see section 16 of Pub. 15.*

## Employee's Portion of Taxes Paid by Employer



*The information provided in this section doesn't take into account an employer that chooses to pay the Additional Medicare Tax on behalf of the employee.*

If you pay your employee's social security and Medicare taxes without deducting them from the employee's pay, you must include the amount of the payments in the employee's wages for federal income tax withholding and social security, Medicare, and FUTA taxes. This increase in the employee's wages for your payment of the employee's social security and Medicare taxes is also subject to employee social security and Medicare taxes. This again increases the amount of the additional taxes you must pay.

To figure the employee's increased wages in this situation, divide the stated pay (the amount that you pay without taking into account your payment of employee social security and Medicare taxes) by a factor for that year. This factor is determined by subtracting from 1 the combined employee social security and Medicare tax rate for the year that the wages are paid. For 2020, the factor is 0.9235 (1 – 0.0765). If the stated pay is more than \$127,165.95 (2020 wage base \$137,700 × 0.9235), follow the procedure described under *Stated pay of more than \$127,165.95 in 2020* below.

**Stated pay of \$127,165.95 or less in 2020.** For an employee with stated pay of \$127,165.95 or less in 2020, figure the correct wages (wages plus employer-paid employee taxes) to report by dividing the stated pay by 0.9235. This will give you the wages to report in box 1 and the social security and Medicare wages to report in boxes 3 and 5 of Form W-2.

On Form W-2, to figure the correct social security tax to enter in box 4, multiply the amount in box 3 by the social security withholding rate of 6.2% and enter the result in box 4. To figure the correct Medicare tax to enter in box 6, multiply the amount in box 5 by the Medicare withholding rate of 1.45% and enter the result in box 6.

**Example.** Donald Devon hires Lydia Lone for only 1 week during 2020. He pays her \$500 for that week. Donald agrees to pay Lydia's part of the social security and Medicare taxes. To figure her reportable wages, he divides \$500 by 0.9235. The result, \$541.42, is the amount that he reports as wages in boxes 1, 3, and 5 of Form W-2. To figure the amount to report as social security tax, Donald multiplies \$541.42 by the social security tax rate of 6.2% (0.062). The result, \$33.57, is entered in box 4 of Form W-2. To figure the amount to report as Medicare tax, Donald multiplies \$541.42 by the Medicare tax rate of 1.45% (0.0145). The result, \$7.85, is entered in box 6 of Form W-2. Although he didn't actually withhold the amounts from Lydia, he will report these amounts as taxes withheld on Form 941 or Form 944 and is responsible for the employer share of these taxes.

For FUTA tax and federal income tax withholding, Lydia's weekly wages are \$541.42.

**Stated pay of more than \$127,165.95 in 2020.** For an employee with stated pay of more than \$127,165.95 in 2020, the portion of stated wages subject to social security tax is \$127,165.95 (the first \$137,700 of wages × 0.9235). The stated pay in excess of \$127,165.95 isn't subject to social security tax because the tax only applies to the first \$137,700 of wages (stated pay plus employer-paid employee taxes). Enter \$137,700 in box 3 of Form W-2. The social security tax to enter in box 4 is \$8,537.40 (\$137,700 × 0.062).

To figure the correct Medicare wages to enter in box 5 of Form W-2, subtract \$127,165.95 from the stated pay. Divide the result by 0.9855 (1 – 0.0145) and add \$137,700.

For example, if stated pay is \$130,000, the correct Medicare wages are figured as follows.

$$\$130,000 - \$127,165.95 = \$2,834.05$$

$$\$2,834.05 \div 0.9855 = \$2,875.75$$

$$\$2,875.75 + \$137,700 = \$140,575.75$$

The Medicare wages are \$140,575.75. Enter this amount in box 5 of Form W-2. The Medicare tax to enter in box 6 is \$2,038.35 (\$140,575.75 × 0.0145).

Although these employment tax amounts aren't actually withheld from the employee's pay, report them as withheld on Forms 941, and pay this amount as the employer's share of the social security and Medicare taxes. If the wages for federal income tax withholding purposes in the preceding example are the same as for social security and Medicare tax purposes, the correct wage amount for federal income tax withholding is \$140,575.75 (\$130,000 + \$8,537.40 + \$2,038.35), which is included in box 1 of Form W-2.

