

# **Taxability of Certain Fringe Benefits for State and Local Governments**

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**FEDERAL STATE AND LOCAL GOVERNMENTS  
AND  
PUBLIC ENTITIES  
WORKING TOGETHER "HAND IN HAND"**



# WHERE TO GET INFORMATION

<http://www.irs.gov/govt/fslg/content/0,,id=117706,00.html>



**Internal Revenue Service**  
United States Department of the Treasury

## **Educational Products**

### **Publication 963: Federal-State Reference Guide**

The November 2008 revision of this publication provides government employers a comprehensive reference guide for Social Security and Medicare coverage and Federal Insurance Contributions Act (FICA) tax withholding issues.

### **Fringe Benefits Guide - Revised January 2009**

In-depth discussion of meal allowances, travel, transportation, moving expenses, education and other common fringe benefit situations for public employers.

### **Quick Reference Guide for Public Employers**

A brief guide to information reporting and employment tax rules, including social security coverage and fringe benefits, for government employers.

# FRINGE BENEFITS

# WHAT IS A FRINGE BENEFIT?

- **Cash, property, services in addition to regular wages**

# **ARE FRINGE BENEFITS TAXABLE?**

- **Taxable to employee unless specifically excluded by IRC**
- **Taxable means subject to withholding and reported on W-2 in year benefit provided**

# SPECIAL ACCOUNTING RULES

- Reporting period
- Regular or supplemental withholding
- November/December benefits-election
- Election not to withhold

# VALUING NON-CASH FRINGE BENEFITS

## FMV

What it would cost employee to buy benefit from an unrelated party

# FRINGE BENEFIT CODE SECTIONS

- Examples:
  - IRC 119 - Meals and Lodging
  - IRC 127 - Educational Assistance
  - IRC 132 - General Fringe Benefit Section

# WORKING CONDITION FRINGE BENEFIT

- Definition:
  - Property or service that employee would have been entitled to deduct on 1040 if employer hadn't provided it

# WORKING CONDITION FRINGE BENEFIT

- General Rules:
  - Must relate to employer's business
  - Employee could have deducted expense on 1040
  - Employee must substantiate business use

# IRC 132(e) - DE MINIMIS FRINGE BENEFIT

## General Rules:

- Property or service that is small in value, and
- Provided to employee infrequently, not regularly

# PER DIEM PAYMENTS

# WHAT IS A PER DIEM?

- Method of reimbursing employees for business expenses for overnight travel
- Reimbursement tax-free, if rules are met

# PER DIEM

- Tax-Free, IF:
  - Accountable plan rules are followed, and
  - Per diem reimbursement is at or below Federal rates
  - Receipts are not required

# PER DIEM BREAKDOWN

- Per Diem consists of:
  - Lodging
  - Meals and Incidental Expenses (M&IE)
- Rates vary by City

# LODGING PER DIEM

- Use rate of city where you spend the night
- Room tax and energy charges are not part of Lodging; they are reimbursed separately

# M&IE PER DIEM

- Includes:
  - meals, and
  - tips for food and luggage handling, and
  - laundry and dry cleaning for travel of less than 4 consecutive nights

# PER DIEM - OTHER RULES

- Prorate M&IE for days of departure and return
- Employer may pay other tax-free business expenses in addition to per diem: room taxes, cab, telephone charges, laundry

# ACCOUNTABLE PLANS



## Accountable v. Nonaccountable Plans

*Methods of Reimbursing Employees for Expenses*

### Accountable Plans

A plan under which an employee is reimbursed for expenses or receives an allowance to cover expenses is an *accountable plan* **only** if the following conditions are satisfied:

- there must be a business condition for the expenses;
  - the expense must be in connection with performance of services as an employee
  - the reimbursement must be for an expense the employee could deduct on his/her tax return
- the employee must either substantiate or be deemed to have substantiated the expenses;
  - Generally substantiation consists of receipts and/or cancelled checks and invoices that show the nature and amount of the expenditure
  - Expenses deemed to have been substantiated are such things as using the mileage allowance rate (55 cents per mile) rather than actual expenses for operating a vehicle or use of a per diem rate for overnight travel rather than requiring receipts for meals
- the employee must return to the employer amounts in excess of the substantiated (or deemed substantiated) expenses within a reasonable time
  - there are 2 methods of determining a reasonable time
    - Periodic Statement
      - a statement from the employer is given to the employee at least quarterly setting forth the amounts paid under the plan in of the substantiated amount and requesting the employee either substantiate or return excess amounts within 120 days of the statement date
    - Fixed Date
      - Advance Payments – 30 days before the reasonably anticipated expenses are paid or incurred
      - Substantiation – 60 days after expenses are paid or incurred
      - Return of excess amounts – 120 days after expenses are paid or incurred



Amounts paid under accountable plans are not income to the employee and are not shown on Form W-2.

