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**(Circular E),
Employer's
Tax Guide**

For use in **2009**



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What's New

This publication reflects changes included in the recently enacted American Recovery and Reinvestment Act of 2009 (ARRA).

New tables for wage withholding and advance earned income credit (EIC) payments. New tables for wage withholding and advance earned income credit (EIC) payments have been developed due to changes made to the tax law by ARRA.

How To Use the Income Tax Withholding and Advance Earned Income Credit (EIC) Payment Tables and the associated tables have been removed from this revision of the publication and can now be found on pages 3–35 in [Publication 15-T, New Wage Withholding and Advance Earned Income Credit Payment Tables \(For Wages Paid Through December 2009\)](#).

The tables for wage withholding and advance earned income credit payments published in Publication 51 (Circular A), *Agricultural Employer's Tax Guide*, and the tables for alternative methods for figuring withholding published in Publication 15-A, *Employer's Supplemental Tax Guide*, are also replaced with the tables published in Publication 15-T.

The new withholding tables in Publication 15-T also apply for figuring income tax withholding on pension payments.

Employers should begin using these tables as soon as possible after February 17, 2009, but no later than April 1, 2009.

Withholding income taxes on the wages of nonresident alien employees. Due to changes enacted by ARRA, new higher amounts in the chart titled [Amount to Add to Nonresident Alien Employee's Wages for Calculating Income Tax Withholding Only](#) on page 16 in section 9 must be used with the new withholding tables to figure income tax withholding on the wages of nonresident alien employees.

COBRA premium assistance credit. ARRA allows a credit against employment taxes for providing COBRA premium assistance for certain involuntarily terminated employees once the employees' reduced share of the premiums has been paid. See [COBRA premium assistance credit](#) in the *Introduction*.

Social security and Medicare tax for 2009. Do not withhold social security tax after an employee reaches \$106,800 in social security wages. There is no limit on the amount of wages subject to Medicare tax. Social security and Medicare taxes apply to the wages of household workers you pay \$1,700 or more in cash. Social security and Medicare taxes apply to election workers who are paid \$1,500 or more.

Disregarded entities and qualified subchapter S subsidiaries (QSUBS). The IRS has published final regulations (Treasury Decision 9356) under which QSUBS and eligible single-owner disregarded entities are treated as separate entities for employment tax purposes. For more information, see [Disregarded entities and qualified subchapter S subsidiaries](#) in the *Introduction*.

New employment tax adjustment and claim process in 2009. If you discover an error on a previously filed Form 941 or Form 944 after December 31, 2008, make the correction using new 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. For errors discovered before January 1, 2009, taxpayers make corrections to Forms 941 and 944 using Form 941c, Supporting Statement To Correct Information, that is filed with Form 941 or Form 944 or by requesting a claim for refund or abatement on Form 843, Claim for Refund and Request for Abatement. Forms 941-X and 944-X are stand-alone forms, meaning taxpayers can file them when an error is discovered, rather than wait until the end of the quarter or year to file Form 941c with Form 941 or 944. Lines 7d, 7e, 7f, and 7g have been deleted from Form 941 beginning with the first quarter of 2009 and lines 6b, 6c, 6d, and 6e will be deleted from Form 944 for 2009. Adjustments previously made on those lines are now made on the new Forms 941-X and 944-X. Claims for refund or abatement previously made on Form 843 are now made on Forms 941-X and 944-X. For more information, visit the IRS website at www.irs.gov and enter the keywords *Correcting Employment Taxes*.

Credit card payments. You can pay the balance due on Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, and Form 945, Annual Return of Withheld Federal Income Tax, by credit card. Do not use a credit card to make federal tax deposits. For more information on paying your taxes with a credit card, visit the IRS website at www.irs.gov and click on the electronic IRS link.

Social Security Administration and magnetic media. Employers and authorized reporting agents requesting

verification of names and social security numbers of between 51 and 250,000 employees can no longer use magnetic media to submit their requests to the Social Security Administration. Employers can upload a file through the Social Security Number Verification System (SSNVS) and will usually receive the results the next government business day. For more information, see [Verification of social security numbers](#) in section 4.

Paid preparers must sign Form 941 and Form 944. The paid preparer's section is no longer optional and is included in Part 5 of Form 941 and Form 944.

Differential wage payments. Differential wage payments will be treated as wages, subject to income tax withholding, but not social security, Medicare, or FUTA taxes, beginning with wages paid after December 31, 2008. See [Differential wage payments](#) in section 5 for more information.

Certain foreign persons treated as American employers. For services performed after July 31, 2008, certain foreign persons are treated as American employers for paying FICA taxes on employees' wages. For more information, see [Foreign persons treated as American employers](#) under [Social Security and Medicare Taxes](#) in section 9.

Calendar

The following is a list of important dates. Also see Publication 509, Tax Calendars for 2009.

 **TIP** *If any date shown below for filing a return, furnishing a form, or depositing taxes falls on a Saturday, Sunday, or federal holiday, use the next business day. A statewide legal holiday delays a filing due date only if the IRS office where you are required to file is located in that state. For any due date, you will meet the "file" or "furnish" requirement if the envelope containing the return or form is properly addressed, contains sufficient postage, and is postmarked by the U.S. Postal Service on or before the due date, or sent by an IRS-designated private delivery service on or before the due date. See [Private Delivery Services](#) on page 6 for more information.*

By January 31

Furnish Forms 1099 and W-2. Furnish each employee a completed Form W-2, Wage and Tax Statement. Furnish each other payee a completed Form 1099 (for example, Form 1099-MISC, Miscellaneous Income).

File Form 941 or Form 944. File Form 941, Employer's QUARTERLY Federal Tax Return, for the fourth quarter of the previous calendar year and deposit any undeposited income, social security, and Medicare taxes. You may pay these taxes with Form 941 if your total tax liability for the quarter is less than \$2,500. File Form 944, Employer's ANNUAL Federal Tax Return, for the previous calendar year instead of Form 941 if the IRS has notified you in writing to file Form 944 and pay any undeposited income, social security, and Medicare taxes. You may pay these taxes with Form 944 if your total tax liability for the year is less than \$2,500. For additional rules on when you can pay your taxes with your return, see [Payment with return](#) on page 21. If you timely deposited all taxes when due, you have 10 additional calendar days from the due date above to file the appropriate return.

File Form 940. File Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return. However, if you deposited all of the FUTA tax when due, you have 10 additional calendar days to file.

File Form 945. File Form 945, Annual Return of Withheld Federal Income Tax, to report any nonpayroll income tax withheld in 2008. If you deposited all taxes when due, you have 10 additional calendar days to file. See [Nonpayroll Income Tax Withholding](#) on page 5 for more information.

By February 15

Request a new Form W-4 from exempt employees. Ask for a new Form W-4, Employee's Withholding Allowance Certificate, from each employee who claimed exemption from income tax withholding last year.

On February 16

Exempt Forms W-4 expire. Any Form W-4 previously given to you claiming exemption from withholding has expired. Begin withholding for any employee who previously claimed exemption from withholding, but has not given you a new Form W-4 for the current year. If the employee does not give you a new Form W-4, withhold tax as if he or she is single, with zero withholding allowances. See [section 9](#) for more information. However, if you have an earlier Form W-4 for this employee that is valid, withhold based on the earlier Form W-4.

By February 28

File paper Forms 1099 and 1096. File Copy A of all paper Forms 1099 with Form 1096, Annual Summary and Transmittal of U.S. Information Returns, with the IRS. For electronically filed returns, see [By March 31](#) below.

File paper Forms W-2 and W-3. File Copy A of all paper Forms W-2 with Form W-3, Transmittal of Wage and Tax Statements, with the Social Security Administration (SSA). For electronically filed returns, see [By March 31](#) below.

File paper Form 8027. File paper Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, with the IRS. See [section 6](#). For electronically filed returns, see [By March 31](#) next.

By March 31

File electronic Forms 1099, 8027, and W-2. File electronic Forms 1099 and 8027 with the IRS. File electronic Forms W-2 with the SSA. For information on reporting Form W-2 information to the SSA electronically, visit the Social Security Administration's Employer W-2 Filing Instructions & Information webpage at www.socialsecurity.gov/employer. For information on filing information returns electronically with the IRS, see Publication 1220, Specifications for Filing Forms 1098, 1099, 5498, and W-2G Electronically, and Publication 1239, Specifications for Filing Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips Electronically.

By April 30, July 31, October 31, and January 31

Deposit FUTA taxes. Deposit federal unemployment (FUTA) tax due if it is more than \$500.

File Form 941. File Form 941 and deposit any undeposited income, social security, and Medicare taxes. You may pay these taxes with Form 941 if your total tax liability for the quarter is less than \$2,500. If you timely deposited

all taxes when due, you have 10 additional calendar days from the due dates above to file the return.

Before December 1

New Forms W-4. Remind employees to submit a new Form W-4 if their withholding allowances have changed or will change for the next year.

On December 31

Form W-5 expires. Form W-5, Earned Income Credit Advance Payment Certificate, expires each year on December 31. Eligible employees who want to receive advance payments of the earned income credit next year must give you a new Form W-5.

Reminders

Electronic Filing and Payment

Now, more than ever before, 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 and worry on taxes and more time running your business. Use *e-file* and the Electronic Federal Tax Payment System (EFTPS) to your benefit.

- For *e-file*, visit www.irs.gov for additional information.
- For EFTPS, visit www.eftps.gov or call EFTPS Customer Service at 1-800-555-4477.
- For electronic filing of Forms W-2, visit www.socialsecurity.gov/employer.

Electronic funds withdrawal (EFW). If you file Form 940, Form 941, or Form 944 electronically, you can e-file and e-pay (electronic funds withdrawal) the balance due in a single step using tax preparation software or through a tax professional. However, **do not** use EFW to make federal tax deposits. For more information on paying your taxes using EFW, visit the IRS website at www.irs.gov and click on the *electronic IRS* link. A fee may be charged to file electronically.

Credit Card Payments

You can use your American Express® Card, Discover® Card, MasterCard® card, or Visa® card to pay the balance due shown on Form 940, Form 941, Form 943, Form 944, and Form 945. To pay by credit card, call toll-free or visit the website of either service provider listed below and follow the instructions. A convenience fee will be charged by the service provider based on the amount you are paying. Fees vary between the providers. You will be told what the fee is during the transaction and you will have the option to either continue or cancel the transaction. You can also find out what the fee will be by calling the provider's toll-free automated customer service number or by visiting the provider's website shown below. You may not use a credit card to pay taxes that are required to be deposited.

- Link2Gov Corporation
1-888-PAY-1040sm (1-888-729-1040)
1-888-658-5465 (Customer Service)
www.PAY1040.com

- Official Payments Corporation
1-800-2PAY-TAXSM (1-800-272-9829)
1-877-754-4413 (Customer Service)
www.officialpayments.com

Forms in Spanish

You can provide Formulario W-4(SP), Certificado de Exención de Retenciones del Empleado, in place of Form W-4, Employee's Withholding Allowance Certificate, to your Spanish-speaking employees. For more information, see Publicación 17(SP), El Impuesto Federal sobre los Ingresos (Para Personas Físicas). You can also provide Formulario W-5(SP), Certificado del Pago por Adelantado del Crédito por Ingreso del Trabajo, in place of Form W-5, Earned Income Credit Advance Payment Certificate. For nonemployees, Formulario W-9(SP), Solicitud y Certificación del Número de Identificación del Contribuyente, may be used in place of Form W-9, Request for Taxpayer Identification Number and Certification.

Hiring New Employees

Eligibility for employment. You must verify that each new employee is legally eligible to work in the United States. This will include completing the U.S. Citizenship and Immigration Services (USCIS) Form I-9, Employment Eligibility Verification. You can get the form from USCIS offices or by calling 1-800-870-3676. Contact the USCIS at 1-800-375-5283, or visit the USCIS website at www.uscis.gov for further information.

New hire reporting. You are required to report any new employee to a designated state new hire registry. Many states accept a copy of Form W-4 with employer information added. Visit the Office of Child Support Enforcement website at www.acf.hhs.gov/programs/cse/newhire for more information.

Income tax withholding. Ask each new employee to complete the 2009 Form W-4. See [section 9](#).

Name and social security number. Record each new employee's name and number from his or her social security card. Any employee without a social security card should apply for one. See [section 4](#).

Paying Wages, Pensions, or Annuities

Correcting Form 941 or Form 944. If you discover an error on a previously filed Form 941 or Form 944 after December 31, 2008, make the correction using new 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. For errors discovered before January 1, 2009, taxpayers make corrections to Forms 941 and 944 using Form 941c that is filed with Form 941 or Form 944, or with Form 843 to claim a refund or abatement. Forms 941-X and 944-X are stand-alone forms, meaning taxpayers can file them when an error is discovered, rather than wait until the end of the quarter or year to file Form 941c with Form 941 or 944. Forms 941-X and 944-X are now used by employers to claim refunds or abatements of employment taxes, rather than Form 843. See [section 13](#) for more information.

Employer Responsibilities: The following list provides a brief summary of your basic responsibilities. Because the individual circumstances for each employer can vary greatly, responsibilities for withholding, depositing, and reporting employment taxes can differ. Each item in this list has a page reference to a more detailed discussion in this publication.