Whether or not the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.

**Household and agricultural employees.** The discussion above doesn't apply to household and agricultural employers. If you pay a household or agricultural employee's social security and Medicare taxes, these payments must be included in the employee's wages. However, this wage increase due to the tax payments made for the employee isn't subject to social security or Medicare taxes as discussed in this section.

**Tax deposits and Form 941 or Form 944.** If you pay your employee's portion of his or her social security and Medicare taxes rather than deducting them from his or her pay, you're liable for timely depositing or paying the increased taxes associated with the wage increase. Also, report the increased wages on the appropriate lines of Form 941 for the quarter during which the wages were paid or on Form 944 for the year during which the wages were paid.

## International Social Security Agreements

The United States has bilateral social security agreements with many countries to eliminate dual taxation and

coverage under two social security systems. Under these agreements, sometimes known as totalization agreements, employees generally must pay social security taxes only to the country where they work. Employees and employers who are subject to foreign social security taxes under these agreements are potentially exempt from U.S. social security taxes, including the Medicare portion. For more information, go to [SSA.gov/international](https://ssa.gov/international), or see Pub. 519, U.S. Tax Guide for Aliens.

## 8. Pensions and Annuities

Generally, federal income tax withholding applies to the taxable part of payments made from pension, profit-sharing, stock bonus, annuity, certain deferred compensation plans, individual retirement arrangements (IRAs), and commercial annuities. Don't withhold income taxes from amounts totally exempt from tax. If part of a distribution is taxable and part is nontaxable, withhold income taxes only on the part subject to tax when known. The method and rate of withholding depends on (a) the kind of payment, (b) whether the payments are to be delivered outside the United States and its possessions, and (c) whether the payee is a nonresident alien individual, a nonresident alien beneficiary, or a foreign estate. Qualified distributions from Roth IRAs and Roth 401(k)s are nontaxable and, therefore, not subject to withholding. See [Payments to Foreign Persons and Payments Outside the United States](#), later in this section, for special withholding rules that apply to payments outside the United States and payments to foreign persons.

The recipient of certain pension or annuity payments can choose not to have federal income tax withheld from the payments by using line 1 of Form W-4P. For an estate, the election to have no federal income tax withheld can be made by the executor or personal representative of the decedent. The estate's EIN should be entered in the area reserved for "Your social security number" on Form W-4P.

Federal income tax must be withheld from eligible rollover distributions. See [Eligible Rollover Distribution—20% Withholding](#), later in this section.

## Federal Income Tax Withholding

### Periodic Payments

Periodic payments are those made in installments at regular intervals over a period of more than 1 year. They may be paid annually, quarterly, monthly, etc. Withholding from periodic payments of a pension or annuity is generally figured in the same manner as withholding from wages. However, it doesn't matter if the Form W-4P is from before 2020 or is a 2020 Form W-4P. In either case, for the appropriate computational method to figure federal income tax withholding on periodic payments, see section 5 of Pub. 15-T.

If the recipient wants income tax withheld, he or she must designate the number of withholding allowances on



Form W-4P, line 2, and can designate an additional amount to be withheld on line 3. If the recipient doesn't want any federal income tax withheld from his or her periodic payments, he or she can check the box on Form W-4P, line 1, and submit the form to you. If the recipient doesn't submit Form W-4P, you must withhold on periodic payments as if the recipient were married claiming three withholding allowances. Generally, this means that tax will be withheld if the pension or annuity is at least \$2,095 a month.

If you receive a Form W-4P that doesn't contain the recipient's correct taxpayer identification number (TIN), you must withhold as if the recipient were single claiming zero withholding allowances even if the recipient attempts to choose not to have income tax withheld.

See section 5 of Pub. 15-T for the appropriate computational method to figure federal income tax withholding on periodic payments if the recipient doesn't submit Form W-4P or you receive a Form W-4P that doesn't contain the recipient's correct TIN.

There are some kinds of periodic payments for which the recipient can't use Form W-4P because they are already defined as wages subject to federal income tax withholding. These include retirement pay for service in the U.S. Armed Forces and payments from certain non-qualified deferred compensation plans and deferred compensation plans of exempt organizations described in section 457.