***Remember that all of the requirements must be met in order for it to be an accountable plan!***

### Nonaccountable Plan

A nonaccountable plan is a reimbursement plan or policy which does not meet all the requirements for an accountable plan.

Amounts paid under a nonaccountable plan are income to the employee and must be included in wages with appropriate tax withholdings.

An employer can have an accountable plan for some items, and a nonaccountable plan for others.

# ACCOUNTABLE PLAN?

**Allowance or reimbursement  
where amounts are non-taxable,  
if certain rules are met**

# THREE RULES:

- **Business Connection**
- **Adequate Accounting**
- **Excess returned on a timely basis**

# Business Connection

- **Directly Related to Trade or Business**
- **Deductible on 1040**

# Adequate Accounting

- **Verify:**
  - Date
  - Time
  - Place
  - Amount
  - Business Purpose

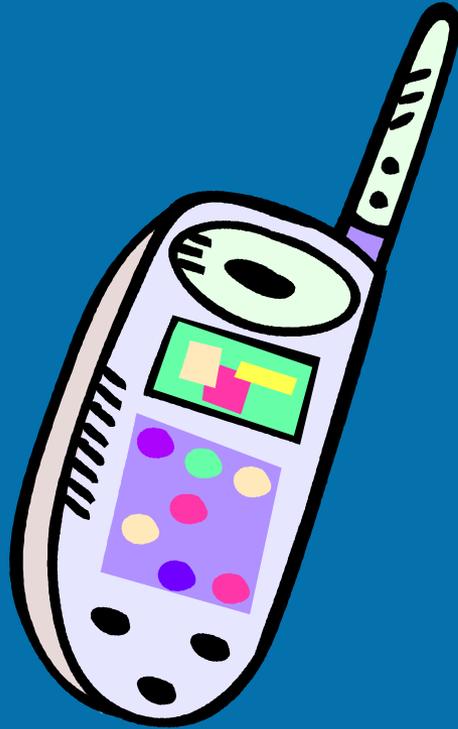
# Return Excess Timely

- **Within a reasonable period of time**

# NON-ACCOUNTABLE PLAN:

- Does not meet ALL 3 RULES  
for Accountable Plans

# Cell Phones



# Cell Phones

**Currently cell phones are considered under the listed property rules.**

**There is current legislation that is being considered to eliminate cell phones under listed property.**

# **PAYMENTS IN LIEU OF INSURANCE**

- **Receipts for Insurance or Medical Expenses**
  - **Non-taxable – no reporting required**

# **PAYMENTS IN LIEU OF INSURANCE (cont'd)**

- **Cash Payments – No Accounting**
  - **Fully taxable**
  - **W-2 reportable**
    - **Box 1 – Gross Compensation**
    - **Box 3 – SSA Wages**
    - **Box 5 – Medicare Wages**

# MOVING EXPENSES

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- IRC Section 132(g):
  - Allows Employer to Reimburse Employee
- IRC Section 217:
  - Allows Individual to Deduct Certain Expenses

# MOVING EXPENSES

- NOT TAXABLE TO EE, if:
  - Paid under Accountable Plan
  - Specific Tests of IRC 217 met

# IRC 217 TESTS:

- Must be an employee
- Employee must incur the expenses
- Expenses closely related to start work at new job location
- Expenses allowed under 217
- Must meet time and distance tests

# MOVING EXPENSES

- NON TAXABLE COSTS OF TRAVELING:
  - Moving Other Members of Household
  - Airfare, Car
  - Lodging while traveling
  - Parking fees, tolls

# MOVING EXPENSES

- NON-TAXABLE COSTS OF MOVING HOUSEHOLD GOODS/PERSONAL EFFECTS:
  - Packing, Crating, Transporting
  - Shipping Car(s)
  - Shipping Pet(s)
  - Storage & Insurance (30 consecutive days)

# MOVING EXPENSES

- REIMBURSEMENTS are not included in income if:
  - Expenses qualify under IRC 217, and
  - are reimbursed in the same calendar year they are deducted

# MOVING EXPENSES

- TIMING OF TAXABILITY
- EMPLOYER'S REPORTING ON W-2

# MEAL ALLOWANCES/ REIMBURSEMENTS

# MEAL ALLOWANCES/ REIMBURSEMENTS

- **Meals While Traveling**
- **Meals While Not Traveling**
  - **Meals with meetings or entertainment**
  - **De minimis meal allowances**