New Employees:	Page	Quarterly (By April 30, July 31, October 31, and January 31):	Page
<input type="checkbox"/> Verify work eligibility of employees	4	<input type="checkbox"/> Deposit FUTA tax if undeposited amount is over \$500	31
<input type="checkbox"/> Record employees' names and SSNs from social security cards	10	<input type="checkbox"/> File Form 941 (pay tax with return if not required to deposit)	26
<input type="checkbox"/> Ask employees for Form W-4	16		
Each Payday:		Annually (See <i>Calendar</i> for due dates):	
<input type="checkbox"/> Withhold federal income tax based on each employee's Form W-4	16	<input type="checkbox"/> Remind employees to submit a new Form W-4 if they need to change their withholding	16
<input type="checkbox"/> Withhold employee's share of social security and Medicare taxes	18	<input type="checkbox"/> Ask for a new Form W-4 from employees claiming exemption from income tax withholding	16
<input type="checkbox"/> Include advance earned income credit payment in paycheck if employee requested it on Form W-5	19	<input type="checkbox"/> Reconcile Forms 941 (or Form 944) with Forms W-2 and W-3.	27
<input type="checkbox"/> Deposit:		<input type="checkbox"/> Furnish each employee a Form W-2	2
• Withheld income tax		<input type="checkbox"/> File Copy A of Forms W-2 and the transmittal Form W-3 with the SSA	3
• Withheld and employer social security taxes		<input type="checkbox"/> Furnish each other payee a Form 1099 (for example, Forms 1099-R and 1099-MISC)	2
• Withheld and employer Medicare taxes	20	<input type="checkbox"/> File Forms 1099 and the transmittal Form 1096	3
Note: Due date of deposit generally depends on your deposit schedule (monthly or semiweekly).		<input type="checkbox"/> File Form 940	30
Annually (By January 31)		<input type="checkbox"/> File Form 945 for any nonpayroll income tax withholding	2
<input type="checkbox"/> File Form 944 if required (pay tax with return if not required to deposit)	26		

Income tax withholding. Withhold federal income tax from each wage payment or supplemental unemployment compensation plan benefit payment according to the employee's Form W-4 and the correct withholding rate. If you have nonresident alien employees, see [Withholding income taxes on the wages of nonresident alien employees](#) in section 9.

Withhold from periodic **pension and annuity payments** as if the recipient is married claiming three withholding allowances, unless he or she has provided Form W-4P, Withholding Certificate for Pension or Annuity Payments, either electing no withholding or giving a different number of allowances, marital status, or an additional amount to be withheld. Do not withhold on direct rollovers from qualified plans or governmental section 457(b) plans. See [section 9](#) and Publication 15-A, Employer's Supplemental Tax Guide. Publication 15-A includes information about withholding on pensions and annuities.

Zero wage return. If you have not filed a "final" Form 941 or Form 944, or are not a "seasonal" employer (see lines 16 and 17 of 2008 Form 941 (lines 18 and 19 of 2009 Form 941)), you must continue to file a Form 941 or Form 944 even for periods during which you paid no wages. IRS encourages you to file your "Zero Wage" Forms 941 or 944 electronically using IRS e-file at www.irs.gov/efile.

Information Returns

You may be required to file information returns to report certain types of payments made during the year. For example, you must file Form 1099-MISC, Miscellaneous Income, to report payments of \$600 or more to persons not treated as employees (for example, independent contractors) for services performed for your trade or business. For details about filing Forms 1099 and for information about required electronic filing, see the 2009 General Instructions for Forms 1099, 1098, 5498, and W-2G for general information and the separate, specific instructions for each information return that you file (for example, 2008 Instructions for Forms 1099-MISC). Do not use Forms 1099 to report wages and other compensation that you paid to employees; report these on Form W-2. See the Instructions for Forms W-2 and W-3 for details about filing Form W-2 and for information about required electronic filing. If you file 250 or more Forms 1099, you must file them electronically. If you file 250 or more Forms W-2, you must file them electronically. SSA will not accept Forms W-2 and W-3 filed on magnetic media.



After December 1, 2008, you cannot file Forms 1099 using magnetic media.

Information reporting customer service site. The IRS operates the Enterprise Computing Center-Martinsburg, 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 related to reporting on information returns, call 1-866-455-7438 (toll free) or 304-263-8700 (toll call). The center can also be reached by email at mccirp@irs.gov. Call 304-267-3367 if you are a TDD/TYY user.

Annual Employment Tax Filing for Small Employers

Certain small employers may have to file Form 944 rather than Form 941 to report their employment taxes. For more information, see the Instructions for Form 944.

Nonpayroll Income Tax Withholding

Nonpayroll federal income tax withholding must be reported on Form 945, Annual Return of Withheld Federal Income Tax. Form 945 is an annual tax return and the return for 2008 is due February 2, 2009. Separate deposits are required for payroll (Form 941 or Form 944) and nonpayroll (Form 945) withholding. Nonpayroll items include:

- Pensions (including distributions from governmental section 457(b) plans), annuities, and IRAs.
- Military retirement.
- Gambling winnings.
- Indian gaming profits.
- Certain government payments subject to voluntary withholding.
- Payments subject to backup withholding.

For details on depositing and reporting nonpayroll income tax withholding, see the Instructions for Form 945.

All income tax withholding reported on Forms 1099 or Form W-2G must also be reported on Form 945. All income tax withholding reported on Form W-2 must be reported on Form 941, Form 943, Form 944, or Schedule H (Form 1040).

Distributions from nonqualified pension plans and deferred compensation plans. Because distributions to participants from some nonqualified pension plans and deferred compensation plans (including section 457(b) plans of tax-exempt organizations) are treated as wages and are reported on Form W-2, income tax withheld must be reported on Form 941 or Form 944, not on Form 945. However, distributions from such plans to a beneficiary or estate of a deceased employee are not wages and are reported on Forms 1099-R; income tax withheld must be reported on Form 945.

Backup withholding. You generally must withhold 28% of certain taxable payments if the payee fails to furnish you with his or her correct taxpayer identification number (TIN). This withholding is referred to as "backup withholding."

Payments subject to backup withholding include interest, dividends, patronage dividends, rents, royalties, commissions, nonemployee compensation, and certain other payments that you make in the course of your trade or business. In addition, transactions by brokers and barter exchanges and certain payments made by fishing boat operators are subject to backup withholding.



Backup withholding does not apply to wages, pensions, annuities, IRAs (including simplified employee pension (SEP) and SIMPLE retirement plans), section 404(k) distributions from an employee stock ownership plan (ESOP), medical savings accounts, health savings accounts, long-term-care benefits, or real estate transactions.

You can use Form W-9 or Formulario W-9(SP) to request that payees furnish a TIN and to certify that the number furnished is correct. You can also use Form W-9 or Formulario W-9(SP) to get certifications from payees that they are not subject to backup withholding or that they are exempt from backup withholding. The Instructions for the Requester of Form W-9 (also available in Spanish) includes a list of types of payees who are exempt from backup withholding. For more information, see Publication 1281, Backup Withholding for Missing and Incorrect Name/TIN(s).

Recordkeeping

Keep all records of employment taxes for at least 4 years. These should be available for IRS review. Your records should include:

- Your employer identification number (EIN),
- Amounts and dates of all wage, annuity, and pension payments,
- Amounts of tips reported to you by your employees,
- Records of allocated tips,
- The fair market value of in-kind wages paid,
- Names, addresses, social security numbers, and occupations of employees and recipients,
- Any employee copies of Forms W-2 and W-2c that were returned to you as undeliverable,
- Dates of employment for each employee,
- Periods for which employees and recipients were paid while absent due to sickness or injury and the amount and weekly rate of payments you or third-party payers made to them,
- Copies of employees' and recipients' income tax withholding allowance certificates (Forms W-4, W-4P, W-4(SP), W-4S, and W-4V),
- Copies of employees' Earned Income Credit Advance Payment Certificates (Forms W-5 and W-5(SP)),
- Dates and amounts of tax deposits that you made and acknowledgment numbers for deposits made by EFTPS,
- Copies of returns filed, including 941 TeleFile Tax Records (discontinued after June 2005) and confirmation numbers, and
- Records of fringe benefits and expense reimbursements provided to your employees, including substantiation.

Change of Address

To notify the IRS of a new business mailing address or business location, file Form 8822, Change of Address. Do not mail Form 8822 with your employment tax return. For information on how to change your address for deposit coupons, see [Making deposits with FTD coupons](#) in section 11.

Private Delivery Services

You can use certain private delivery services designated by the IRS to mail tax returns and payments. The list includes only the following:

- DHL Express (DHL): DHL Same Day Service; DHL Next Day 10:30 am; DHL Next Day 12:00 pm; DHL Next Day 3:00 pm; and DHL 2nd Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

Your private delivery service can tell you how to get written proof of the mailing date.



Private delivery services cannot deliver items to P.O. boxes. You must use the U.S. Postal Service to mail any item to an IRS P.O. box address.

Telephone Help

Additional employment tax information. Visit the IRS website at www.irs.gov/businesses and click on the *Employment Taxes* link.

Tax questions. You can call the IRS Business and Specialty Tax Line with your employment tax questions at 1-800-829-4933.

Help for people with disabilities. Telephone help is available using TTY/TDD equipment. You may call 1-800-829-4059 with any tax question or to order forms and publications. You may also use this number for assistance with unresolved tax problems.

Recorded tax information (TeleTax). The IRS TeleTax service provides recorded tax information on topics that answer many individual and business federal tax questions. You can listen to up to three topics on each call that you make. Touch-Tone service is available 24 hours a day, 7 days a week. TeleTax topics are also available on the IRS website at www.irs.gov/taxtopics.

A list of employment tax topics is provided below. Select, by number, the topic you want to hear and call 1-800-829-4477. For the directory of all topics, select Topic 123.

Teletax Topics

Topic No.	Subject (These topics are available in Spanish)
752	Form W-2—Where, When, and How to File (Dónde, Cuándo y Cómo Presentar La Formulario W-2)
753	Form W-4—Employee's Withholding Allowance Certificate (Formulario W-4—Certificado de Deducción en la Retención del Empleado)
754	Form W-5—Advance Earned Income Credit (Formulario W-5—Pago Anticipado del Crédito por Ingreso del Trabajo)
755	Employer Identification Number (EIN)—How to Apply (Como Solicitar Un Número de Identificación Patronal (EIN))
756	Employment Taxes for Household Employees (Impuestos Patronales por Empleados Domésticos)
757	Form 941 and Form 944—Deposit Requirements (Formulario 941 and Formulario 944—Requisitos de Depósito)
758	Form 941—Employer's QUARTERLY Federal Tax Return and Form 944—Employer's ANNUAL Federal Tax Return (Formulario 941—Declaración Trimestral del Impuesto Federal del Empleador) (Formulario 944—Declaración Anual del Impuesto Federal del Empleador)
759	Form 940—Deposit Requirements (Formulario 940—Requisitos de Depósito)

Topic No.	Subject (These topics are available in Spanish)
760	Form 940—Employer’s Annual Federal Unemployment (FUTA) Tax Return (Formulario 940—Declaración Anual del Empleador del Impuesto Federal para el Desempleo)
761	Tips—Withholding and Reporting (Propinas—Declaración y Retención)
762	Independent Contractor vs. Employee (Contratista Independiente vs. Empleado)

Ordering Employer Tax Products

You can order employer tax products and information returns online at www.irs.gov/businesses. To order 2008 and 2009 forms, select “Online Ordering for Information Returns and Employer Returns.” You may also order employer tax products and information returns by calling 1-800-829-3676.

Instead of ordering paper Forms W-2 and W-3, consider filing them electronically using the Social Security Administration’s (SSA) free e-file service. Visit SSA’s Employer W-2 Filing Instructions & Information website at www.socialsecurity.gov/employer, select “Electronically File Your W-2s,” and provide registration information. You will be able to create and file “fill-in” versions of Forms W-2 with SSA and can print out completed copies of Forms W-2 for filing with state and local governments, for distribution to your employees, and for your records. Form W-3 will be created for you based on your Forms W-2.

Contacting Your Taxpayer Advocate

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should.

You can contact TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059 to see if you are eligible for assistance. You can also call or write to your local taxpayer advocate, whose phone number and address are listed in your local telephone directory and in Publication 1546, Taxpayer Advocate Service – Your Voice at the IRS. You can file Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), or ask an IRS employee to complete it on your behalf. For more information, go to www.irs.gov/advocate.

Filing Addresses

Generally, your filing address for Forms 940, 941, 943, 944, and 945 depends on the location of your residence or principal place of business and whether or not you included a payment with your return. There are separate filing addresses for these returns if you are a tax-exempt organization or government entity. If you are located in the United States and do not include a payment with your return, you should file at either the Cincinnati or Ogden Service Centers. File Form CT-1 (for railroad retirement taxes) at the Cincinnati Service Center. See the separate instructions for Form 940, 941, 943, 944, 945, or CT-1 for the filing addresses.

Photographs of Missing Children

The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. 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.

Introduction

This publication explains your tax responsibilities as an employer. It explains the requirements for withholding, depositing, reporting, paying, and correcting employment taxes. It explains the forms that you must give to your employees, those that your employees must give to you, and those that you must send to the IRS and SSA. This guide also has tax tables that you need to figure the taxes to withhold from each employee for 2009. References to “income tax” in this guide apply only to “federal” income tax. Contact your state or local tax department to determine if their rules are different.

Additional employment tax information is available in Publication 15-A, Employer’s Supplemental Tax Guide. Publication 15-A includes specialized information supplementing the basic employment tax information provided in this publication. Publication 15-B, Employer’s Tax Guide to Fringe Benefits, contains information about the employment tax treatment and valuation of various types of non-cash compensation.

Most employers must withhold (except FUTA), deposit, report, and pay the following employment taxes.

- Income tax.
- Social security tax.
- Medicare tax.
- Federal unemployment tax (FUTA).

There are exceptions to these requirements. See section 15, [Special Rules for Various Types of Services and Payments](#). Railroad retirement taxes are explained in the Instructions for Form CT-1.

Employer’s liability. Employers are responsible to ensure that tax returns are filed and deposits and payments are made, even if the employer contracts with a third-party. The employer remains liable if the third party fails to perform a required action.

Federal Government employers. The information in this guide applies to federal agencies except for the rules requiring deposit of federal taxes only at Federal Reserve banks or through the FedTax option of the Government On-Line Accounting Link Systems (GOALS). See the Treasury Financial Manual (I TFM 3-4000) for more information.

State and local government employers. Payments to employees for services in the employ of state and local government employers are generally subject to federal income tax withholding but not federal unemployment (FUTA) tax. Most elected and appointed public officials of state or local governments are employees under common law rules. See chapter 3 of Publication 963, Federal-State Reference Guide. In addition, wages, with certain exceptions, are subject to social security and Medicare taxes. See [section 15](#) of this guide for more information on the exceptions.

