

Internal Revenue Service



Federal, State and Local Governments

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PUBLIC EMPLOYER TAX GUIDE

PUBLIC EMPLOYER TAX GUIDE

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Disclaimer:

The training materials attached hereto, although prepared by employees of the Internal Revenue Service, do not constitute an official ruling of the Internal Revenue Service and should not be used as such. The user of these training materials assumes all risks as to their accuracy under the law. Anyone who wants an official ruling by the Internal Revenue Service should follow the instructions outlined in Revenue Procedure 2008-1 and its successor revenue procedures.

INTRODUCTION

This guide is intended to provide a brief introduction to basic Federal employment tax and information reporting requirements for governmental employers. For more detailed information see [Publication 963](#), Federal-State Reference Guide. For a general discussion of employment tax responsibilities that apply to all employers, see [Publication 15](#), Employer's Tax Guide. These publications discuss the general rules for reporting wages on Form W-2, Wage and Tax Statement, for compensation to employees, and Form 941, Employer's Quarterly Employment Tax Return, and deposit and withholding requirements. This publication is intended to focus on common issues faced by public employers.

1. COMPENSATION

Compensation includes any property or services of provided in exchange for services. This includes cash and noncash remuneration.

The term "wages" means all remuneration for services performed by an employee for an employer unless specifically excepted.

Generally, the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, for example, stocks, bonds, inventory, or other forms of property. If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages.

Employees

In general, an employee is anyone who performs services subject to the will and control of the individual or entity paying for the services. Payments to employees in the form of cash, property, services or other benefits are taxable wages, unless excluded by a specific provision of the law. Taxable wages are reported on Form W-2, Wage and Tax Statement. Regulation Section 31.3401(a)-1 defines indicates that wages include noncash property or services received in exchange for services. For a full discussion of how to determine who is an employee, see [Publication 963](#) or [Publication 15-A](#).

Independent Contractors

Independent contractors include any person or business that performs services for you and is not subject to your will and control as an employee. Generally, any payment of \$600 or more during a calendar year are reportable on Form 1099-MISC, Miscellaneous Income. This form is never used to report compensation to employees. For more information on information reporting, see the [Instructions for Form 1099-MISC](#).

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Barter Transactions

Barter transactions involving independent contractors are reported on Form 1099-MISC.: Regulation 1.6041-1(e) states that:

If any payment that is required to be reported on Form 1099 is made in property other than money, the fair market value of the property at the time of payment is the amount to be included on such form.

For purposes of an information return, an amount is deemed to have been paid when it is credited or set apart to a person without any substantial limitation or restriction. The issuance of Form 1099 is generally not required for exchanges between an employer and incorporated entities or between two tax-exempt organizations.

2. SOCIAL SECURITY AND MEDICARE COVERAGE

Public employers need to be aware of the rules that govern social security and Medicare (FICA) coverage for their employees. Public employees may be subject to social security tax, either through mandatory withholding, or through the provisions of a Section 218 Agreement. They may be exempt from social security if they are covered by a qualifying public retirement system. Several legal issues must be considered to determine the correct social security and Medicare status of a worker.

It is first necessary to determine whether a Section 218 Agreement applies to services performed by the worker. A Section 218 Agreement covers positions, not individuals. If the position is covered by an Agreement, your worker is subject to social security up to the wage base (\$102,000 in 2008) and Medicare or Medicare-only taxes and you, as employer, must match these tax amounts. (There is no wage base limit for Medicare tax.) Since April 20, 1983, any public employer who had previously entered into a Section 218 Agreement to cover their employees must continue to cover employees under the Agreement, regardless of whether or not another qualifying plan is made available.

If you are not sure whether a worker's position is covered, or have any questions about your Section 218 Agreement, please call your State Social Security Administrator. A list of state administrators is available at www.ncsssa.org.

If a position is not covered by a Section 218 Agreement, you then need to establish the date the worker in question was hired. This is the date the worker began his/her current employment. If a worker was terminated and re-hired, the date you would use to figure the coverage would be the re-hire date.

After July 1, 1991, full-time, part-time, temporary and seasonal employees who are not participating in a qualifying retirement system made available through their employer **MUST** be covered by social security and Medicare. It is also possible for employees under a public retirement system to be covered for social security if a Section 218 Agreement covers them. If the worker was hired prior to April 1, 1986, Medicare coverage depends on whether the worker

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is currently covered by a pension plan that meets Internal Revenue Service requirements (see Pension Coverage, below). If the worker was hired after March 31, 1986, it is mandatory that both the worker and public employer pay Medicare tax.

3. RETIREMENT PLAN COVERAGE

A public retirement system is not required to be a qualified plan within the meaning of the Employees' Retirement Income Security Act of 1974 (ERISA). The employee may be a member of any type of retirement system, including a nonqualified system (for example, a section 457(b) plan, discussed below), as long as the plan provides a minimum level of benefits, as specified by law, under that system.