The recipient's Form W-4P stays in effect until he or she changes or revokes it. You must notify recipients each year of their right to choose not to have federal income tax withheld or to change their previous choice.

## Nonperiodic Payments—10% Withholding

You must withhold at a flat 10% rate from nonperiodic payments (but see [Eligible Rollover Distribution—20% Withholding](#) next) unless the recipient chooses not to have income tax withheld (if permitted). Distributions from an IRA that are payable on demand are treated as nonperiodic payments. A recipient can choose not to have income tax withheld from a nonperiodic payment by submitting Form W-4P (containing his or her correct TIN) and checking the box on line 1. Generally, the choice not to have federal income tax withheld will apply to any later payment from the same plan. A recipient can't use line 2 for nonperiodic payments, but he or she may use line 3 to specify an additional amount that he or she wants withheld.

If a recipient submits a Form W-4P that doesn't contain his or her correct TIN, you can't honor his or her request not to have income tax withheld and you must withhold 10% of the payment for federal income tax.

## Eligible Rollover Distribution—20% Withholding

Distributions from eligible retirement plans (other than IRAs), such as qualified plans, 401(k) plans, section 457(b) plans maintained by a governmental employer, section 403(a) annuity plans or section 403(b) tax-sheltered annuities that are eligible to be rolled over tax free to an IRA or another eligible retirement plan, are subject to a flat 20% withholding rate. The 20% withholding rate is required and a recipient can't choose to have less federal income tax withheld from eligible rollover distributions. However, you shouldn't withhold federal income tax if the entire distribution is transferred in a direct rollover to a traditional IRA or another eligible retirement plan.

**Exceptions.** Distributions that are (a) required minimum distributions, (b) one of a specified series of equal payments, or (c) qualifying "hardship" distributions aren't "eligible rollover distributions" and aren't subject to the mandatory 20% federal income tax withholding. See Pub. 505 for details. Also, see [Nonperiodic Payments—10% Withholding](#) above.

## Payments to Foreign Persons and Payments Outside the United States

Unless the recipient is a nonresident alien, withholding in the manner described earlier is required on any periodic or nonperiodic payments that are delivered outside the United States and its possessions. A recipient can't choose not to have federal income tax withheld.

In the absence of a treaty exemption, nonresident aliens, nonresident alien beneficiaries, and foreign estates generally are subject to a 30% withholding tax under section 1441 on the taxable portion of a periodic or nonperiodic pension or annuity payment that is from U.S. sources. However, many tax treaties provide that private pensions and annuities are exempt from withholding and tax. Also, payments from certain pension plans are exempt from withholding even if no tax treaty applies. See Pub. 515 and Pub. 519. A foreign person should submit Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals), to you before receiving any payments. The Form W-8BEN must contain the foreign person's TIN to support a withholding exemption. A TIN for this purpose means a U.S. TIN (SSN or individual taxpayer identification number (ITIN)). However, for a claim based on a tax treaty, a foreign TIN may be substituted for a U.S. TIN.

Special rules may apply to nonresident aliens who relinquished U.S. citizenship or ceased to be long-term residents of the United States after June 16, 2008. For more information, see section 5 of Notice 2009-85, 2009-45 I.R.B. 598, available at [IRS.gov/irb/2009-45 IRB#NOT-2009-85](#). Also see Form W-8CE, Notice of Expatriation and Waiver of Treaty Benefits.

## Statement of Income Tax Withheld

By January 31 of the next year, you must furnish a statement on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., showing the total amount of the recipient's pension or annuity payments and the total federal income tax you withheld during the prior year. Report income tax withheld on Form 945, Annual Return of Withheld Federal Income Tax, not on Forms 941 or Form 944.

If the recipient is a foreign person who has provided you with Form W-8BEN, you instead must furnish a statement to the recipient on Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, by March 15 for the prior year. Report federal income tax withheld on Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

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## How To Get Tax Help

If you have questions about a tax issue, need help preparing your tax return, or want to download free publications, forms, or instructions, go to [IRS.gov](https://www.irs.gov) and find resources that can help you right away.

**Preparing and filing your tax return.** Go to [IRS.gov/ EmploymentEfile](https://www.irs.gov/employmentefile) for more information on filing your employment tax returns electronically.