If an election worker is employed in another capacity with the same government entity, see Revenue Ruling

2000-6 on page 512 of Internal Revenue Bulletin 2000-6 at www.irs.gov/pub/irs-irbs/irb00-06.pdf.

You can get information on reporting and social security coverage from your local IRS office. If you have any questions about coverage under a section 218 (Social Security Act) agreement, contact the appropriate state official. To find your State Social Security Administrator, visit the National Conference of State Social Security Administrators website at www.ncsssa.org.

Disregarded entities and qualified subchapter S subsidiaries. The IRS has published final regulations section 301.7701-2(c)(2)(iv) under which QSubs and eligible single-owner disregarded entities are treated as separate entities for employment tax purposes. Under these regulations eligible single-member entities that have not elected to be taxed as corporations must report and pay employment taxes on wages paid to their employees after December 31, 2008, using the entities' own names and EINs. The disregarded entity will be responsible for its own employment tax obligations on wages paid after December 31, 2008. For wages paid before January 1, 2009, see Publication 15 (Circular E), For Use in 2008.

COBRA premium assistance credit. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides certain former employees, retirees, spouses, former spouses, and dependent children the right to temporary continuation of health coverage at group rates. COBRA generally covers multiemployer health plans and health plans maintained by private-sector employers (other than churches) with 20 or more full and part-time employees. Parallel requirements apply to these plans under the Employee Retirement Income Security Act of 1974 (ERISA). Under the Public Health Service Act, COBRA requirements apply also to health plans covering state or local government employees. Similar requirements apply under the Federal Employees Health Benefits Program and under some state laws. For the premium assistance (or subsidy) discussed below, these requirements are all referred to as COBRA requirements.

The American Recovery and Reinvestment Act of 2009 (ARRA) allows a credit against "payroll taxes" (referred to in this publication as "employment taxes") for providing COBRA premium assistance to assistance eligible individuals. For periods of COBRA continuation coverage beginning after February 16, 2009, a group health plan must treat an assistance eligible individual as having paid the required COBRA continuation coverage premium if the individual elects COBRA coverage and pays 35% of the amount of the premium.

An assistance eligible individual is a qualified beneficiary of an employer's group health plan who is eligible for COBRA continuation coverage during the period beginning September 1, 2008, and ending December 31, 2009, due to the involuntary termination from employment of a covered employee during the period and elects continuation COBRA coverage. The assistance for the coverage can last up to 9 months.

The 65% of the premium not paid by the assistance eligible individuals is reimbursed to the employer maintaining the group health plan. The reimbursement is made through a credit against the employer's employment tax liabilities. The employer takes the credit on line 12a of Form 941 or line 11a of Form 944 once the 35% of the premium is paid by or on behalf of the assistance eligible individual. The credit is treated as a deposit made on the first day of the return period (quarter or year). In the case of a multiemployer plan, the credit is claimed by the plan, rather than the employer. In the case of an insured plan subject to state law continuation coverage requirements, the credit is claimed by the insurance company, rather than the employer.

Anyone claiming the credit for COBRA assistance payments must maintain the following information to support their claim, including the following.

- Information on the receipt, including dates and amounts, of the assistance eligible individuals' 35% share of the premium.
- In the case of an insurance plan, a copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier required under COBRA.
- In the case of a self-insured plan, proof of the premium amount and proof of the coverage provided to the assistance eligible individuals.
- Attestation of involuntary termination, including the date of the involuntary termination for each covered employee whose involuntary termination is the basis for eligibility for the subsidy.
- Proof of each assistance eligible individual's eligibility for COBRA coverage and the election of COBRA coverage.
- A record of the SSNs of all covered employees, the amount of the subsidy reimbursed with respect to each covered employee, and whether the subsidy was for one individual or two or more individuals.

For more information, visit the IRS website at www.irs.gov and enter keywords *COBRA Health Insurance Continuation Premium Subsidy*.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions. You can email us at [*taxforms@irs.gov](mailto:taxforms@irs.gov). (The asterisk must be included in the address.) Please put "Publications Comment" on the subject line.

You can write to us at the following address:

Internal Revenue Service
Tax Products Coordinating Committee
SE:W:CAR:MP:T:T:SP
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

1. Employer Identification Number (EIN)

If you are required to report employment taxes or give tax statements to employees or annuitants, you need an employer identification number (EIN).

The EIN is a 9-digit number that the IRS issues. The digits are arranged as follows: 00-0000000. It is used to identify the tax accounts of employers and certain others who have no employees. Use your EIN on all of the items that you send to the IRS and SSA. For more information, get Publication 1635, Understanding Your EIN.

If you do not have an EIN, you may apply for one online. Go to the IRS website at www.irs.gov and click on the *Online EIN Application* link. You may also apply for an EIN by calling 1-800-829-4933, or you can fax or mail Form SS-4 to the IRS. Do not use a social security number (SSN) in place of an EIN.

You should have only one EIN. If you have more than one and are not sure which one to use, call 1-800-829-4933 (TTY/TDD users can call 1-800-829-4059). Give the numbers that you have, the name and address to which each was assigned, and the

address of your main place of business. The IRS will tell you which number to use.

If you took over another employer's business (see [Successor employer](#) in section 9), do not use that employer's EIN. If you have applied for an EIN but do not have your EIN by the time a return is due, write "Applied For" and the date that you applied for it in the space shown for the number. See [Depositing without an EIN](#) in section 11 if you must make a tax deposit and you do not have an EIN.

2. Who Are Employees?

Generally, employees are defined either under common law or under statutes for certain situations. See Publication 15-A for details on statutory employees and nonemployees.

Employee status under common law. Generally, a worker who performs services for you is 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. See Publication 15-A for more information on how to determine whether an individual providing services is an independent contractor or an employee.

Generally, people in business for themselves are not employees. For example, doctors, lawyers, veterinarians, construction contractors, and others in an independent trade in which they offer their services to the public are usually not employees. However, if the business is incorporated, corporate officers who work in the business are employees.

If an employer-employee relationship exists, it does not matter what it is called. The employee may be called an agent or independent contractor. It also does not matter how payments are measured or paid, what they are called, or if the employee works full or part time.

Statutory employees. If someone who works for you is not an employee under the common law rules discussed above, do not withhold federal income tax from his or her pay, unless backup withholding applies. Although the following persons may not be common law employees, they may be considered employees by statute for social security, Medicare, and FUTA tax purposes under certain conditions.

- An agent (or commission) driver who delivers food, beverages (other than milk), laundry, or dry cleaning for someone else.
- A full-time life insurance salesperson who sells primarily for one company.
- A homemaker who works by guidelines of the person for whom the work is done, with materials furnished by and returned to that person or to someone that person designates.
- A traveling or city salesperson (other than an agent-driver or commission-driver) who works full time (except for sideline sales activities) for one firm or person getting orders from customers. The orders must be for items for resale or use as supplies in the customer's business. The customers must be retailers, wholesalers, contractors, or operators of hotels, restaurants, or other businesses dealing with food or lodging.

Statutory nonemployees. Direct sellers, qualified real estate agents, and certain companion sitters are, by law, considered nonemployees. They are generally treated as

self-employed for all federal tax purposes, including income and employment taxes.

Treating employees as nonemployees. You will generally be liable for social security and Medicare taxes and withheld income tax if you do not deduct and withhold these taxes because you treated an employee as a non-employee. You may be able to calculate your liability using special rates for the employee share of social security and Medicare taxes and the federal income tax withholding. The applicable rates depend on whether you filed required Forms 1099. You cannot recover the employee share of social security, or Medicare tax, or income tax withholding from the employee. You are liable for the income tax withholding regardless of whether the employee paid income tax on the wages. You continue to owe the full employer share of social security and Medicare taxes. See Internal Revenue Code section 3509 for details. Also see the Instructions for Form 941-X.

Section 3509 rates are not available if you intentionally disregard the requirement to withhold taxes from the employee or if you withheld income taxes but not social security or Medicare taxes. Section 3509 is not available for reclassifying statutory employees. See [Statutory employees](#) earlier.

If the employer issued required information returns, the section 3509 rates are:

- For social security taxes; employer rate of 6.2% plus 20% of the employee rate of 6.2%, for a total rate of 7.44% of wages.
- For Medicare taxes; employer rate of 1.45% plus 20% of the employee rate of 1.45%, for a total rate of 1.74% of wages.
- For income tax withholding, the rate is 1.5% of wages.

If the employer did not issue required information returns, the section 3509 rates are:

- For social security taxes; employer rate of 6.2% plus 40% of the employee rate of 6.2%, for a total rate of 8.68% of wages.
- For Medicare taxes; employer rate of 1.45% plus 40% of the employee rate of 1.45%, for a total rate of 2.03% of wages.
- For income tax withholding, the rate is 3.0% of wages.

Relief provisions. 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 tax returns, including 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. See Publication 1976, *Do You Qualify for Relief Under Section 530?*

IRS help. If you want the IRS to determine whether a worker is an employee, file Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*.

3. Family Employees

Child employed by parents. Payments for the services of a child under age 18 who works for his or her parent in a trade or business are not subject to social security and

Medicare taxes if the trade or business is a sole proprietorship or a partnership in which each partner is a parent of the child. If these payments are for work other than in a trade or business, such as domestic work in the parent's private home, they are not subject to social security and Medicare taxes until the child reaches age 21. However, see [Covered services of a child or spouse](#) below. Payments for the services of a child under age 21 who works for his or her parent, whether or not in a trade or business, are not subject to federal unemployment (FUTA) tax. Although not subject to FUTA tax, the wages of a child may be subject to income tax withholding.

One spouse employed by another. The wages for the services of an individual who works for his or her spouse in a trade or business are subject to income tax withholding and social security and Medicare taxes, but not to FUTA tax. However, the payments for services of one spouse employed by another in other than a trade or business, such as domestic service in a private home, are not subject to social security, Medicare, and FUTA taxes.

Covered services of a child or spouse. The wages for the services of a child or spouse are subject to income tax withholding as well as social security, Medicare, and FUTA taxes if he or she works for:

- A corporation, even if it is controlled by the child's parent or the individual's spouse,
- A partnership, even if the child's parent is a partner, unless each partner is a parent of the child,
- A partnership, even if the individual's spouse is a partner, or
- An estate, even if it is the estate of a deceased parent.

Parent employed by child. The payments for the services of a parent employed by his or her child in a trade or business are subject to income tax withholding and social security and Medicare taxes. Social security and Medicare taxes do not apply to payments made to a parent for services not in a trade or business, but they apply to domestic services if:

- The parent cares for a child who lives with the parent's child and the child is under age 18 or requires adult supervision for at least 4 continuous weeks in a calendar quarter due to a mental or physical condition and
- The parent's son or daughter is a widow or widower, divorced, or living with a spouse who, because of a physical or mental condition that lasts at least 4 continuous weeks, cannot care for the child during such period.

Payments made to a parent employed by his or her child are not subject to FUTA tax, regardless of the type of services provided.

4. Employee's Social Security Number (SSN)

You are required to get each employee's name and SSN and to enter them on Form W-2. This requirement also applies to resident and nonresident alien employees. You should ask your employee to show you his or her social security card. The employee may show the card if it is available. You may, but are not required to, photocopy the social security card if the employee provides it. If you do not provide the correct employee name and SSN on Form

W-2, you may owe a penalty unless you have reasonable cause. See Publication 1586, Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs, for information on the requirement to solicit the employee's SSN.

Applying for a social security card. Any employee who is legally eligible to work in the United States and does not have a social security card can get one by completing Form SS-5, Application for a Social Security Card, and submitting the necessary documentation. You can get this form at SSA offices, by calling 1-800-772-1213, or from the SSA website at www.socialsecurity.gov/online/ss-5.html. The employee must complete and sign Form SS-5; it cannot be filed by the employer.

Applying for a social security number. If you file Form W-2 on paper and your employee applied for an SSN but does not have one when you must file Form W-2, enter "Applied For" on the form. If you are filing electronically, enter all zeros (000-00-000) in the social security number field. When the employee receives the SSN, file Copy A of Form W-2c, Corrected Wage and Tax Statement, with the SSA to show the employee's SSN. Furnish copies B, C, and 2 of Form W-2c to the employee. Up to five Forms W-2c for each Form W-3c may now be filed per session over the Internet, with no limit on the number of sessions. For more information, visit the SSA's Employer W-2 Filing Instructions & Information webpage at www.socialsecurity.gov/employer. Advise your employee to correct the SSN on his or her original Form W-2.

Correctly record the employee's name and SSN. Record the name and number of each employee as they are shown on the employee's social security card. If the employee's name is not correct as shown on the card (for example, because of marriage or divorce), the employee should request a corrected card from the SSA. Continue to report the employee's wages under the old name until the employee shows you an updated social security card with the new name.

If the Social Security Administration issues the employee a replacement card after a name change, or a new card with a different social security number after a change in alien work status, file a Form W-2c to correct the name/SSN reported for the most recently filed Form W-2. It is not necessary to correct other years if the previous name and number were used for years before the most recent Form W-2.

IRS individual taxpayer identification numbers (ITINs) for aliens. Do not accept an ITIN in place of an SSN for employee identification or for work. An ITIN is only available to resident and nonresident aliens who are not eligible for U.S. employment and need identification for other tax purposes. You can identify an ITIN because it is a 9-digit number, beginning with the number "9" with either a "7" or "8" as the fourth digit and is formatted like an SSN (for example, 9NN-7N-NNNN).



An individual with an ITIN who later becomes eligible to work in the United States must obtain an SSN.

Verification of social security numbers. The SSA offers employers and authorized reporting agents three methods for verifying employee SSNs.

- **Internet.** Verify up to 10 names and numbers (per screen) online and receive immediate results, or upload batch files of up to 250,000 names and numbers and usually receive results the next government business day. Visit www.socialsecurity.gov/employer and click on the *Verify SSNs Online* link.

- **Telephone.** Verify up to five names and numbers by calling 1-800-772-6270 or 1-800-772-1213.
- **Paper.** Verify up to 300 names and numbers by submitting a paper request. For information, see *Appendix A* in the Social Security Number Verification System (SSNVS) handbook at www.socialsecurity.gov/employer/ssnvs_handbk.htm#appendix.