A public retirement system may take one of two forms: the **defined benefit retirement system**, which is based on a guaranteed minimum benefit, and the **defined contribution retirement system**, which is based on a minimum contribution relative to salary.

In order for a **defined benefit retirement system** to be a qualified plan, benefits must be measured by and based on various factors such as years of service rendered by the employee, compensation earned by the employee and the age of the employee at retirement. The Service issued Revenue Procedure 91-40 to clarify the minimum retirement benefit tests, which must be met in the plan's formula. This Revenue Procedure can be found in the Appendix of [Publication 963](#), Federal-State Reference Guide.

In order for a **defined contribution retirement system** to qualify, the worker must be covered in a plan in which at least 7.5% of his/her income is placed into a retirement plan. This contribution can be any combination of employer and employee contributions, but must total a minimum of 7.5% of his pay, and cannot include any credited interest in the calculation. The plan may include any plan described in section 401(a), an annuity plan or contract under section 403(b) or a plan described in section 457(b) or (f) of the Internal Revenue Code.

Any person working for a public employer after July 1, 1991, who is not covered in a pension plan that meets the requirements discussed above or the defined benefit system safe harbor rules of Revenue Procedure 91-40, must be covered by social security and Medicare under the mandatory coverage provisions of Section 210 of the Social Security Act.

4. SECTION 457 (NONQUALIFIED) PLAN

Section 457 of the Internal Revenue Code establishes a nonqualified plan for employees of tax-exempt organizations and governments. A section 457 plan, while not meeting the tests of the plans described above, does allow for deferral of compensation.

An employee can defer compensation up to \$15,500 for the year 2008. The government entity holds the funds in trust until the employee is eligible for a distribution (usually at retirement)

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and withdraws the money. The employer can match the employee's contribution, but is not required to do so. The employer's contribution usually vests immediately.

The 457 plan can be used either as a primary retirement plan or as a deferred compensation plan in addition to the employee's retirement system or social security.

When a 457 deferred compensation plan is used in addition to either social security or a state retirement system, an employer must be aware of the FICA tax implications. The employees' contributions are subject to FICA tax in the same manner as the employees' regular wages. If the employees' wages are subject to social security and/or Medicare tax, the 457 contributions are as well.

Unlike qualified pension plans, the employer's contribution is subject to social security and/or Medicare tax in the same manner as the employee's wages. The employer's contribution is subject to FICA tax at the later of:

- a) When the services are rendered, or
- b) When the plan vests to the employee so that there is no substantial risk of forfeiture.

Please review Employment Tax Notice 2000-38 issued in [Internal Revenue Bulletin 2000-33](#) for more information on this subject.

5. FEE-BASED PUBLIC OFFICIALS

In general, if an individual performs services as an official of a public entity (city, state, town, village, water district, library, etc.) and the remuneration received is paid out of governmental funds, the official is an employee and the wages are subject to Federal employment taxes. Examples of public officials include, but are not limited to, the President, a governor, mayor, county commissioner, judge, justice of the peace, sheriff, constable, registrar of deeds, building and plumbing inspectors, etc. The only exception to this rule applies to a public official who receives his/her remuneration in the form of fees **directly from the public** with whom he/she does business. However, if the fee service is covered by a Section 218 agreement, the services would be covered as employment, as discussed in [Publication 15](#), Employer's Tax Guide (Circular E).

If a public official receives his or her remuneration or salary directly from or through a government fund on the basis of a fixed percentage and no portion of the monies collected belongs to or can be retained by him/her as compensation, then the remuneration is not a fee, but salary subject to all employment taxes.

If an individual performs services in more than one position, each position is treated separately for purposes of determining whether the compensation for the service meets the fee-based or wage criteria.

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For detailed information on this subject, see [Publication 963](#), Federal-State Reference Guide, and Revenue Ruling 74-608, 1974-2 C.B. 275.

6. SPECIAL SITUATIONS FOR PUBLIC WORKERS

Elected and Appointed Officials

With the exception of fee-based officials discussed in section 4, elected and appointed officials are employees for Federal income tax withholding purposes, per Section 3401(c) of the Internal Revenue Code. For social security and Medicare purposes, all elected and most appointed officials are employees of the public entity they serve, per Section 3121(d)(2) and 3121(d)(4) of the Code. For more information, see Publication 963.

Following is brief analysis of a few of the issues you as the public employer may encounter during your normal work in properly classifying other types of workers:

Casual Laborer

Federal tax law does not recognize the term “casual laborer.” If you hire a student to clean up the town dump or a day laborer to cut trees, the worker is an employee and you must withhold, report, and pay over applicable employment taxes. There are no grace periods before withholding applies; you must withhold with the first dollar earned by the worker.

Volunteer Firefighters

Volunteer firefighters are considered employees and their remuneration is generally subject to all withholding taxes. However, if the payment is reimbursement for out-of-pocket expenses actually incurred in the course of work, and the payment is accounted for according to the requirements of Reg. 1.62-2 regarding accountable plans, then the payment could be excludable from the rest of the firefighter’s Form W-2. (See the discussion of accountable plans under Fringe Benefits, later.) See Publication 963 for more information on this issue.