# MEAL ALLOWANCES/ REIMBURSEMENTS

- **Meals While Traveling**
  - **Tax-Free Requirements**
    - **Must be away from tax home overnight, or long enough to require substantial sleep or rest**
    - **No set number of hours away or distance**
    - **Substantiation required**

# MEAL ALLOWANCES/ REIMBURSEMENTS

- **Meals Not Away From Home**
  - **Meals with meetings**
  - **Meals with entertainment**
  - **De minimis meals**

# MEAL ALLOWANCES/ REIMBURSEMENTS

- **Meals with Meetings or Entertainment**
  - **Tax-free if meal meets test:**
    - **“Directly-related” test, or**
    - **“Associated with” test**

# MEAL ALLOWANCES/ REIMBURSEMENTS

- **“Directly Related” Meals - Tax-Free**
  - Meals as part of business meetings
  - Meals at service club or professional meetings
    - Example- Rotary, OFOA, CPA

# MEAL ALLOWANCES/ REIMBURSEMENTS

- **“Associated With” Test**
  - **Meals in clear business purpose**
  - **Substantial business discussions/negotiations directly preceding or following meal**

# MEAL ALLOWANCES/ REIMBURSEMENTS

- **“Associated With” Meals - Tax-Free**
  - **Meals at conventions**
  - **Meals at conferences**

# MEAL ALLOWANCES/ REIMBURSEMENTS

- **De Minimis Meals - Tax-Free if:**
  - Meal is small in value and occasional
  - Not provided routinely or often
  - Provided so employee can work overtime
  - Enables employee to work overtime

# MEAL ALLOWANCES/ REIMBURSEMENTS

- **De Minimis Meal**
  - Generally, meal must be consumed during overtime period
  - Meal allowances based on number of hours worked does not qualify as de minimis.

# MEAL ALLOWANCES/ REIMBURSEMENTS (Cont'd)

- **NOTE:** Meals consumed en-route to daily business events are not tax deductible.
  - i.e. Breakfast or diner while traveling to and from a daily convention or conference would not be deductible.

# **MEAL ALLOWANCES/ REIMBURSEMENTS (Cont'd)**

- No hotel = no tax free meal reimbursement while traveling to and from event.**
- If you break for lunch and everyone is responsible for their own lunch arrangements, the reimbursement for lunch is fully taxable.**

**EMPLOYEE VEHICLE  
USED FOR  
EMPLOYER'S BUSINESS**



# EMPLOYEE'S CAR

**REIMBURSED BUSINESS USE is  
Non-Taxable if *AT or BELOW*  
Federal Mileage Rate**

# STANDARD MILEAGE RATES

- 2010 .50 cents per mile

# **EMPLOYER - PROVIDED VEHICLES**

- **Qualified Non-Personal Use Vehicle**
  - **By design, vehicle is unlikely to have personal use**
  - **Use of vehicle is tax-free**

# EMPLOYER PROVIDED VEHICLES

- **Qualified Non-Personal Use Vehicles**
  - **Clearly marked police and fire vehicles**
  - **School buses**
  - **Unmarked law enforcement vehicles**
  - **Special purpose vehicles – now plows, etc**
  - **Vans and pickups must be modified to qualify.**

# This Qualifies:



Sorry- No:



# Definitely Not!



# This Qualifies



**Because it has this:**



And definitely not this one!

A COWASAKI !!



# **EMPLOYER - PROVIDED VEHICLES**

- **See Publication 15-B for car valuation rules on employer provided vehicles. Available at [www.irs.gov/publications](http://www.irs.gov/publications)**

# **UNIFORMS AND CLOTHING ALLOWANCES**

# UNIFORMS

- **Uniforms must be qualified in order to be exempt from tax**
- **Plain pants and shirt do not qualify as uniform**
- **Suits, sports coats, etc worn be plain clothes officers do not qualify as uniforms**

# OTHER TYPES OF COMPENSATION

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- All income is taxable unless excluded by IRC
- Some types of payments are 'Supplemental' Wages

# SUPPLEMENTAL WAGES

- Bonuses: Signing, Recruiting, Relocation
- Awards for outstanding service
- Back pay
- Severance pay
- Administrative leave

# SUPPLEMENTAL WAGES

- **WITHHOLD:**
  - **TWO DIFFERENT METHODS:**
    1. **Optional**
    2. **Aggregate**

# AWARDS AND PRIZES

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- **CASH or CASH Equivalent - Always Taxable**
- **Cash Equivalent: savings bonds, unrestricted gift certificates**