**Employers can register to use Business Services Online.** The SSA offers online service for fast, free, and secure online Form W-2 filing options to CPAs, accountants, enrolled agents, and individuals who process Forms W-2, Wage and Tax Statement, and Forms W-2c, Corrected Wage and Tax Statement. Employers can go to [SSA.gov/ employer](https://www.ssa.gov/employer) for more information.



**Getting answers to your tax questions.** On [IRS.gov](https://www.irs.gov), get answers to your tax questions any-time, anywhere.

- Go to [IRS.gov/Help](https://www.irs.gov/help) for a variety of tools that will help you get answers to some of the most common tax questions.
- Go to [IRS.gov/Forms](https://www.irs.gov/forms) to search for our forms, instructions, and publications. You will find details on 2019 tax changes and hundreds of interactive links to help you find answers to your questions.
- You may also be able to access tax law information in your electronic filing software.

**Tax reform.** Tax reform legislation affects individuals, businesses, and tax-exempt and government entities. Go to [IRS.gov/TaxReform](https://www.irs.gov/taxreform) for information and updates on how this legislation affects your taxes.

**IRS social media.** Go to [IRS.gov/SocialMedia](https://www.irs.gov/socialmedia) to see the various social media tools the IRS uses to share the latest information on tax changes, scam alerts, initiatives, prod-

ucts, and services. At the IRS, privacy and security are paramount. We use these tools to share public information with you. **Don't** post your social security number or other confidential information on social media sites. Always protect your identity when using any social networking site.

The following IRS YouTube channels provide short, informative videos on various tax-related topics in English, Spanish, and ASL.

- [Youtube.com/irsvideos](https://www.youtube.com/irsvideos).
- [Youtube.com/irsvideomultilingua](https://www.youtube.com/irsvideomultilingua)
- [Youtube.com/irsvideosASL](https://www.youtube.com/irsvideosASL).

**Watching IRS videos.** The IRS Video portal ([IRSVideos.gov](https://www.irs.gov/irsvideos)) contains video and audio presentations for individuals, small businesses, and tax professionals.

**Getting tax information in other languages.** For taxpayers whose native language isn't English, we have the following resources available. Taxpayers can find information on [IRS.gov](https://www.irs.gov) in the following languages.

- [Spanish \(IRS.gov/Spanish\)](https://www.irs.gov/spanish).
- [Chinese \(IRS.gov/Chinese\)](https://www.irs.gov/chinese).
- [Korean \(IRS.gov/Korean\)](https://www.irs.gov/korean).
- [Russian \(IRS.gov/Russian\)](https://www.irs.gov/russian).
- [Vietnamese \(IRS.gov/Vietnamese\)](https://www.irs.gov/vietnamese).

The IRS Taxpayer Assistance Centers (TACs) provide over-the-phone interpreter service in over 170 languages, and the service is available free to taxpayers.

**Getting tax forms and publications.** Go to [IRS.gov/ Forms](https://www.irs.gov/forms) to view, download, or print most of the forms, instructions, and publications you may need. You can also download and view popular tax publications and instructions (including Pub. 15-A) on mobile devices as an eBook at no charge at [IRS.gov/eBooks](https://www.irs.gov/ebooks). Or you can go to [IRS.gov/OrderForms](https://www.irs.gov/orderforms) to place an order and have them mailed to you within 10 business days.

**Getting a transcript or copy of a return.** You can get a copy of your tax transcript or a copy of your return by calling 800-829-4933 or by mailing Form 4506-T (transcript request) or Form 4506 (copy of return) to the IRS.

**Resolving tax-related identity theft issues.**

- The IRS doesn't initiate contact with taxpayers by email or telephone to request personal or financial information. This includes any type of electronic communication, such as text messages and social media channels.
- Go to [IRS.gov/IDProtection](https://www.irs.gov/idprotection) for information.
- If your EIN has been lost or stolen or you suspect you're a victim of tax-related identity theft, visit [IRS.gov/IdentityTheft](https://www.irs.gov/identitytheft) to learn what steps you should take.

**Making a tax payment.** The IRS uses the latest encryption technology to ensure your electronic payments are

safe and secure. You can make electronic payments online, by phone, and from a mobile device using the IRS2Go app. Paying electronically is quick, easy, and faster than mailing in a check or money order. Go to [IRS.gov/Payments](https://www.irs.gov/Payments) to make a payment using any of the following options.