Beginning in 2008, a new provision allows members of a qualified volunteer emergency response organization to exclude property tax rebates or reductions from federal income. Eligible members may also exclude \$30 of other payments for each month of the year services were provided. For more information, see www.irs.gov.

Road Commissioners

The road commissioner is an elected or appointed official of the governmental entity, and therefore is an employee who can be supervised, directed, and disciplined, and a work plan and job description can be developed for the position by the appointing body.

The relationship between the employing entity and the commissioner may also allow for a fair rental payment for the use of any large equipment owned by the commissioner. This rental fee for equipment used should be separate, agreed upon in advance, and reported to the

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individual on Form 1099-MISC, Box 7. Fair equipment rental rates should be determined and governmental units should be guided by what a private company would charge.

Scenarios such as these, in which the road commissioner may hire a crew to perform certain services, generally have to be evaluated on a case-by-case basis. It is possible that these workers could be employees of the town. All remuneration that the road commissioner personally receives is wages.

Animal Control Officer

If an animal control officer holds an elected or appointed position, then the remuneration paid to that person should be regarded as wages.

Note: Moderators, civil emergency directors, bus drivers, harbormasters, correction officers, fire chiefs, fire and ambulance workers, airport managers, summer aides, and librarians are generally considered employees.

7. FRINGE BENEFITS

Fringe benefits include any compensation other than cash wages. Some fringe benefits are excluded from income based on provisions of the Internal Revenue Code. Some of the common fringe benefit issues faced by public employers are discussed below. For a complete discussion of fringe benefits, see [Publication 15-B](#), Employer's Tax Guide to Fringe Benefits.

Reimbursement for Expenses

In general, reimbursements or expenses paid by the employer on behalf of the employee are taxable unless they are for allowable excluded benefits or expenses, unless the reimbursements are made under an **accountable plan**. For payments to be considered to be made under an accountable plan, the employees must:

- (1) Incur the expenses in the performance of work;
- (2) Adequately account for the expenses within a reasonable period of time, and
- (3) Return any amounts in excess of expenses within a reasonable period of time.

Government-Owned Vehicles

Unless it is excludable because it is infrequent and of little value (a de minimis benefit), the personal use of a government-owned vehicle is a taxable fringe benefit. Personal use includes the value of commuting to and from work in a government-owned vehicle, even if the vehicle is taken home for the convenience of the employer. The value of the fringe benefit must be included in wages and is subject to income and employment taxes. There are three methods that can be used to determine the value of the vehicle provided to the employee: commuting value rule, cents-per-mile rule and lease value rule (see below). Control employees who work for a government employer includes elected officials (such as a mayor) and employees who

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earn at least Federal Executive Level V salary (\$139,600 for 2008), can only use the cents-per-mile rule or the automobile lease rule.

All of your employee's use of a **qualified nonpersonal use vehicle** qualifies as a working condition fringe. You can exclude the value of that use from employee income. A qualified nonpersonal use vehicle is any vehicle the employee is not likely to use more than minimally for personal purposes because of its design. Qualified nonpersonal use vehicles include:

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

All Other Employer-Provided Vehicles

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

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

Examples:

A town-owned pickup truck has the name of the town marked on the vehicle. Usually the employee is allowed to take the vehicle home because he/she is "on call." The vehicle is not a qualified nonpersonal use vehicle, thus the commuting is a non-cash taxable fringe benefit.

An employee takes a city vehicle home in order to avoid exposing it to harm. The vehicle has a city seal on the door and is not to be used for personal use. If this is an infrequent occurrence (less than once a month) this may be excludable as a de minimis fringe benefit. If this is a frequent or regular occurrence, the commuting may be valued using the commuting rule (see below) because there is a noncompensatory business purpose for the employee taking the vehicle home. Otherwise, if the vehicle is not a qualified nonpersonal use vehicle as discussed earlier, the employee has a taxable commuting benefit if he/she takes a city vehicle home.

Special Valuation Rules

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Employees may use one of the following special valuation rules to determine the value of personal use of a vehicle:

1) Lease Value Rule

This method is used if neither of the rules below is applicable. It determines the benefit by determining the annual lease value of the vehicle, as follows:

- a) Determine the fair market value of the vehicle.
- b) Use the annual lease value (ALV) in the table in IRS Publication 15-B, which are based on a 4-year lease term. These values will generally stay the same for each year. After four years the vehicle must be revalued and the ALV recomputed.
- c) You must add the fair market value of fuel provided to the lease amount; you may use 5.5 cents per mile for this purpose.