# AWARDS AND PRIZES

- Non-Taxable Awards and Prizes
  - Only three types are tax-free:
    - Certain awards/prizes transferred to charity
    - De minimis awards/prizes
    - Certain employee achievement awards

# AWARDS AND PRIZES

- Transferred to Charity:
  - Must be given for charitable, scientific, artistic, or educational achievement, and
  - Must be transferred to charitable organization before taking possession
  - Other rules apply

# AWARDS AND PRIZES

- Non-Taxable De Minimis Awards/Prizes:
  - Cannot be cash or cash equivalent
  - Must be small in value and not given frequently
  - NO SET \$\$\$ amount for de minimis

# AWARDS AND PRIZES

- Non-Taxable De Minimis Awards/Prizes
  - Examples:
    - holiday ham or turkey
    - flowers for special occasions
    - nominal birthday gifts
    - coffee mugs, plaques

# AWARDS AND PRIZES

- Non-Taxable Employee Achievement Awards and Prizes
  - Must be non-cash
  - Must be for safety or length of service

# AWARDS AND PRIZES

- Non-Taxable Employee Achievement Awards and Prizes
  - Value cannot exceed either \$400 or \$1600 / year / employee
  - Average value of all awards CANNOT EXCEED \$400 and remain tax-free

# AWARDS AND PRIZES

- Non-Taxable Length of Service Awards
  - Cannot be given within first five years of employment
  - Cannot be given more often than every five years (except for retirement awards)

# AWARDS AND PRIZES

- **Non-Taxable Safety Awards**
  - Cannot give first year of employment, and
  - Cannot be given to more than 10% of eligible employees  
( not managers, clerical or other professional employees)

# AWARDS AND PRIZES

- **Taxable Awards**
  - Cash or cash equivalent
  - Non-cash awards won in employer sponsored drawing
  - Any award other than qualified non-taxable

# **PROFESSIONAL LICENSES AND DUES FOR ORGANIZATIONS**

# PROFESSIONAL LICENSES

- **Fees Paid To Maintain - Ordinary Business Expense**
- **If EE pays: deductible on 1040**
- **If ER pays: Working Condition Fringe**
  - **Follow Accountable Plan Rules**
  - **Employee must keep records**

# ORGANIZATION DUES

- General Rule: Not Deductible
- **EXCEPTION for Professional Organizations**
  - Business Leagues
  - Professional Organizations
  - Trade Associations

# Questions



# QUESTION NUMBER 1

We have a question related to de minimis fringe benefits. If an employer provides a gift certificate for a Christmas turkey or an occasional theatre ticket, what facts and circumstances would allow the gift certificate to be excluded from taxable income?

# QUESTION NUMBER 2

What is the current status of cell phones and laptops? How should an employee's use of employer provided cell phones and laptops be treated on Form W-2?

# QUESTION NUMBER 3

We have a question related to a retirement gift. A faculty member of a school is retiring and his department would like to give a \$100 gift card to a restaurant as a retirement present. The employer wants to know if this is taxable or not because of the infrequency and special occasion circumstance.

# QUESTION NUMBER 4

**We have a policy that specifically prohibits an employee from using a county supplied cell phone for personal reasons and we police the cell phone bills for personal use. We discipline employees for violating the policy. Will personal use still be taxable?**

# QUESTION NUMBER 5

**We have a question about uniforms. Are fire retardant uniforms provided as a condition of employment and worn by workers that are performing electrical work taxable?**

# QUESTION NUMBER 6

Our new union agreement states that some employees get a \$75.00 boot allowance. What is the best way to handle this? Also our Police officers get a \$500 allowance for uniforms. The union agreement states uniforms will be ordered and paid according to police department policy. Does this let us off the hook and put the record keeping on the employee?

# QUESTION NUMBER 7

When a county's Sheriff squad cars are no longer being used in the active fleet, they are provided to the County Jail Administrators for commuting. The County would like to know if they can use the commuting rule to value the employees' personal usage of the vehicles.

# RECAP – Helpful Resources

- [www.irs.gov/govts/fslg](http://www.irs.gov/govts/fslg)  
educational materials for government entities
- [www.irs.gov/formspubs](http://www.irs.gov/formspubs)  
link to download forms and publications and other education resources

# USEFUL TELEPHONE NUMBERS

- **1-827-829-5500** for the TE/GE toll free tax assistance line
- **1-800-829-3676** for the Forms order site
- **1-866-455-7438** for the 1099 and W-2 Assistance

# In Summary:

- We value your comments and would appreciate your feedback on this Webinar at: **tege.fslg.feedback@irs.gov**
- If you have Federal Tax topics for Government Entities for future Webinars, please provide comments at the above e-mail address.