Some verification methods require registration. For more information, call 1-800-772-6270.

5. Wages and Other Compensation

Wages subject to federal employment taxes generally include all pay that you give to an employee for services performed. The pay may be in cash or in other forms. It includes salaries, vacation allowances, bonuses, commissions, and fringe benefits. It does not matter how you measure or make the payments. Amounts an employer pays as a bonus for signing or ratifying a contract in connection with the establishment of an employer-employee relationship and an amount paid to an employee for cancellation of an employment contract and relinquishment of contract rights are wages subject to social security, Medicare, and federal unemployment taxes and income tax withholding. Also, compensation paid to a former employee for services performed while still employed is wages subject to employment taxes.

More information. See [section 6](#) for a discussion of tips and [section 7](#) for a discussion of supplemental wages. Also, see [section 15](#) for exceptions to the general rules for wages. Publication 15-A provides additional information on wages, including nonqualified deferred compensation, and other compensation. Publication 15-B provides information on other forms of compensation, including:

- Accident and health benefits,
- Achievement awards,
- Adoption assistance,
- Athletic facilities,
- De minimis (minimal) benefits,
- Dependent care assistance,
- Educational assistance,
- Employee discounts,
- Employee stock options,
- Group-term life insurance coverage,
- Health Savings Accounts,
- Lodging on your business premises,
- Meals,
- Moving expense reimbursements,
- No-additional-cost services,
- Retirement planning services,
- Transportation (commuting) benefits,
- Volunteer firefighter and emergency medical responder benefits,
- Tuition reduction, and
- Working condition benefits.

Employee business expense reimbursements. A reimbursement or allowance arrangement is a system by which you pay the advances, reimbursements, and charges for your employees' business expenses. How you report a reimbursement or allowance amount depends on whether you have an accountable or a nonaccountable plan. If a single payment includes both wages and an expense reimbursement, you must specify the amount of the reimbursement.

These rules apply to all ordinary and necessary employee business expenses that would otherwise qualify for a deduction by the employee.

Accountable plan. To be an accountable plan, your reimbursement or allowance arrangement must require your employees to meet all three of the following rules.

1. They must have paid or incurred deductible expenses while performing services as your employees. The reimbursement or advance must be paid for the expense and must not be an amount that would have otherwise been paid by the employee.
2. They must substantiate these expenses to you within a reasonable period of time.
3. They must return any amounts in excess of substantiated expenses within a reasonable period of time.

Amounts paid under an accountable plan are not wages and are not subject to the withholding and payment of income, social security, Medicare, and federal unemployment (FUTA) taxes.

If the expenses covered by this arrangement are not substantiated (or amounts in excess of substantiated expenses are not returned within a reasonable period of time), the amount paid under the arrangement in excess of the substantiated expenses is treated as paid under a nonaccountable plan. This amount is subject to the withholding and payment of income, social security, Medicare, and FUTA taxes for the first payroll period following the end of the reasonable period of time.

A reasonable period of time depends on the facts and circumstances. Generally, it is considered reasonable if your employees receive their advance within 30 days of the time that they incur the expenses, adequately account for the expenses within 60 days after the expenses were paid or incurred, and return any amounts in excess of expenses within 120 days after the expenses were paid or incurred. Also, it is considered reasonable if you give your employees a periodic statement (at least quarterly) that asks them to either return or adequately account for outstanding amounts and they do so within 120 days.

Nonaccountable plan. Payments to your employee for travel and other necessary expenses of your business under a nonaccountable plan are wages and are treated as supplemental wages and subject to the withholding and payment of income, social security, Medicare, and FUTA taxes. Your payments are treated as paid under a nonaccountable plan if:

- Your employee is not required to or does not substantiate timely those expenses to you with receipts or other documentation,
- You advance an amount to your employee for business expenses and your employee is not required to or does not return timely any amount he or she does not use for business expenses, or
- You advance or pay an amount to your employee regardless of whether you reasonably expect the employee to have business expenses related to your business.

- You pay an amount as a reimbursement that you would have otherwise paid as wages.

See [section 7](#) for more information on supplemental wages.

Per diem or other fixed allowance. You may reimburse your employees by travel days, miles, or some other fixed allowance under the applicable revenue procedure. In these cases, your employee is considered to have accounted to you if your reimbursement does not exceed rates established by the Federal Government. The 2008 standard mileage rate for auto expenses was 50.5 cents per mile from January 1 – June 30 and 58.5 cents per mile from July 1 – December 31. The rate for 2009 is 55 cents per mile. The government per diem rates for meals and lodging in the continental United States are listed in Publication 1542, Per Diem Rates. Other than the amount of these expenses, your employees' business expenses must be substantiated (for example, the business purpose of the travel or the number of business miles driven).

If the per diem or allowance paid exceeds the amounts specified, you must report the excess amount as wages. This excess amount is subject to income tax withholding and payment of social security, Medicare, and FUTA taxes. Show the amount equal to the specified amount (for example, the nontaxable portion) in box 12 of Form W-2 using code L.

Wages not paid in money. If in the course of your trade or business you pay your employees in a medium that is neither cash nor a readily negotiable instrument, such as a check, you are said to pay them "in kind." Payments in kind may be in the form of goods, lodging, food, clothing, or services. Generally, the fair market value of such payments at the time that they are provided is subject to federal income tax withholding and social security, Medicare, and FUTA taxes.

However, noncash payments for household work, agricultural labor, and service not in the employer's trade or business are exempt from social security, Medicare, and FUTA taxes. Withhold income tax on these payments only if you and the employee agree to do so. Nonetheless, noncash payments for agricultural labor, such as commodity wages, are treated as cash payments subject to employment taxes if the substance of the transaction is a cash payment.

Moving expenses. Reimbursed and employer-paid qualified moving expenses (those that would otherwise be deductible by the employee) paid under an accountable plan are not includible in an employee's income unless you have knowledge that the employee deducted the expenses in a prior year. Reimbursed and employer-paid nonqualified moving expenses are includible in income and are subject to employment taxes and income tax withholding. For more information on moving expenses, see Publication 521, Moving Expenses.

Meals and lodging. The value of meals is not taxable income and is not subject to income tax withholding and social security, Medicare, and FUTA taxes if the meals are furnished for the employer's convenience and on the employer's premises. The value of lodging is not subject to income tax withholding and social security, Medicare, and FUTA taxes if the lodging is furnished for the employer's convenience, on the employer's premises, and as a condition of employment.

"For the convenience of the employer" means that you have a substantial business reason for providing the meals and lodging other than to provide additional compensation to the employee. For example, meals that you provide at the place of work so that an employee is available for emergencies during his or her lunch period are generally considered to be for your convenience.

However, whether meals or lodging are provided for the convenience of the employer depends on all of the facts and circumstances. A written statement that the meals or lodging are for your convenience is not sufficient.

50% test. If over 50% of the employees who are provided meals on an employer's business premises receive these meals for the convenience of the employer, all meals provided on the premises are treated as furnished for the convenience of the employer. If this 50% test is met, the value of the meals is excludable from income for all employees and is not subject to federal income tax withholding or employment taxes. For more information, see Publication 15-B.

Health insurance plans. If you pay the cost of an accident or health insurance plan for your employees, including an employee's spouse and dependents, your payments are not wages and are not subject to social security, Medicare, and FUTA taxes, or federal income tax withholding. Generally, this exclusion also applies to qualified long-term care insurance contracts. However, for income tax withholding, the value of health insurance benefits must be included in the wages of S corporation employees who own more than 2% of the S corporation (2% shareholders). For social security, Medicare, and FUTA taxes, the health insurance benefits are excluded from the wages only for employees and their dependents or for a class or classes of employees and their dependents. See Announcement 92-16 for more information. You can find Announcement 92-16 on page 53 of Internal Revenue Bulletin 1992-5.

Health Savings Accounts and medical savings accounts. Your contributions to an employee's Health Savings Account (HSA) or Archer medical savings account (MSA) are not subject to social security, Medicare, or FUTA taxes, or federal income tax withholding if it is reasonable to believe at the time of payment of the contributions that they will be excludable from the income of the employee. To the extent that it is not reasonable to believe that they will be excludable, your contributions are subject to these taxes. Employee contributions to their HSAs or MSAs through a payroll deduction plan must be included in wages and are subject to social security, Medicare, and FUTA taxes and income tax withholding. However, HSA contributions made under a salary reduction arrangement in a section 125 cafeteria plan are not wages and are not subject to employment taxes or withholding. For more information, see the Instructions for Form 8889.

Medical care reimbursements. Generally, medical care reimbursements paid for an employee under an employer's self-insured medical reimbursement plan are not wages and are not subject to social security, Medicare, and FUTA taxes, or income tax withholding. See Publication 15-B for an exception for highly compensated employees.

Differential wage payments. Differential wage payments are any payments made by an employer to an individual for a period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days and represent all or a portion of the wages the individual would have received from the employer if the individual were performing services for the employer.

Differential wage payments are wages for income tax withholding, but are not subject to social security, Medicare, or FUTA taxes. Employers should report differential wage payments on Form W-2 in box 1. For more information about the tax treatment of differential wage payments, visit the IRS website at www.irs.gov and enter keywords *Employers with Employees in a Combat Zone*.

Fringe benefits. You generally must include fringe benefits in an employee's gross income (but see [Nontaxable fringe benefits](#) next). The benefits are subject to income tax withholding and employment taxes. Fringe benefits include cars that you provide, flights on aircraft that you provide, free or discounted commercial flights, vacations, discounts on property or services, memberships in country clubs or other social clubs, and tickets to entertainment or sporting events. In general, the amount that you must include is the amount by which the fair market value of the benefits is more than the sum of what the employee paid for it plus any amount that the law excludes. There are other special rules that you and your employees may use to value certain fringe benefits. See Publication 15-B for more information.

Nontaxable fringe benefits. Some fringe benefits are not taxable (or are minimally taxable) if certain conditions are met. See Publication 15-B for details. Examples include:

1. Services provided to your employees at no additional cost to you,
2. Qualified employee discounts,
3. Working condition fringes that are property or services that the employee could deduct as a business expense if he or she had paid for it. Examples include a company car for business use and subscriptions to business magazines,
4. Certain minimal value fringes (including an occasional cab ride when an employee must work overtime, local transportation benefits provided because of unsafe conditions and unusual circumstances, and meals that you provide at eating places that you run for your employees if the meals are not furnished at below cost),
5. Qualified transportation fringes subject to specified conditions and dollar limitations (including transportation in a commuter highway vehicle, any transit pass, and qualified parking),
6. Qualified moving expense reimbursement. See [Moving expenses](#), on page 12 for details,
7. The use of on-premises athletic facilities, if substantially all of the use is by employees, their spouses, and their dependent children, and
8. Qualified tuition reduction that an educational organization provides to its employees for education. For more information, see Publication 970, Tax Benefits for Education.

However, do not exclude the following fringe benefits from the income of highly compensated employees unless the benefit is available to other employees on a nondiscriminatory basis.

- No-additional-cost services (item 1 above).
- Qualified employee discounts (item 2 above).
- Meals provided at an employer operated eating facility (included in item 4 above).
- Reduced tuition for education (item 8 above).

For more information, including the definition of a highly compensated employee, see Publication 15-B.

When fringe benefits are treated as paid. You may choose to treat certain noncash fringe benefits as paid by the pay period, by the quarter, or on any other basis that you choose as long as you treat the benefits as paid at least once a year. You do not have to make a formal choice

of payment dates or notify the IRS of the dates that you choose. You do not have to make this choice for all employees. You may change methods as often as you like, as long as you treat all benefits provided in a calendar year as paid by December 31 of the calendar year. See Publication 15-B for more information, including a discussion of the special accounting rule for fringe benefits provided during November and December.

Valuation of fringe benefits. Generally, you must determine the value of fringe benefits no later than January 31 of the next year. Before January 31, you may reasonably estimate the value of the fringe benefits for purposes of withholding and depositing on time.

Withholding on fringe benefits. You may add the value of fringe benefits to regular wages for a payroll period and figure withholding taxes on the total, or you may withhold federal income tax on the value of the fringe benefits at the flat 25% supplemental wage rate. However, see [Withholding on supplemental wages when an employee receives more than \\$1,000,000 of supplemental wages during the calendar year](#) in section 7.

You may choose not to withhold income tax on the value of an employee's personal use of a vehicle that you provide. You must, however, withhold social security and Medicare taxes on the use of the vehicle. See Publication 15-B for more information on this election.

Depositing taxes on fringe benefits. Once you choose payment dates for fringe benefits (discussed above), you must deposit taxes in the same deposit period that you treat the fringe benefits as paid. To avoid a penalty, deposit the taxes following the general deposit rules for that deposit period.

If you determine by January 31 that you overestimated the value of a fringe benefit at the time you withheld and deposited for it, you may claim a refund for the overpayment or have it applied to your next employment tax return. See [Valuation of fringe benefits](#) above. If you underestimated the value and deposited too little, you may be subject to a failure-to-deposit penalty. See [section 11](#) for information on deposit penalties.

If you deposited the required amount of taxes but withheld a lesser amount from the employee, you can recover from the employee the social security, Medicare, or income taxes that you deposited on his or her behalf, and included in the employee's Form W-2. However, you must recover the income taxes before April 1 of the following year.

Sick pay. In general, sick pay is any amount that you pay under a plan to an employee who is unable to work because of sickness or injury. These amounts are sometimes paid by a third party, such as an insurance company or an employees' trust. In either case, these payments are subject to social security, Medicare, and FUTA taxes. Sick pay becomes exempt from these taxes after the end of 6 calendar months after the calendar month that the employee last worked for the employer. The payments are always subject to federal income tax. See Publication 15-A for more information.

6. Tips

Tips that your employee receives from customers are generally subject to withholding. Your employee must report cash tips to you by the 10th of the month after the month that the tips are received. The report should include tips that you paid over to the employee for charge customers and tips that the employee received directly from customers. No report is required for months when tips are less than \$20. Your employee reports the tips on Form 4070, Employee's Report of Tips to Employer, or on a similar

statement. The statement must be signed by the employee and must show the following:

- The employee's name, address, and SSN.
- Your name and address.
- The month or period that the report covers.
- The total of tips received during the month or period.