2) Cents-Per-Mile Rule

To use the cents-per-mile rule, the vehicles cannot have a greater fair market value in the year placed in service than a maximum amount determined by the IRS for each year (for 2008, \$15,000 for cars and \$15,900 for trucks). The value of the personal use of a vehicle may be figured at 50.5 cents per mile for 2008 if the following conditions are met:

- a) Must be used regularly for business. This means:
 - (1) at least 50% of the total annual mileage is for your business, or
 - (2) based on facts and circumstances, the vehicle is used regularly for business; or
 - (3) you sponsor a commuting pool that generally uses the vehicle each workday to drive at least three employees to and from work.
- b) Fair market value is less than annual amount (\$15,000 for cars in 2008).
- c) Is driven at least 10,000 miles for the year, primarily by employees.

3) Commuting Value Rule

An amount of \$3.00 per day or \$1.50 per one-way commute (home to work or work to home) is a non-cash taxable fringe benefit to the employee, includible in gross income. You can use this rule only if you meet all of the following requirements:

- a) You own or lease the vehicle and provide it to an employee to use in your business,
- b) For bona fide noncompensatory business reasons, you require the employee to commute in the vehicle,
- c) You establish a written policy allowing no personal use other than commuting or de minimis personal use (such as stop for personal errand),

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- d) Your employee does not use the vehicle for personal purposes other than commuting and de minimis personal use, and
- e) The employee is not a government control employee defined as follows:
 - i. Elected official, or
 - ii. Employee whose pay is at least Federal Government Executive Level V (\$139,600 for 2008).

To conform to the accountable plan rules, employees using a vehicle for business purposes (regardless of which special valuation rule is used) should keep daily records of business miles by keeping a log containing the following information:

- 1) Date
- 2) Mileage (beginning and ending)
- 3) Destination
- 4) Business purpose
- 5) Personal use mileage
- 6) Commuting

Clothing Provided by the Employer

The value of work clothing provided by the employer is not taxable to the employee if:

- 1) The employee must wear the clothing as a condition of employment, and
- 2) The clothes are not suitable for everyday wear.

It is not enough that the employee wear distinctive clothing; the employer must specifically require the clothing as a working condition. Nor is it enough that the employee does not, in fact, wear the work clothes away from work. The clothing must not be suitable for taking the place of your regular clothing.

The value and upkeep of work clothes provided to firefighters, health care workers, law enforcement officers or letter carriers is nontaxable to the employee.

Similarly, the value of safety shoes or boots, safety glasses, hard hats and work gloves provided and maintained by the employer are not taxable if the purchases are substantiated under the accountable plan rules.

Clothing Allowances for Police, Fire and Public Works

If the clothing does not qualify as a deductible expense (i.e. as a uniform), then these payments must be treated as a taxable fringe benefit and are subject to income, social security and Medicare taxes. Thus, a police officer or firefighter uniform would qualify for exclusion from income if paid under an accountable plan and meets all the requirements of an accountable plan (qualified expense, substantiation, and return of excess). However, a detective's suit jacket and related clothing, since they are suitable for everyday wear, do not qualify as a uniform and are taxable to the employee.

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Group-Term Life Insurance

An employer may exclude from income the cost of up to \$50,000 of group-term life insurance from an employee's wages. If the employee receives more than \$50,000 insurance, only the IRS-determined cost of the excess is includable as wages. Use the tables in [Publication 15-B](#), Employer's Tax Guide to Fringe Benefits, to calculate the includible income.

If the employee makes any payment toward the cost of the insurance, then the amount of coverage attributable to that payment is not considered in determining the amount of insurance provided by the employer.

Taxable employer-provided group-term life insurance is treated as wages, but is not subject to income tax withholding. It is subject to social security and Medicare tax withholding and must be included on Form W-2, in box 1, 3, 5 and 12 (code C).

The taxable portion is included on **Form 941**, Employer's Quarterly Federal Tax Return, as part of wages, tips and other compensation, and on the lines for social security and Medicare wages.

Meals

You can exclude the value of meals you furnish to an employee from the employee's wages if they meet the following tests:

- They are furnished on your business premises.
- They are furnished for your convenience.

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

You can exclude infrequent meals provided to employees if they have so little value that accounting for it would be unreasonable or administratively impracticable. Occasional meal money to enable an employee to work overtime may also be excludable. For more information, on de minimis benefits, see the [Taxable Fringe Benefit Guide](#) and [Publication 15-B](#).

Lodging

You can exclude the value of lodging you furnish to an employee if it meets the following tests:

- It is furnished on your business premises.
- It is furnished for your convenience.
- The employee must accept it as a condition of employment.

For more information, see [Publication 15-B](#).

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SUMMARY: TREATMENT OF NONCASH FRINGE BENEFITS

The following chart is for quick reference only. For complete information, see the appropriate references. These benefits are discussed in Publication 15-B.