- **Debit or Credit Card:** Choose an approved payment processor to pay online, by phone, and by mobile device.
- **Electronic Funds Withdrawal:** Offered only when filing your federal taxes using tax return preparation software or through a tax professional.
- **Electronic Federal Tax Payment System:** Best option for businesses. Enrollment is required.
- **Check or Money Order:** Mail your payment to the address listed on the notice or instructions.
- **Cash:** You may be able to pay your taxes with cash at a participating retail store.
- **Same-Day Wire:** You may be able to do same-day wire from your financial institution. Contact your financial institution for availability, cost, and cut-off times.

**What if I can't pay now?** Go to [IRS.gov/Payments](https://www.irs.gov/Payments) for more information about your options.

- Apply for an **online payment agreement (IRS.gov/OPA)** to meet your tax obligation in monthly installments if you can't pay your taxes in full today. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved.
- Use the **Offer in Compromise Pre-Qualifier** to see if you can settle your tax debt for less than the full amount you owe. For more information on the Offer in Compromise program, go to [IRS.gov/OIC](https://www.irs.gov/OIC).

**Understanding an IRS notice or letter.** Go to [IRS.gov/Notices](https://www.irs.gov/Notices) to find additional information about responding to an IRS notice or letter.

**Contacting your local IRS office.** Keep in mind, many questions can be answered on IRS.gov without visiting an IRS Tax Assistance Center (TAC). Go to [IRS.gov/LetUsHelp](https://www.irs.gov/LetUsHelp) for the topics people ask about most. If you still need help, IRS TACs provide tax help when a tax issue can't be handled online or by phone. All TACs now provide service by appointment so you'll know in advance that you can get the service you need without long wait times. Before you visit, go to [IRS.gov/TACLocator](https://www.irs.gov/TACLocator) to find the nearest TAC, check hours, available services, and appointment options. Or, on the IRS2Go app, under the Stay Connected tab, choose the Contact Us option and click on "Local Offices."

## The Taxpayer Advocate Service (TAS) Is Here To Help You

### What Is TAS?

TAS is an **independent** organization within the IRS that helps taxpayers and protects taxpayer rights. Their job is to ensure that every taxpayer is treated fairly and that you know and understand your rights under the [Taxpayer Bill of Rights](https://www.irs.gov/advocate).

### How Can You Learn About Your Taxpayer Rights?

The Taxpayer Bill of Rights describes 10 basic rights that all taxpayers have when dealing with the IRS. Go to [TaxpayerAdvocate.IRS.gov](https://www.irs.gov/advocate) to help you understand [what these rights mean to you](https://www.irs.gov/advocate) and how they apply. These are **your** rights. Know them. Use them.

### What Can TAS Do For You?

TAS can help you resolve problems that you can't resolve with the IRS. And their service is free. If you qualify for their assistance, you will be assigned to one advocate who will work with you throughout the process and will do everything possible to resolve your issue. TAS can help you if:

- Your problem is causing financial difficulty for you, your family, or your business;
- You face (or your business is facing) an immediate threat of adverse action; or
- You've tried repeatedly to contact the IRS but no one has responded, or the IRS hasn't responded by the date promised.

### How Can You Reach TAS?

TAS has offices [in every state, the District of Columbia, and Puerto Rico](https://www.irs.gov/advocate). Your local advocate's number is in your local directory and at [TaxpayerAdvocate.IRS.gov/Contact-Us](https://www.irs.gov/advocate). You can also call them at 877-777-4778.

### How Else Does TAS Help Taxpayers?

TAS works to resolve large-scale problems that affect many taxpayers. If you know of one of these broad issues, please report it to them at [IRS.gov/SAMS](https://www.irs.gov/SAMS).

TAS also has a website, [Tax Reform Changes](https://www.irs.gov/advocate), which shows you how the new tax law may change your future tax filings and helps you plan for these changes. The information is categorized by tax topic in the order of the IRS Form 1040 or 1040-SR. Go to [TaxChanges.us](https://www.irs.gov/advocate) for more information.



## **TAS for Tax Professionals**

TAS can provide a variety of information for tax professionals, including tax law updates and guidance, TAS programs, and ways to let TAS know about systemic problems you've seen in your practice.



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