Both Forms 4070 and 4070-A, Employee's Daily Record of Tips, are included in Publication 1244, Employee's Daily Record of Tips and Report to Employer.



You are permitted to establish a system for electronic tip reporting by employees. See Regulations section 31.6053-1(d).

Collecting taxes on tips. You must collect income tax, employee social security tax, and employee Medicare tax on the employee's tips. If an employee reports to you in writing \$20 or more of tips in a month, the tips are also subject to FUTA tax.

You can collect these taxes from the employee's wages or from other funds that he or she makes available. See [Tips treated as supplemental wages](#) in section 7 for more information. Stop collecting the employee social security tax when his or her wages and tips for tax year 2009 reach \$106,800; collect the income and employee Medicare taxes for the whole year on all wages and tips. You are responsible for the employer social security tax on wages and tips until the wages (including tips) reach the limit. You are responsible for the employer Medicare tax for the whole year on all wages and tips. File Form 941 or Form 944 to report withholding and employment taxes on tips.

Ordering rule. If, by the 10th of the month after the month for which you received an employee's report on tips, you do not have enough employee funds available to deduct the employee tax, you no longer have to collect it. If there are not enough funds available, withhold taxes in the following order.

1. Withhold on regular wages and other compensation.
2. Withhold social security and Medicare taxes on tips.
3. Withhold income tax on tips.

Reporting tips. Report tips and any uncollected social security and Medicare taxes on Form W-2 and on lines 5b and 5c of Form 941 (lines 4b and 4c of Form 944). Report an adjustment on line 7c of Form 941 (line 6a of the 2008 Form 944, line 6 of the 2009 Form 944) for the uncollected social security and Medicare taxes. Enter the amount of uncollected social security and Medicare taxes in box 12 of Form W-2 with codes A and B. See [section 13](#) and the Instructions for Forms W-2 and W-3.

Allocated tips. If you operate a large food or beverage establishment, you must report allocated tips under certain circumstances. However, do not withhold income, social security, or Medicare taxes on allocated tips.

A large food or beverage establishment is one that provides food or beverages for consumption on the premises, where tipping is customary, and where there were normally more than 10 employees on a typical business day during the preceding year.

The tips may be allocated by one of three methods—hours worked, gross receipts, or good faith agreement. For information about these allocation methods, including the requirement to file Forms 8027 on magnetic media or electronically if 250 or more forms are filed, see the Instructions for Form 8027.

Tip Rate Determination and Education Program. Employers may participate in the Tip Rate Determination and Education Program. The program primarily consists of two voluntary agreements developed to improve tip income reporting by helping taxpayers to understand and meet their tip reporting responsibilities. The two agreements are the Tip Rate Determination Agreement (TRDA) and the Tip Reporting Alternative Commitment (TRAC). Additionally, the IRS is offering an expanded tip reporting and education program for food and beverage industry employers called the Attributed Tip Income Program (ATIP). ATIP has simple enrollment requirements and procedures. To find out more about the program, or to identify the IRS Tip Coordinator for your state, call the IRS at 1-800-829-4933. To get more information about TRDA, TRAC, or ATIP agreements, access the IRS website at www.irs.gov and enter keywords *Market Segment Understanding (MSU)*.

7. Supplemental Wages

Supplemental wages are compensation paid in addition to an employee's regular wages. They include, but are not limited to, bonuses, commissions, overtime pay, payments for accumulated sick leave, severance pay, awards, prizes, back pay, retroactive pay increases, and payments for nondeductible moving expenses. Other payments subject to the supplemental wage rules include taxable fringe benefits and expense allowances paid under a nonaccountable plan. How you withhold on supplemental wages depends on whether the supplemental payment is identified as a separate payment from regular wages. See Regulations section 31.3402(g)-1 for additional guidance for wages paid after January 1, 2007. Also see Revenue Ruling 2008-29, 2008-24 I.R.B. 1149, available at www.irs.gov/irb/2008-24_IRB/ar08.html.

Withholding on supplemental wages when an employee receives more than \$1,000,000 of supplemental wages from you during the calendar year. Special rules apply to the extent that supplemental wages paid to any one employee during the calendar year exceed \$1,000,000. If a supplemental wage payment, together with other supplemental wage payments made to the employee during the calendar year, exceeds \$1,000,000, the excess is subject to withholding at 35 percent (or the highest rate of income tax for the year). Withhold using the 35% rate without regard to the employee's Form W-4. In determining supplemental wages paid to the employee during the year, include payments from all businesses under common control. For more information, see Treasury Decision 9276, 2006-37 I.R.B. 423, available at www.irs.gov/irb/2006-37_IRB/ar09.html.

Withholding on supplemental wage payments to an employee who does not receive \$1,000,000 of supplemental wages during the calendar year. If the supplemental wages paid to the employee during the calendar year are less than or equal to \$1,000,000, the following rules apply in determining the amount of income tax to be withheld.

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

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

1. If you withheld income tax from an employee's regular wages in the current or immediately preceding calendar year, you can use one of the following methods for the supplemental wages.
 - a. Withhold a flat 25% (no other percentage allowed).
 - b. Add the supplemental wages to the concurrently paid regular wages, or, if there are no concurrently paid regular wages, to the most recent payment of regular wages this year. Then figure the income tax withholding as if the total was a single payment. Subtract the tax already withheld from the regular wages. Withhold the remaining tax from the supplemental wages. If there are no concurrently paid regular wages but there were other payments of supplemental wages (after the last payment of regular wages but before the current payment of supplemental wages), aggregate all the payments, calculate the tax on the total, subtract the tax already withheld from the regular wages and the previous supplemental wages, and withhold the remaining tax.
2. If you did not withhold income tax from the employee's regular wages in the current or immediately preceding calendar year, use method 1-b above. This would occur, for example, when the value of the employee's withholding allowances claimed on Form W-4 is more than the wages.

Regardless of the method that you use to withhold income tax on supplemental wages, they are subject to social security, Medicare, and FUTA taxes.

Example 1. You pay John Peters a base salary on the 1st of each month. He is single and claims one withholding allowance. In January of 2009, he is paid \$1,000. Using the wage bracket tables, you withhold \$50 from this amount. In February 2009, he receives salary of \$1,000 plus a commission of \$2,000, which you include with regular wages. You figure the withholding based on the total of \$3,000. The correct withholding from the tables is \$342.

Note. The new wage withholding tables found in Publication 15-T were used to calculate the withholding amounts for the next three examples.

Example 2. You pay Sharon Warren a base salary on the 1st of each month. She is single and claims one allowance. Her May 1, 2009, pay is \$2,000. Using the wage bracket tables, you withhold \$154. On May 14, 2009, she receives a bonus of \$2,000. Electing to use supplemental payment method 1-b, you:

1. Add the bonus amount to the amount of wages from the most recent pay date ($\$2,000 + \$2,000 = \$4,000$).
2. Determine the amount of withholding on the combined \$4,000 amount to be \$524 using the wage bracket tables.
3. Subtract the amount withheld from wages on the most recent pay date from the combined withholding amount ($\$524 - \$154 = \$370$).
4. Withhold \$370 from the bonus payment.

Example 3. The facts are the same as in Example 2, except that you elect to use the flat rate method of withholding on the bonus. You withhold 25% of \$2,000, or \$500, from Sharon's bonus payment.

Example 4. The facts are the same as in Example 2, except that you elect to pay Sharon a second bonus of \$1,000 on May 28. Using supplemental payment method 1-b, you:

1. Add the bonus amount to the amount of wages from the most recent pay date ($\$2,000 + \$2,000 + \$1,000 = \$5,000$).
2. Determine the amount of withholding on the combined \$5,000 amount to be \$774 using the wage bracket tables.
3. Subtract the amount withheld from wages on the most recent pay date and from the first bonus payment from the combined withholding amount ($\$774 - \$524 = \$250$).
4. Withhold \$250 from the second bonus payment.

Tips treated as supplemental wages. Withhold income tax on tips from wages or from other funds that the employee makes available. If an employee receives regular wages and reports tips, figure income tax withholding as if the tips were supplemental wages. If you have not withheld income tax from the regular wages, add the tips to the regular wages. Then withhold income tax on the total. If you withheld income tax from the regular wages, you can withhold on the tips by method 1-a or 1-b earlier.

Vacation pay. Vacation pay is subject to withholding as if it were a regular wage payment. When vacation pay is in addition to regular wages for the vacation period, treat it as a supplemental wage payment. If the vacation pay is for a time longer than your usual payroll period, spread it over the pay periods for which you pay it.

8. Payroll Period

Your payroll period is a period of service for which you usually pay wages. When you have a regular payroll period, withhold income tax for that time period even if your employee does not work the full period.

No regular payroll period. When you do not have a regular payroll period, withhold the tax as if you paid wages for a daily or miscellaneous payroll period. Figure the number of days (including Sundays and holidays) in the period covered by the wage payment. If the wages are unrelated to a specific length of time (for example, commissions paid on completion of a sale), count back the number of days from the payment period to the latest of:

- The last wage payment made during the same calendar year,
- The date employment began, if during the same calendar year, or
- January 1 of the same year.

Employee paid for period less than 1 week. When you pay an employee for a period of less than one week, and the employee signs a statement under penalties of perjury indicating that he or she is not working for any other employer during the same week for wages subject to withholding, figure withholding based on a weekly payroll period. If the employee later begins to work for another employer for wages subject to withholding, the employee must notify you within 10 days. You then figure withholding based on the daily or miscellaneous period.

9. Withholding From Employees' Wages

Income Tax Withholding

Using Form W-4 to figure withholding. To know how much federal income tax to withhold from employees' wages, you should have a Form W-4, Employee's Withholding Allowance Certificate, on file for each employee. Encourage your employees to file an updated Form W-4 for 2009, especially if they owed taxes or received a large refund when filing their 2008 tax return. Advise your employees to use the Withholding Calculator on the IRS website at www.irs.gov/individuals for help in determining how many withholding allowances to claim on their Forms W-4.

Ask all new employees to give you a signed Form W-4 when they start work. Make the form effective with the first wage payment. If a new employee does not give you a completed Form W-4, withhold income tax as if he or she is single, with no withholding allowances.

Form in Spanish. You can provide Formulario W-4(SP), Certificado de Exención de Retenciones del Empleado, in place of Form W-4, Employee's Withholding Allowance Certificate, to your Spanish-speaking employees. For more information, see Publicación 17(SP), El Impuesto Federal sobre los Ingresos (Para Personas Físicas). The rules discussed in this section that apply to Form W-4 also apply to Formulario W-4(SP).

Electronic system to receive Form W-4. You may establish a system to electronically receive Forms W-4 from your employees. See Regulations section 31.3402(f)(5)-1(c) for more information.

Effective date of Form W-4. A Form W-4 remains in effect until the employee gives you a new one. When you receive a new Form W-4 from an employee, do not adjust withholding for pay periods before the effective date of the new form. If an employee gives you a Form W-4 that replaces an existing Form W-4, begin withholding no later than the start of the first payroll period ending on or after the 30th day from the date when you received the replacement Form W-4. For exceptions, see [Exemption from federal income tax withholding, IRS review of requested Forms W-4](#), and [Invalid Forms W-4](#) later.



A Form W-4 that makes a change for the next calendar year will not take effect in the current calendar year.

Successor employer. If you are a successor employer (see [Successor employer](#) on page 18), secure new Forms W-4 from the transferred employees unless the "Alternative Procedure" in section 5 of Revenue Procedure 2004-53 applies. See Revenue Procedure 2004-53, 2004-34 I.R.B. 320, available at www.irs.gov/irb/2004-34_IRB/ar13.html.

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

Employees may claim fewer withholding allowances than they are entitled to claim. They may wish to claim

fewer allowances to ensure that they have enough withholding or to offset the tax on other sources of taxable income that are not subject to adequate withholding.

See Publication 505, Tax Withholding and Estimated Tax, for more information about completing Form W-4. Along with Form W-4, you may wish to order Publication 505 and Publication 919, How Do I Adjust My Tax Withholding, for use by your employees.

Do not accept any withholding or estimated tax payments from your employees in addition to withholding based on their Form W-4. If they require additional withholding, they should submit a new Form W-4 and, if necessary, pay estimated tax by filing Form 1040-ES, Estimated Tax for Individuals.

Exemption from federal income tax withholding. Generally, an employee may claim exemption from federal income tax withholding because he or she had no income tax liability last year and expects none this year. See the Form W-4 instructions for more information. However, the wages are still subject to social security and Medicare taxes. See also [Invalid Forms W-4](#) on page 18.

A Form W-4 claiming exemption from withholding is valid for only 1 calendar year. To continue to be exempt from withholding in the next year, an employee must give you a new Form W-4 by February 15 of that year. If the employee does not give you a new Form W-4, withhold tax as if the employee is single with zero withholding allowances or withhold based on the last valid Form W-4 you have for the employee.

Withholding income taxes on the wages of nonresident alien employees. In general, you must withhold federal income taxes on the wages of nonresident alien employees. However, see Publication 515 for exceptions to this general rule. You must add an amount as set forth in the chart below to the nonresident alien's wages solely for calculating the income tax withholding for each payroll period. You determine the amount to be withheld by applying the income tax withholding tables to the amount of wages paid plus the additional chart amount. For more information, see Notice 2005-76, 2005-46 I.R.B. 947, available at www.irs.gov/irb/2005-46_IRB/ar10.html.



Nonresident alien students from India and business apprentices from India are not subject to this procedure.

The amount to be added to the nonresident alien's wages to calculate income tax withholding is set forth in the following chart.