Benefit or Program	Code Section or Reference	Income Tax Withholding	Social Security and Medicare
Accident Insurance	105, 106	Exempt, except for certain long-term care benefits.	Exempt
Adoption Expenses	137	Exempt	Taxable
Athletic Facilities, on employer premises	132(j)(4)	Exempt if substantially all use is by employee, spouse or dependent children.	
Achievement Awards	74, 274, Pub. 15-B, Pub. 535	Value of noncash safety or length-of-service awards valued up to \$400 for nonqualified or \$1,600 for qualified awards. See Pub. 15-B and 535, chapter 2.	
Cafeteria Plan Benefits (see specific benefit)	125, Pub. 15-B	Generally exempt. See Pub. 15-B.	
Clothing Provided	162, Pub. 17	Exempt, if required and not suitable for nonbusiness use.	
Dependent Care Assistance	129, 3121(a), 3401(a)	Exempt up to \$5,000 (\$2,500 for married filing separate return) per year.	
Disability Pay	Pub. 15-A	See Pub. 15-A.	
Educational Assistance	127	Exempt for up to \$5,250 of benefits per year. May also qualify as working condition fringe benefit.	
Group Term Life Insurance	79	Exempt	Exempt up to cost of \$50,000 of insurance.
Health Insurance	105, 106	Exempt, except for certain long-term care benefits.	Exempt.

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Benefit or Program	Code Section or Reference	Income Tax Withholding	Social Security and Medicare
Lodging Provided Employer	119	Exempt if for employer's convenience as a condition of employment.	
Meals Provided	119	Exempt if furnished on employer's premises for employer's convenience, or if qualifies as de minimis.	
Membership Fees Paid	132(a)(3)	Exempt if for professional and business-related organizations and reasonable business purpose.	
Moving Expenses	217; Pub. 521	Exempt if expenses would be deductible if the employee had paid them.	
No-additional-cost services	132(b)	Exempt. See Pub. 15-B.	
Sick Pay	Pub. 15-A	See Pub. 15-A.	
Tuition Reduction	117	Exempt if for undergraduate education (or graduate education if the employee performs teaching or research activities).	
Travel Expenses	162, Pub 15, Pub 15-A	Exempt if paid under an accountable plan for necessary expenses. See Pub. 15-A.	
Vehicle Provided by employer	280F, Pub. 15-B	Exempt if provided for business use. See Pub. 15-B.	
Working condition fringe benefit	132(d), Pub. 15-B	Exempt. See Pub. 15-B.	

8. INFORMATION REPORTING

Any entity, including a governmental organization, conducting a trade or business is required to file information returns for certain of payments. In most cases, these payments are reported on Form 1099-MISC, Miscellaneous Income.

IRC 6041(a) states that:

All persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, of \$600 or more in any taxable year shall render a true and accurate return setting forth the amount of such income and the name and address of the recipient of such payment.

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The recipient of the payment is required to furnish to you the entity's name, address and identification number. This identification number must be included on the information return.

The Regulations state that every person engaged in a trade or business shall make an information return for each calendar year with respect to payments made by him to another person: salaries, wages, commissions for services rendered, interest, rents, royalties, annuities, pensions, and other gains, profits, and income aggregating \$600 or more. The returns used for this purpose are the forms in the 1099 series. The return with respect to certain payments of compensation to an employee is made on Forms W-2 and W-3; never use Form 1099-MISC to report payments for services by an employee.

File Form 1099 for:

Payments of \$600 or more for:

- Services (Form 1099-MISC)
- Rents (Form 1099-MISC)
- Retirement benefits (Form 1099-R)
- Payments of \$10 or more for Interest (1099-INT)

Payments of \$600 or more to:

- Individuals
- Partnerships
- Estates
- Trusts
- Medical and Legal Service Provider

EXAMPLES OF REPORTABLE PAYMENTS

Non-employee (Form 1099-MISC Box 7)

Accounting services
Advertising
Appraisal services
Attorney fees
Auto repair
Construction
Consultant fees
Custodial/Maintenance
Engineering services
Game officials and referees
Landscapers, locksmiths
Photographers, printing services
Trash removal

Medical & Health Care Services (1099-MISC Box 6)

Ambulance services
Dentists
Doctors
For-profit hospitals

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Lab services
Optometrists
Private duty nurses
Psychiatrists, psychologists
Rehabilitation centers
Therapists

Rents (Form 1099-MISC Box 1)

Equipment
Office space
Parking lot space
Welfare rental assistance (to landlords)

NOTE: Certain payments and recipients are exempt from the requirements, including:

Payments to exempt organizations and governments
Generally, payments to corporations BUT not attorneys' fees, medical and health care payments
Payments of rent to real estate agents

See the [Instructions for Form 1099-MISC](#) and [General Instructions for Forms 1099, 1098, 5498, and W-2G](#) for more information.

Information returns are not required for:

- a) Payments of income required to be reported on Forms 1042, 1120-S, 941, W-3, and W-2.
- b) Payments by a broker to his customer.
- c) Payments to a corporation, except payments to a corporation engaged in providing legal, medical AND health care services.
- d) Payments of bills for merchandise, telegrams, telephone, freight, storage and similar charges.
- e) Payments of rent made to real estate agents.
- f) Salaries and profits paid or distributed by a partnership to the individual partners.
- g) Payments of commissions to general agents by fire insurance companies or other companies insuring property.

Payments for services not specifically excluded are reportable on an information return.

You should obtain vendor information before any payments are made. Use Form W-9, Request for Taxpayer Identification Number and Certification, or a substitute, to collect the owner's name (if sole proprietor), legal business name, mailing address, taxpayer identification number.

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If the vendor fails to supply an identification number, you must withhold 28% and pay it over to the IRS on Form 945. This is called **backup withholding**, discussed in the next section.

Send copy B of Form 1099-MISC to the recipient by January 31 of the following year, and copy A to the IRS by February.

Information Reporting Customer Service Site

Basic information about information return requirements is available in the [General Instructions for Forms 1099, 1098, 5498 and 1099-G](#), as well as the individual instructions, such as [Instructions for Form 1099-MISC](#). These instructions are revised each year as new annual versions of the forms are produced. In addition, the IRS operates a centralized customer service site to answer questions about reporting on Forms W-2, W-3, 1099, and other information returns. If you have questions about reporting on these forms, call 1-866-455-7438 (toll free), Monday through Friday, 8:30 a.m. to 4:30 p.m., eastern time.

9. BACKUP WITHHOLDING

Government entities that make payments reportable on Form 1099-MISC are required to withhold income tax of 28% from these payments if the payee is not exempt from backup withholding and fails to furnish a correct taxpayer identification number (TIN). Backup withholding does not apply to wages or pension payments. Backup withholding does not apply to employees.

In general, in the case of any reportable payment, if the payee fails to furnish his taxpayer identification number to the payer in the manner required, then the payer must deduct and withhold a tax equal to 28% of the payment. The tax collected from backup withholding is reported on Form 945, Annual Return of Withheld Income Tax.

The amount of backup withholding is shown in box 4 of Form 1099-MISC.

The payer is liable for the payment of the tax required to be deducted and withheld under the backup withholding rules. If the payer fails to deduct and withhold tax at a rate of 28% from a reportable payment, and the payee fails to furnish his TIN, the payer is then liable for the payment of the tax.

"B" Notice

If the IRS sends you a "B" notice indicating an incorrect payee TIN, you are required to backup withhold from a payee no later than 30 days after receipt. Backup withholding continues until the payee furnishes a TIN and certifies that it is correct.

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“C” Notice

If the IRS sends you a “C” notice indicating notified payee underreporting, you must withhold on any reportable payment no later than 30 days after receipt. The IRS will notify you when to stop withholding.

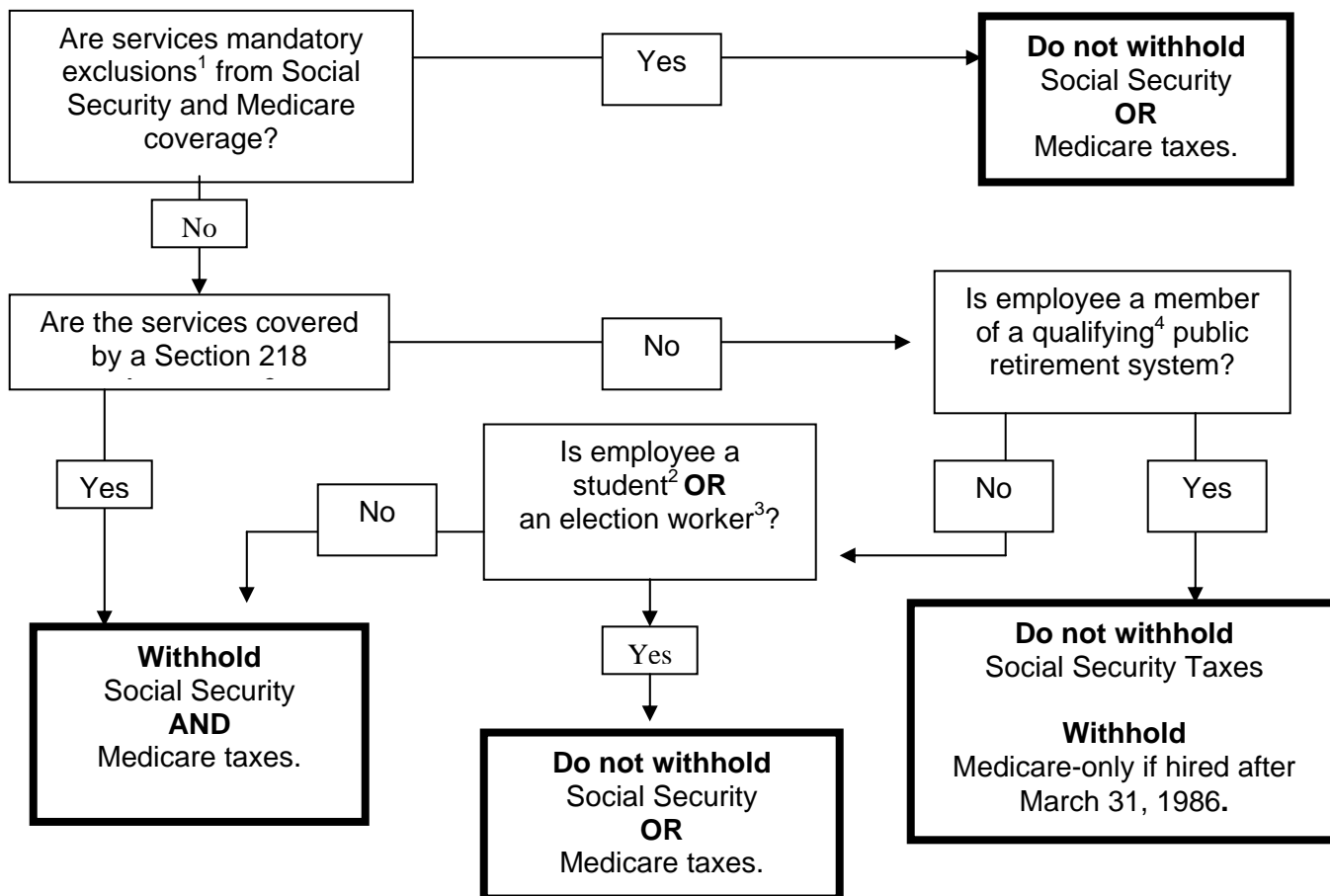
For more information, see the Instructions for Forms [1099](#), [1098](#), [5498](#), and [W-2G](#) and [Publication 1281](#), Backup Withholding for Missing and Incorrect Name/TIN(s).