Amount to Add to Nonresident Alien Employee's Wages for Calculating Income Tax Withholding Only

<u>Payroll Period</u>	<u>Add Additional</u>
Weekly	\$ 138.00
Biweekly	276.00
Semimonthly	299.00
Monthly	598.00
Quarterly	1,795.00
Semiannually	3,590.00
Annually	7,180.00
Daily or Miscellaneous (each day of the payroll period)	27.60

The amounts added under this chart are added to wages solely for calculating income tax withholding on the

wages of the nonresident alien employee. These chart amounts should not be included in any box on the employee's Form W-2 and do not increase the income tax liability of the employee. Also, these chart amounts do not increase the social security, Medicare, or FUTA tax liability of the employer or the employee.

This procedure only applies to nonresident alien employees who have wages subject to income tax withholding.

Example. An employer using the percentage method of withholding pays wages of \$500 for a biweekly payroll period to a married nonresident alien employee. The nonresident alien has properly completed Form W-4, entering marital status as "single" with one withholding allowance and indicating status as a nonresident alien on line 6 of Form W-4 (see [Nonresident alien employee's Form W-4](#) later). The employer determines the wages to be used in the withholding tables by adding to the \$500 amount of wages paid the amount of \$276 from the chart earlier (\$776 total). The employer then applies the applicable table (Table 2(a), the table for biweekly payroll period, single persons) by subtracting the applicable percentage method amount for one withholding allowance for a biweekly payroll period from \$776 and making the calculations according to the table.

The \$276 added to wages for calculating income tax withholding is not reported on Form W-2, and does not increase the income tax liability of the employee. The \$276 added amount also does not affect the social security tax, Medicare tax, or FUTA tax liability of the employer or the employee.

Supplemental wage payment. This procedure for determining the amount of income tax withholding does not apply to a supplemental wage payment (see [section 7](#)) if the 35 percent mandatory flat rate withholding applies or if the 25 percent flat rate withholding is being used to calculate income tax withholding on the supplemental wage payment.

Nonresident alien employee's Form W-4. When completing Forms W-4, nonresident aliens are required to:

- Not claim exemption from income tax withholding,
- Request withholding as if they are single, regardless of their actual marital status,
- Claim only one allowance (if the nonresident alien is a resident of Canada, Mexico, or Korea, he or she may claim more than one allowance), and
- Write "Nonresident Alien" or "NRA" above the dotted line on line 6 of Form W-4.

If you maintain an electronic Form W-4 system, you should provide a field for nonresident aliens to enter nonresident alien status in lieu of writing "Nonresident Alien" or "NRA" above the dotted line on line 6.



A nonresident alien employee may request additional withholding at his or her option for other purposes, although such additions should not be necessary for withholding to cover federal income tax liability related to employment.

Form 8233. If a nonresident alien employee claims a tax treaty exemption from withholding, the employee must submit Form 8233, Exemption from Withholding or Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual, with respect to the income exempt under the treaty, instead of Form W-4. See Publication 515 for details.

IRS review of requested Forms W-4. When requested by the IRS, you must make original Forms W-4 available for inspection by an IRS employee. You may also be directed to send certain Forms W-4 to the IRS. You may receive a notice from the IRS requiring you to submit a copy of Form W-4 for one or more of your named employees. Send the requested copy or copies of Form W-4 to the IRS at the address provided and in the manner directed by the notice. The IRS may also require you to submit copies of Form W-4 to the IRS as directed by a revenue procedure or notice published in the Internal Revenue Bulletin. When we refer to Form W-4, the same rules apply to Formulario W-4(SP), its Spanish translation.

After submitting a copy of a requested Form W-4 to the IRS, continue to withhold federal income tax based on that Form W-4 if it is valid (see [Invalid Forms W-4](#) on page 18). However, if the IRS later notifies you in writing that the employee is not entitled to claim exemption from withholding or a claimed number of withholding allowances, withhold federal income tax based on the effective date, marital status, and maximum number of withholding allowances specified in the notice (commonly referred to as a "lock-in letter").

Initial lock-in letter. The IRS also uses information reported on Form W-2 to identify employees with withholding compliance problems. In some cases, if a serious under-withholding problem is found to exist for a particular employee, the IRS may issue a lock-in letter to the employer specifying the maximum number of withholding allowances and marital status permitted for a specific employee. You must furnish this notice to the employee within 10 business days of receipt if the employee is employed by you as of the date of the notice. Begin withholding based on the notice on the date specified in the notice.

Employee not performing services. If you receive a notice for an employee who is not performing services for you, you must still furnish the notice to the employee and withhold based on the notice if any of the following apply.

- You are paying wages for the employee's prior services and the wages are subject to income tax withholding on or after the date specified in the notice.
- You reasonably expect the employee to resume services within 12 months of the date of the notice.
- The employee is on a leave of absence that does not exceed 12 months or the employee has a right to reemployment after the leave of absence.

Termination and re-hire of employees. If you must furnish and withhold based on the notice and the employment relationship is terminated after the date of the notice, you must continue to withhold based on the notice if you continue to pay any wages subject to income tax withholding. You must also withhold based on the notice or modification notice if the employee resumes the employment relationship with you within 12 months after the termination of the employment relationship.

Modification notice. After issuing the notice specifying the maximum number of withholding allowances and marital status permitted, the IRS may issue a subsequent notice (modification notice) that modifies the original notice. The modification notice may change the marital status and/or the number of withholding allowances permitted. You must withhold federal income tax based on effective date specified in the modification notice.

New Form W-4 after notice. After the IRS issues a notice or modification notice, if the employee provides you with a new Form W-4 claiming complete exemption from

withholding or claims a marital status, a number of withholding allowances, and any additional withholding that results in less withholding than would result under the IRS notice or modification notice, disregard the new Form W-4. You must withhold based on the notice or modification notice unless the IRS notifies you to withhold based on the new Form W-4. If the employee wants to put a new Form W-4 into effect that results in less withholding than required, the employee must contact the IRS.

If, after you receive an IRS notice or modification notice, your employee gives you a new Form W-4 that does not claim exemption from federal income tax withholding and claims a marital status, a number of withholding allowances, and any additional withholding that results in more withholding than would result under the notice or modification notice, you must withhold tax based on the new Form W-4. Otherwise, disregard any subsequent Forms W-4 provided by the employee and withhold based on the IRS notice or modification notice.

For additional information about these rules, see Treasury Decision 9337, 2007-35 I.R.B. 455, available at www.irs.gov/irb/2007-35_IRB/ar10.html.

Substitute Forms W-4. You are encouraged to have your employees use the official version of Form W-4 to claim withholding allowances or exemption from withholding. Call the IRS at 1-800-829-3676 or visit the IRS website at www.irs.gov to obtain copies of Form W-4.

You may use a substitute version of Form W-4 to meet your business needs. However, your substitute Form W-4 must contain language that is identical to the official Form W-4 and your form must meet all current IRS rules for substitute forms. At the time that you provide your substitute form to the employee, you must provide him or her with all tables, instructions, and worksheets from the current Form W-4.

You cannot accept substitute Forms W-4 developed by employees. An employee who submits an employee-developed substitute Form W-4 after October 10, 2007, will be treated as failing to furnish a Form W-4. However, continue to honor any valid employee-developed Forms W-4 you accepted before October 11, 2007.

Invalid Forms W-4. Any unauthorized change or addition to Form W-4 makes it invalid. This includes taking out any language by which the employee certifies that the form is correct. A Form W-4 is also invalid if, by the date an employee gives it to you, he or she indicates in any way that it is false. An employee who submits a false Form W-4 may be subject to a \$500 penalty. You may treat a Form W-4 as invalid if the employee wrote "exempt" on line 7 and also entered a number on line 5 or an amount on line 6.

When you get an invalid Form W-4, do not use it to figure federal income tax withholding. Tell the employee that it is invalid and ask for another one. If the employee does not give you a valid one, withhold taxes as if the employee was single and claiming no withholding allowances. However, if you have an earlier Form W-4 for this worker that is valid, withhold as you did before.

Amounts exempt from levy on wages, salary, and other income. If you receive a Notice of Levy on Wages, Salary, and Other Income (Forms 668-W(c), 668-W(c)(DO), or 668-W(ICS)), you must withhold amounts as described in the instructions for these forms. Publication 1494 (2009), Tables for Figuring Amount Exempt From Levy on Wages, Salary, and Other Income—Forms 668-W(c), 668-W(c)(DO), and 668-W(ICS), shows the exempt amount. If a levy issued in a prior year is still in effect and the taxpayer submits a new Statement of Exemptions and Filing Status, use the current year Publication 1494 to compute the exempt amount.

Social Security and Medicare Taxes

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

Generally, you are required to withhold social security and Medicare taxes from your employees' wages and you must also pay a matching amount of these taxes. Certain types of wages and compensation are not subject to social security and Medicare taxes. See [sections 5](#) and [15](#) for details. Generally, employee wages are subject to social security and Medicare taxes regardless of the employee's age or whether he or she is receiving social security benefits. If the employee reported tips, see [section 6](#).

Tax rates and the social security wage base limit. Social security and Medicare taxes have different rates and only the social security tax has a wage base limit. The wage base limit is the maximum wage that is subject to the tax for the year. Determine the amount of withholding for social security and Medicare taxes by multiplying each payment by the employee tax rate. There are no withholding allowances for social security and Medicare taxes.

The employee tax rate for social security is 6.2% (amount withheld). The employer tax rate for social security is also 6.2% (12.4% total). The 2008 wage base limit was \$102,000. For 2009, the wage base limit is \$106,800.

The employee tax rate for Medicare is 1.45% (amount withheld). The employer tax rate for Medicare tax is also 1.45% (2.9% total). There is no wage base limit for Medicare tax; all covered wages are subject to Medicare tax.

Successor employer. If you received all or most of the property used in the trade or business of another employer, or a unit of that employer's trade or business, you may include the wages that the other employer paid to your acquired employees before the transfer of property when you figure the annual wage base limit for social security. You should determine whether or not you should file Schedule D (Form 941), Report of Discrepancies Caused by Acquisitions, Statutory Mergers, or Consolidations, by reviewing the Instructions for Schedule D (Form 941). See Regulations section 31.3121(a)(1)-1(b) for more information. Also see Revenue Procedure 2004-53, 2004-34 I.R.B. 320, available at www.irs.gov/irb/2004-34_IRB/ar13.html.

Example. Early in 2009, you bought all of the assets of a plumbing business from Mr. Martin. Mr. Brown, who had been employed by Mr. Martin and received \$2,000 in wages before the date of purchase, continued to work for you. The wages that you paid to Mr. Brown are subject to social security taxes on the first \$104,800 (\$106,800 minus \$2,000). Medicare tax is due on all of the wages that you pay him during the calendar year.

Withholding of social security and Medicare taxes on nonresident aliens. In general, if you pay wages to nonresident alien employees, you must withhold federal social security and Medicare taxes as you would for a U.S. citizen. However, see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, for exceptions to this general rule.

International social security agreements. The United States has social security agreements with many countries that eliminate dual taxation and dual coverage. Compensation subject to social security and Medicare taxes may be exempt under one of these agreements. You can get more information and a list of agreement countries from the SSA at www.socialsecurity.gov/international or see section 7 of Publication 15-A.

Religious exemption. An exemption from social security and Medicare taxes is available to members of a recognized religious sect opposed to insurance. This exemption is available only if both the employee and the employer are members of the sect.

For more information, see Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers.

Foreign persons treated as American employers. For services performed after July 31, 2008, a foreign person who meets both of the following conditions is generally treated as an American employer for paying FICA taxes on an employee's wages.

1. The foreign person is a member of a domestically controlled group of entities.
2. The employee of the foreign person performs services in connection with a contract between the U.S. Government (or an instrumentality of the U.S. Government) and any member of the domestically controlled group of entities. Ownership of 80% constitutes control.

Part-Time Workers

For federal income tax withholding and social security, Medicare, and federal unemployment (FUTA) tax purposes, there are no differences among full-time employees, part-time employees, and employees hired for short periods. It does not matter whether the worker has another job or has the maximum amount of social security tax withheld by another employer. Income tax withholding may be figured the same way as for full-time workers. Or it may be figured by the part-year employment method explained in section 9 of Publication 15-A.

10. Advance Earned Income Credit (EIC) Payment

An employee who expects to be eligible for the earned income credit (EIC) and expects to have a qualifying child is entitled to receive EIC payments with his or her pay during the year. To get these payments, the employee must provide to you a properly completed Form W-5 (or Formulario W-5(SP), its Spanish translation), Earned Income Credit Advance Payment Certificate, using either the paper form or an approved electronic format. You are required to make advance EIC payments to employees who give you a completed and signed Form W-5. You may establish a system to electronically receive Forms W-5 from your employees. See Announcement 99-3 for information on electronic requirements for Form W-5. You can find Announcement 99-3 on page 15 of Internal Revenue Bulletin 1999-3 at www.irs.gov/pub/irs-irbs/irb99-03.pdf.

Certain employees who do not have a qualifying child may be able to claim the EIC on their tax return. However, they cannot get advance EIC payments.

For 2009, the advance payment can be as much as \$1,826. The tables that begin on page 27 of Publication 15-T reflect that limit.

Form W-5. Form W-5 explains the eligibility requirements for receiving advance EIC payments. On Form W-5, an employee states that he or she expects to be eligible to claim the EIC and shows whether he or she has another Form W-5 in effect with any other current employer. The employee also shows the following:

- Whether he or she expects to have a qualifying child.

- Whether he or she will file a joint return.
- If the employee is married, whether his or her spouse has a Form W-5 in effect with any employer.

An employee may have only one certificate in effect with a current employer at one time. If an employee is married and his or her spouse also works, each spouse should file a separate Form W-5.

Length of effective period. Form W-5 is effective for the first payroll period ending on or after the date the employee gives you the form (or the first wage payment made without regard to a payroll period). It remains in effect until the end of the calendar year unless the employee revokes it or files another one. Eligible employees must file a new Form W-5 each year.

Change of status. If an employee gives you a signed Form W-5 and later becomes ineligible for advance EIC payments, he or she must revoke Form W-5 within 10 days after learning about the change of circumstances. The employee must give you a new Form W-5 stating that he or she is no longer eligible for or no longer wants advance EIC payments.