**SECTION 218 OF THE SOCIAL SECURITY ACT
KEY DATES**

- **Before 1951** - No social security coverage for public employees
- **1951**-Section 218 Added to Social Security Act; coverage became available for positions not covered under public retirement systems
- **1955** – Governmental employers with retirement systems allowed to participate in 218 coverage
- **1966** – Medicare coverage begins; employees covered by a Section 218 Agreement are subject to Medicare tax
- **Beginning April 20, 1983** - Termination of a Section 218 agreements is prohibited
- **Beginning April 1, 1986** - Mandatory Medicare coverage applies to all new hires
- **Beginning July 2, 1991** - Mandatory social security coverage applies unless employees participate in a qualifying retirement system or are covered by a Section 218 Agreement

SOCIAL SECURITY COVERAGE

This chart is meant as a guide only and is not a substitute for discussing difficult Section 218 coverage situations with your State Social Security Administrator or taxation issues with your IRS FSLG agent.



¹Mandatory Exclusions from Social Security and Medicare (FICA) coverage

Services performed:

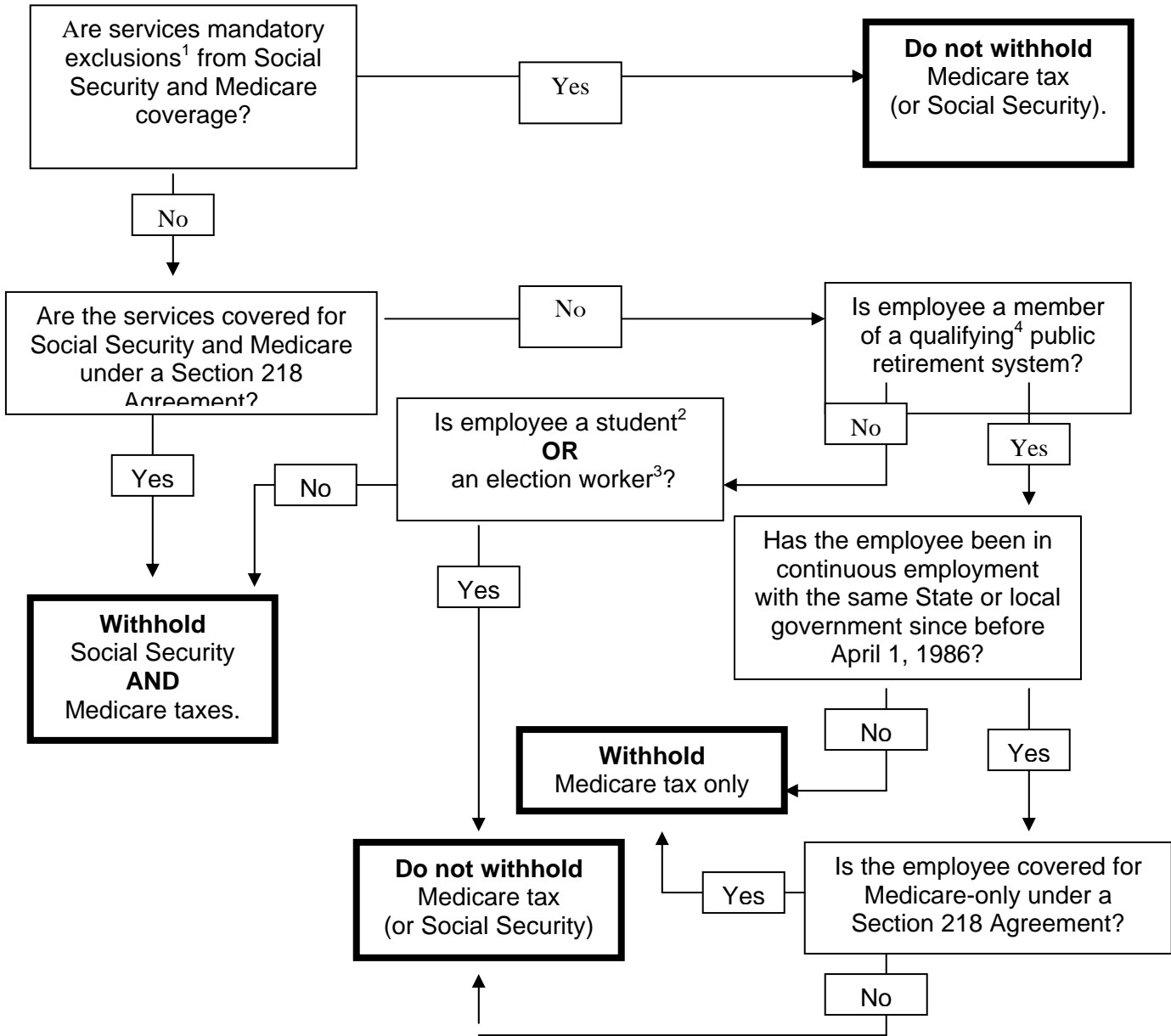
- by individuals hired solely to be relieved from unemployment
- in a hospital, home or other institution by a patient or inmate
- by workers hired on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar **emergency**
- by non-resident aliens with F-1, J-1, M-1 & Q-1 visas
- in positions compensated solely by fees that are subject to SECA
(NOTE: These services may be covered by a 218 Agreement and subject to FICA.)
- by students² enrolled and regularly attending classes at the school where they are working
(NOTE: These services may be covered by a 218 Agreement and subject to FICA.)
- by election workers³ paid less than the threshold amount mandated by law
(NOTE: These services may be covered by a 218 Agreement and subject to FICA.)
- that are excluded from definition of employment in Section 210 of the Social Security Act

⁴Qualifying Public Retirement System – See information under “Pension Coverage” in this booklet. For more information and discussion of **rehired annuitants**, see *Pub 963, Federal-State Reference Guide*.

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MEDICARE COVERAGE

This chart is meant as a guide only and is not a substitute for discussing difficult Section 218 coverage situations with your State Social Security Administrator or taxation issues with your IRS FSLG agent.



¹**Mandatory Exclusions from Social Security and Medicare (FICA) coverage**

Services performed:

- by individuals hired solely to be relieved from unemployment
- in a hospital, home or other institution by a patient or inmate
- by workers hired on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency
- by non-resident aliens with F-1, J-1, M-1 & Q-1 visas
- in positions compensated solely by fees that are subject to SECA
(NOTE: These services may be covered by a 218 Agreement and subject to FICA.)
- by students² enrolled and regularly attending classes at the school where they are working
(NOTE: These services may be covered by a 218 Agreement and subject to FICA.)
- by election workers³ paid less than the threshold amount mandated by law
(NOTE: These services may be covered by a 218 Agreement and subject to FICA.)
- that are excluded from definition of employment in Section 210 of the Social Security Act

⁴**Qualifying Public Retirement System** – See information under “Pension Coverage” in this booklet. For more information and discussion of

rehired

annuitants, see *Publication 963, Federal-State Reference Guide*.

OFFICE OF FEDERAL, STATE, AND LOCAL GOVERNMENTS (FSLG)

The IRS Office of Federal, State and Local Governments is responsible for ensuring federal tax compliance by federal, quasi-governmental and state agencies; city, county and other units of local government; and American Samoa, Guam, Puerto Rico and the U.S. Virgin Islands. The office coordinates activities with other IRS offices such as Customer Account Services, Counsel, Government Liaison & Disclosure, Employee Plans and Excise Tax to better assist you. Additionally, Federal, State and Local Governments works with the Taxpayer Advocate Service to resolve tax problems.

For more information about FSLG's outreach and compliance activities, and to locate an FSLG Specialist in your area, visit the website at www.irs.gov/govts

IMPORTANT PUBLICATIONS

[Publication 15](#), Employer's Tax Guide
[Publication 15-A](#), Employer's Supplemental Tax Guide
[Publication 15-B](#), Employer's Guide to Fringe Benefits
[Publication 963](#), Federal, State Reference Guide

OTHER USEFUL WEBSITES

www.irs.gov - Internal Revenue Service home page

www.ssa.gov - Social Security Administration homepage

www.ssa.gov/slge - Social Security Administration site for state and local government employers

www.ncsssa.org - National Conference of State Social Security Administrators (NCSSSA)