If an employee's situation changes because his or her spouse files a Form W-5, the employee must file a new Form W-5 showing that his or her spouse has a Form W-5 in effect with an employer. This will reduce the maximum amount of advance payments that you can make to that employee.

If an employee's spouse has filed a Form W-5 that is no longer in effect, the employee may file a new Form W-5 with you, but is not required to do so. A new form will certify that the spouse does not have a Form W-5 in effect and will increase the maximum amount of advance payments you can make to that employee.

Invalid Form W-5. The Form W-5 is invalid if it is incomplete, unsigned, or has an alteration or unauthorized addition. The form has been altered if any of the language has been deleted. Any writing added to the form other than the requested entries is an unauthorized addition.

You should consider a Form W-5 invalid if an employee has made an oral or written statement that clearly shows the Form W-5 to be false. If you receive an invalid form, tell the employee that it is invalid as of the date that he or she made the oral or written statement. For advance EIC payment purposes, the invalid Form W-5 is considered void.

You are not required to determine if a completed and signed Form W-5 is correct. However, you should contact the IRS if you have reason to believe that it contains an incorrect statement.

How to figure the advance EIC payment. To figure the amount of the advance EIC payment to include with the employee's pay, you must consider:

- Wages, including reported tips, for the same period. Generally, figure advance EIC payments using the amount of wages subject to income tax withholding. If an employee's wages are not subject to income tax withholding, use the amount of wages subject to withholding for social security and Medicare taxes.
- Whether the employee is married or single.
- Whether a married employee's spouse has a Form W-5 in effect with an employer.

Do not consider combat zone pay received by the employee and excluded from income as earned income when figuring the advance EIC payment.

Figure the amount of advance EIC to include in the employee's pay by using the tables that begin on page 27 of Publication 15-T. There are separate tables for employees whose spouses have a Form W-5 in effect. See page 3

of Publication 15-T for instructions on using the advance EIC payment tables.



The amount of advance EIC paid to an employee during 2009 cannot exceed \$1,826. If during the year you have paid an employee total wages of at least \$35,463 (\$40,463 if married filing jointly), you must also stop making advance EIC payments to that employee for the rest of the year.

Paying the advance EIC to employees. An advance EIC payment is not subject to withholding of income, social security, or Medicare taxes. An advance EIC payment does not change the amount of income, social security, or Medicare taxes that you withhold from the employee's wages. You add the EIC payment to the employee's **net** pay for the pay period. At the end of the year, you show the total advance EIC payments in box 9 on Form W-2. Do not include this amount as wages in box 1.

Employer's returns. Show the total payments you made to employees on the advance EIC payments line (line 9) of your Form 941 (line 8 of Form 944). Subtract this amount from your total taxes on line 8 (line 7 of Form 944). See the separate Instructions for Form 941 (or the separate Instructions for Form 944). Reduce the amounts reported on line 15 of 2008 Form 941 (line 17 of 2009 Form 941) or on appropriate lines of Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, by any advance EIC paid to your employees.

Generally, employers will make the advance EIC payment from withheld income tax and employee and employer social security and Medicare taxes. These taxes are normally required to be paid over to the IRS either through federal tax deposits or with employment tax returns. For purposes of deposit due dates, advance EIC payments are treated as deposits of these taxes on the day that you pay wages (including the advance EIC payment) to your employees. The payments are treated as deposits of these taxes in the following order: (1) income tax withholding, (2) withheld employee social security and Medicare taxes, and (3) the employer's share of social security and Medicare taxes.

Example. You have 10 employees, each entitled to an advance EIC payment of \$10. The total amount of advance EIC payments that you make for the payroll period is \$100. The total amount of income tax withholding for the payroll period is \$90. The total employee and employer social security and Medicare taxes for the payroll period is \$122.60 (\$61.30 each).

You are considered to have made a deposit of \$100 advance EIC payment on the day that you paid wages. The \$100 is treated as if you deposited the \$90 total income tax withholding and \$10 of the employee social security and Medicare taxes. You remain liable for depositing the remaining \$112.60 of the social security and Medicare taxes (\$51.30 + \$61.30 = \$112.60).

Advance EIC payments more than taxes due. For any payroll period, if the total advance EIC payments are more than the total payroll taxes (withheld income tax and both employee and employer shares of social security and Medicare taxes), you may choose either to:

1. Reduce each employee's advance payment proportionally so that the total advance EIC payments equal the amount of taxes due or
2. Make full payment of the advance EIC and treat the excess as an advance payment of employment taxes.

Example. You have 10 employees who are each entitled to an advance EIC payment of \$10. The total amount

of advance EIC payable for the payroll period is \$100. The total employment tax for the payroll period is \$90 (including income tax withholding and social security and Medicare taxes). The advance EIC payable is \$10 more than the total employment tax. The \$10 excess is 10% of the advance EIC payable (\$100). You may—

- Reduce each employee's payment by 10% (to \$9 each) so that the advance EIC payments equal your total employment tax (\$90) or
- Pay each employee \$10, and treat the excess \$10 as an advance payment of employment taxes. See the Instructions for Form 941 (or the Instructions for Form 944) for reporting details.

U.S. possessions. If you are in American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the U.S. Virgin Islands, consult your local tax office for information on the EIC. You cannot take advance EIC payments into account on Form 941-SS or Form 944-SS.

Required Notice to Employees

You must notify employees who have no federal income tax withheld that they may be able to claim a tax refund because of the EIC. Although you do not have to notify employees who claim exemption from withholding on Form W-4 about the EIC, you are encouraged to notify any employees whose wages for 2008 were less than \$38,646 (\$41,646 if married filing jointly) that they may be eligible to claim the credit for 2008. This is because eligible employees may get a refund of the amount of EIC that is more than the tax that they owe.

You will meet this notification requirement if you issue the employee Form W-2 with the EIC notice on the back of Copy B, or a substitute Form W-2 with the same statement. You will also meet the requirement by providing Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC), or your own statement that contains the same wording.

If a substitute for Form W-2 is given to the employee on time but does not have the required statement, you must notify the employee within 1 week of the date that the substitute for Form W-2 is given. If Form W-2 is required but is not given on time, you must give the employee Notice 797 or your written statement by the date that Form W-2 is required to be given. If Form W-2 is not required, you must notify the employee by February 7, 2009.

11. Depositing Taxes

In general, you must deposit federal income tax withheld and both the employer and employee social security and Medicare taxes plus or minus any prior period adjustments to your tax liability (minus any advance EIC payments). You must deposit by using the Electronic Federal Tax Payment System (EFTPS) or by mailing or delivering a check, money order, or cash with Form 8109, Federal Tax Deposit Coupon, to a financial institution that is an authorized depository for federal taxes. Some taxpayers are required to deposit using EFTPS. See [How To Deposit](#) on page 23 for information on electronic deposit requirements for 2009.



The credit against employment taxes for COBRA assistance payments you take on line 12a of Form 941 or line 11a of Form 944 is treated as a deposit of taxes on the first day of your return period. See [COBRA premium assistance credit](#) on page 8 for more information.

Payment with return. You may make a payment with Form 941 or Form 944 instead of depositing, without incurring a penalty, if one of the following applies.

- You report less than a \$2,500 tax liability for the quarter on line 10 of Form 941 (or for the year on line 9 of Form 944). However, if you are unsure that you will report less than \$2,500, deposit under the appropriate rules so that you will not be subject to failure-to-deposit penalties.
- You are a monthly schedule depositor (defined below) and make a payment in accordance with the [Accuracy of Deposits Rule](#) discussed on page 23. This payment may be \$2,500 or more.

Employers who have been notified to file Form 944 can pay their fourth quarter tax liability with Form 944 if the fourth quarter tax liability is less than \$2,500. Employers must have deposited any tax liability due for the first, second, and third quarters according to the deposit rules to avoid failure-to-deposit penalties for deposits during those quarters.

Separate deposit requirements for nonpayroll (Form 945) tax liabilities. Separate deposits are required for nonpayroll and payroll income tax withholding. Do not combine deposits for Forms 941 (or Form 944) and 945 tax liabilities. Generally, the deposit rules for nonpayroll liabilities are the same as discussed below, except that the rules apply to an annual rather than a quarterly return period. Thus, the \$2,500 threshold for the deposit requirement discussed above applies to Form 945 on an annual basis. See the separate Instructions for Form 945 for more information.

When To Deposit

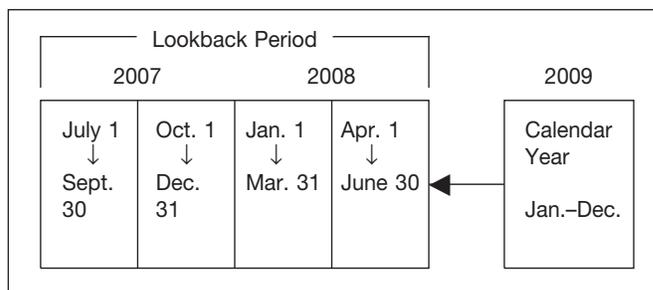
There are two deposit schedules—monthly and semi-weekly—for determining when you deposit social security, Medicare, and withheld income taxes. These schedules tell you when a deposit is due after a tax liability arises (for example, when you have a payday). Before the beginning of each calendar year, you must determine which of the two deposit schedules that you are required to use. The deposit schedule that you must use is based on the total tax liability that you reported on Form 941 during a lookback period discussed below. Your deposit schedule is not determined by how often you pay your employees or make deposits. See special rules for Forms 944 and 945 below. See [Application of Monthly and Semiweekly Schedules](#) on page 22.



These rules do not apply to federal unemployment (FUTA) tax. See [section 14](#) for information on depositing FUTA tax.

Lookback period. If you are a Form 941 filer, your deposit schedule for a calendar year is determined from the total taxes (that is, not reduced by any advance EIC payments) reported on line 8 of your Forms 941 in a 4-quarter lookback period. The lookback period begins July 1 and ends June 30 as shown in Table 1 below. If you reported \$50,000 or less of taxes for the lookback period, you are a monthly schedule depositor; if you reported more than \$50,000, you are a semiweekly schedule depositor.

Table 1. Lookback Period for Calendar Year 2009



The lookback period for a 2009 Form 941 filer who filed Form 944 in either 2007 or 2008 is calendar year 2007.

If you are a Form 944 filer for the current year or either of the preceding 2 years, your deposit schedule for a calendar year is determined from the total taxes (that is, not reduced by any advance EIC payments) reported during the second preceding calendar year (either on line 8 of your Form 941 for all 4 quarters of that year or line 7 of your Form 944 for that year). The lookback period for 2009 for a Form 944 filer is calendar year 2007.

If you are a Form 945 filer, your deposit schedule for a calendar year is determined from the total taxes reported on line 4 of your Form 945 for the second preceding calendar year. The lookback period for 2009 for a Form 945 filer is calendar year 2007.

Adjustments and the lookback rule. Determine your tax liability for the 4 quarters in the lookback period based on the tax liability as reported on your Form 941. If you made adjustments on lines 7d, 7e, 7f, and 7g on Forms 941 filed for periods in 2008 and earlier to correct errors on previously filed Forms 941, these adjustments do affect the amount of tax liability for purposes of the lookback rule. Adjustments made on Form 941-X do not affect the amount of tax liability for previous periods for purposes of the lookback rule.

Example. An employer originally reported a tax liability of \$45,000 for the lookback period. The employer discovered during January 2009 that the tax during one of the lookback period quarters was understated by \$10,000 and corrected this error by filing Form 941-X for the quarter in which the error was discovered. This employer is a monthly schedule depositor for 2009 because the lookback period tax liabilities are based on the amounts originally reported, and they were \$50,000 or less.

Deposit period. The term deposit period refers to the period during which tax liabilities are accumulated for each required deposit due date. For monthly schedule depositors, the deposit period is a calendar month. The deposit periods for semiweekly schedule depositors are Wednesday through Friday and Saturday through Tuesday.

Monthly Deposit Schedule

You are a monthly schedule depositor for a calendar year if the total taxes on line 8 of Form 941 for the 4 quarters in your lookback period were \$50,000 or less. **Under the monthly deposit schedule, deposit employment taxes on payments made during a month by the 15th day of the following month.** See also [Deposits on Banking Days Only](#) on page 22.

Monthly schedule depositors should not file Form 941 or Form 944 on a monthly basis. Also, do not file Form 941-M, Employer's Monthly Federal Tax Return, unless you are instructed to do so by an IRS representative.

New employers. Your tax liability for any quarter in the lookback period before you started or acquired your business is considered to be zero. Therefore, you are a monthly schedule depositor for the first calendar year of your business. However, see the [\\$100,000 Next-Day Deposit Rule](#) on page 23.

Semiweekly Deposit Schedule

You are a semiweekly schedule depositor for a calendar year if the total taxes on line 8 of Form 941 during your lookback period were more than \$50,000. Under the semiweekly deposit schedule, deposit employment taxes for payments made on Wednesday, Thursday, and/or Friday by the following Wednesday. Deposit taxes for payments made on Saturday, Sunday, Monday, and/or Tuesday by the following Friday. See also [Deposits on Banking Days Only](#) later.

Note. Semiweekly schedule depositors must complete Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, and submit it with Form 941. If you must file Form 944 and are a semiweekly schedule depositor, complete Form 945-A, Annual Record of Federal Tax Liability, and submit it with your return (instead of Schedule B).

Table 2. Semiweekly Deposit Schedule

IF the payday falls on a . . .	THEN deposit taxes by the following . . .
Wednesday, Thursday, and/or Friday	Wednesday
Saturday, Sunday, Monday, and/or Tuesday	Friday

Semiweekly deposit period spanning 2 quarters. If you have more than one pay date during a semiweekly period and the pay dates fall in different calendar quarters, you will need to make **separate deposits** for the separate liabilities.

Example 1. If you have a pay date on Wednesday, September 30, 2009 (third quarter), and another pay date on Friday, October 2, 2009 (fourth quarter), two separate deposits would be required even though the pay dates fall within the same semiweekly period. Both deposits would be due Wednesday, October 7, 2009 (3 banking days from the end of the semiweekly deposit period).

Example 2. If you made a payment on both Wednesday and Friday and incurred taxes of \$10,000 for each pay date, deposit the \$20,000 on the following Wednesday. If you made no additional payments on Saturday through Tuesday, no deposit is due on the following Friday.

Summary of Steps To Determine Your Deposit Schedule	
1. Identify your lookback period (see <i>Lookback period</i> earlier).	
2. Add the total taxes from line 8, Form 941 you reported during the lookback period.	
3. Determine if you are a monthly or semiweekly schedule depositor:	
If the total taxes you reported in the lookback period were . . .	Then you are a . . .
\$50,000 or less	Monthly Schedule Depositor
More than \$50,000	Semiweekly Schedule Depositor

Example of Monthly and Semiweekly Schedules

Rose Co. reported Form 941 taxes as follows:

2008 Lookback Period		2009 Lookback Period	
3rd Quarter 2006	\$12,000	3rd Quarter 2007	\$12,000
4th Quarter 2006	\$12,000	4th Quarter 2007	\$12,000
1st Quarter 2007	\$12,000	1st Quarter 2008	\$12,000
2nd Quarter 2007	<u>\$12,000</u>	2nd Quarter 2008	<u>\$15,000</u>
	\$48,000		\$51,000

Rose Co. is a monthly schedule depositor for 2008 because its tax liability for the 4 quarters in its lookback period (third quarter 2006 through second quarter 2007) was not more than \$50,000. However, for 2009, Rose Co. is a semiweekly schedule depositor because the total taxes exceeded \$50,000 for the 4 quarters in its lookback period (third quarter 2007 through second quarter 2008).

Deposits on Banking Days Only

If a deposit is required to be made on a day that is not a banking day, the deposit is considered timely if it is made by the close of the next banking day. In addition to federal and state bank holidays, Saturdays and Sundays are treated as nonbanking days. For example, if a deposit is required to be made on a Friday and Friday is not a banking day, the deposit will be considered timely if it is made by the following Monday (if that Monday is a banking day).

Semiweekly schedule depositors have at least 3 banking days to make a deposit. That is, if any of the 3 weekdays after the end of a semiweekly period is a banking holiday, you will have 1 additional banking day to deposit. For example, if a semiweekly schedule depositor accumulated taxes for payments made on Friday and the following Monday is not a banking day, the deposit normally due on Wednesday may be made on Thursday (allowing 3 banking days to make the deposit).

Application of Monthly and Semiweekly Schedules

The terms “monthly schedule depositor” and “semiweekly schedule depositor” do not refer to how often your business pays its employees or even how often you are required to make deposits. The terms identify which set of deposit rules that you must follow when an employment tax liability arises. The deposit rules are based on the dates when wages are paid (for example, cash basis); not on when tax liabilities are accrued for accounting purposes.

Monthly schedule example. Spruce Co. is a monthly schedule depositor with seasonal employees. It paid wages each Friday. During March it paid wages but did not pay any wages during April. Under the monthly deposit schedule, Spruce Co. must deposit the combined tax liabilities for the four March paydays by April 15. Spruce Co. does not have a deposit requirement for April (due by May 15) because no wages were paid and, therefore, it did not have a tax liability for April.

Semiweekly schedule example. Green, Inc., which has a semiweekly deposit schedule, pays wages once each month on the last day of the month. Although Green, Inc., has a semiweekly deposit schedule, it will deposit just once a month because it pays wages only once a month. The

deposit, however, will be made under the semiweekly deposit schedule as follows: Green, Inc.'s tax liability for the April 24, 2009 (Friday), payday must be deposited by April 29, 2009 (Wednesday). Under the semiweekly deposit schedule, liabilities for wages paid on Wednesday through Friday must be deposited by the following Wednesday.

\$100,000 Next-Day Deposit Rule

If you accumulate \$100,000 or more of taxes (that is, line 10 of Form 941 or line 9 of Form 944) on any day during a deposit period, you must deposit the tax by the next banking day, whether you are a monthly or semiweekly schedule depositor.

For purposes of the \$100,000 rule, do not continue accumulating a tax liability after the end of a deposit period. For example, if a semiweekly schedule depositor has accumulated a liability of \$95,000 on a Tuesday (of a Saturday-through-Tuesday deposit period) and accumulated a \$10,000 liability on Wednesday, the \$100,000 next-day deposit rule does not apply. Thus, \$95,000 must be deposited by Friday and \$10,000 must be deposited by the following Wednesday.

However, once you accumulate at least \$100,000 in a deposit period, stop accumulating at the end of that day and begin to accumulate anew on the next day. For example, Fir Co. is a semiweekly schedule depositor. On Monday, Fir Co. accumulates taxes of \$110,000 and must deposit this amount on Tuesday, the next banking day. On Tuesday, Fir Co. accumulates additional taxes of \$30,000. Because the \$30,000 is not added to the previous \$110,000 and is less than \$100,000, Fir Co. must deposit the \$30,000 by Friday (following the semiweekly deposit schedule).



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

Example. Elm, Inc., started its business on April 1, 2009. On April 11, it paid wages for the first time and accumulated a tax liability of \$40,000. On Friday, April 17, 2009, Elm, Inc., paid wages and accumulated a liability of \$60,000, bringing its accumulated tax liability to \$100,000. Because this was the first year of its business, the tax liability for its lookback period is considered to be zero, and it would be a monthly schedule depositor based on the lookback rules. However, since Elm, Inc., accumulated a \$100,000 liability on April 17, it became a semiweekly schedule depositor on April 18. It will be a semiweekly schedule depositor for the remainder of 2009 and for 2010. Elm, Inc., is required to deposit the \$100,000 by Monday, April 20, the next banking day.

Accuracy of Deposits Rule

You are required to deposit 100% of your tax liability on or before the deposit due date. However, penalties will not be applied for depositing less than 100% if both of the following conditions are met.

- Any deposit shortfall does not exceed the greater of \$100 or 2% of the amount of taxes otherwise required to be deposited and
- The deposit shortfall is paid or deposited by the shortfall makeup date as described below.

Makeup Date for Deposit Shortfall:

1. **Monthly schedule depositor.** Deposit the shortfall or pay it with your return by the due date of your return for the return period in which the shortfall occurred. You may pay the shortfall with your return even if the amount is \$2,500 or more.
2. **Semiweekly schedule depositor.** Deposit by the earlier of:
 - a. The first Wednesday or Friday (whichever comes first) that falls on or after the 15th of the month following the month in which the shortfall occurred or
 - b. The due date of your return (for the return period of the tax liability).

For example, if a semiweekly schedule depositor has a deposit shortfall during July 2009, the shortfall makeup date is August 19, 2009 (Wednesday). However, if the shortfall occurred on the required April 1 (Wednesday) deposit due date for a March 27 (Friday) pay date, the return due date for the March 27 pay date (April 30) would come before the May 15 (Friday) shortfall makeup date. In this case, the shortfall must be deposited by April 30.

How To Deposit

The two methods of depositing employment taxes, including Form 945 taxes, are discussed below. See [Payment with return](#) on page 21 for exceptions explaining when taxes may be paid with the tax return instead of being deposited.

Electronic deposit requirement. You must make electronic deposits of all depository taxes (such as employment tax, excise tax, and corporate income tax) using the Electronic Federal Tax Payment System (EFTPS) in 2009 if:

- Your total deposits of depository taxes in 2007 were more than \$200,000 or
- You were required to use EFTPS in 2008 or any prior year.

If you are required to use EFTPS and fail to do so, you may be subject to a 10% failure-to-deposit penalty. EFTPS is a free service provided by the Department of Treasury. If you are not required to use EFTPS, you may participate voluntarily. To get more information or to enroll in EFTPS, call 1-800-555-4477. You can also visit the EFTPS website at www.eftps.gov.

When you receive your EIN. If you are a new employer that indicated a federal tax obligation when requesting an EIN, you will be pre-enrolled in EFTPS. You will receive information in your Employer Identification Number (EIN) Package about Express Enrollment and an additional mailing containing your EFTPS personal identification number (PIN) and instructions for activating your PIN. Call the toll-free number located in your "How to Activate Your Enrollment" brochure to activate your enrollment and begin making your payroll tax deposits. Be sure to tell your payroll provider about your EFTPS enrollment. Consider using EFTPS to make your other federal tax payments electronically as well. You should activate your EFTPS enrollment now even if you plan to deposit using FTD coupons (Form 8109) because it may take 5 to 6 weeks to receive the coupons and you may be required to make a deposit while waiting for them.

Depositing on time. For deposits made by EFTPS to be on time, you must initiate the transaction at least 1 business day before the date that the deposit is due.

Deposit record. For your records, an Electronic Funds Transfer (EFT) Trace Number will be provided with each successful payment. The number can be used as a receipt or to trace the payment.

Same day payment option. If you fail to initiate a deposit transaction on EFTPS at least 1 business day before the date a deposit is due, you can still make your deposit on time by using the Federal Reserve-Electronic Tax Application (FR-ETA). If you ever need the same-day payment method, you will need to make arrangements with your financial institution ahead of time. FR-ETA allows you to initiate the transaction and have the funds transferred from your financial institution on the same day. Enrollment in EFTPS automatically enrolls you in FR-ETA. Instructions for using FR-ETA are included in your EFTPS enrollment package. Business taxpayers can use FR-ETA even if not enrolled, but may need help to have their financial institution use the proper format for making the payment. The guidelines for financial institutions for making payments using FR-ETA can be found at www.frb services.org/files/serviceofferings/pdf/Sameday.pdf.

Making deposits with FTD coupons. If you are not making deposits by EFTPS, use Form 8109 to make the deposits at an authorized financial institution.

For **new employers**, if you would like to receive a Federal Tax Deposit (FTD) coupon booklet, call 1-800-829-4933. Allow 5 to 6 weeks for delivery. Consider activating your enrollment in EFTPS now so that you can make timely deposits of payroll taxes while waiting for requested FTD coupons.

The IRS will keep track of the number of FTD coupons that you use and automatically will send you additional coupons when you need them. If you do not receive your resupply of FTD coupons, call 1-800-829-4933. You can have the FTD coupon books sent to a branch office, tax preparer, or service bureau that is making your deposits by showing that address on Form 8109-C, FTD Address Change, which is in the FTD coupon book. Filing Form 8109-C will not change your address of record; it will change only the address where the FTD coupons are mailed. The FTD coupons will be preprinted with your name, address, and EIN. They have entry boxes for indicating the type of tax and the tax period for which the deposit is made.

It is very important to clearly mark the correct type of tax and tax period on each FTD coupon. This information is used by the IRS to credit your account.

If you have branch offices depositing taxes, give them FTD coupons and complete instructions so that they can deposit the taxes when due.

Please use only **your** FTD coupons. If you use anyone else's FTD coupon, you may be subject to a failure-to-deposit penalty. This is because your account will be underpaid by the amount of the deposit credited to the other person's account. See [Deposit Penalties](#) later for penalty amounts.

How to deposit with a FTD coupon. Mail or deliver each FTD coupon and a single payment covering the taxes to be deposited to an authorized depository. An authorized depository is a financial institution (for example, a commercial bank) that is authorized to accept federal tax deposits. Follow the instructions in the FTD coupon book. Make your check or money order payable to the depository. To help ensure proper crediting of your account, include your EIN, the type of tax (for example, Form 941), and the tax period to which the payment applies on your check or money order.

Authorized depositories must accept cash, a postal money order drawn to the order of the depository, or a check or draft drawn on and to the order of the depository. You may deposit taxes with a check drawn on another

financial institution only if the depository is willing to accept that form of payment. Be sure that the financial institution where you make deposits is an authorized depository. Deposits made at an unauthorized institution may be subject to the failure-to-deposit penalty.

If you prefer, you may mail your coupon and payment to: Financial Agent, Federal Tax Deposit Processing, P.O. Box 970030, St. Louis, MO 63197. Make your check or money order payable to "Financial Agent."

The Financial Agent cannot process foreign checks. If you send a check written on a foreign bank to pay a federal tax deposit, you generally will be charged a deposit penalty and will receive a bill in the mail. A foreign bank is a financial institution that is not incorporated under the laws of the United States, any U.S. state, any U.S. possession, or the District of Columbia.

You may enroll in the Electronic Federal Tax Payment System (EFTPS), which will allow you to make electronic payments at no charge to you. Instructions for enrollment are available at www.eftps.gov.

You may also make the payments by wire transfer, through EFTPS, without being enrolled. A same day payment is initiated by your financial institution and can be used by businesses for making EFTPS tax payments. Please check with your financial institution regarding availability, deadlines, and costs. Generally, your bank will charge you a fee for payments made this way.

Depositing on time. The IRS determines whether deposits are on time by the date that they are received by an authorized depository. To be considered timely, the funds must be available to the depository on the deposit due date before the institution's daily cutoff deadline. Contact your local depository for information concerning check clearance and cutoff schedules. However, a deposit received by the authorized depository after the due date will be considered timely if the taxpayer establishes that it was mailed in the United States in a properly addressed, postage prepaid envelope at least 2 days before the due date.



If you must deposit any taxes more than once a month, any deposit of \$20,000 or more must be received by the authorized depository by its due date to be timely. See Internal Revenue Code section 7502(e)(3) for more information.

Depositing without an EIN. If you have applied for an EIN but have not received it and you must make a deposit, make the deposit with the IRS. Do not make the deposit at an authorized depository. Make it payable to the "United States Treasury" and show on it your name (as shown on Form SS-4), address, kind of tax, period covered, and date you applied for an EIN. Send your deposit with an explanation to the IRS office where you will file your return. IRS office addresses are in the instructions for your return and on the IRS website at www.irs.gov/businesses under "Where To File." Use the "Without a payment" address. Do not use Form 8109-B, Federal Tax Deposit Coupon, in this situation.

Depositing without Form 8109. If you have an EIN but do not have a preprinted Form 8109, you may use Form 8109-B to make deposits. Form 8109-B is an over-the-counter FTD coupon that is not preprinted with your identifying information. You may get this form by visiting an IRS taxpayer assistance center. Be sure to have your EIN with you. You will not be able to obtain Form 8109-B by calling 1-800-TAX-FORM.

Use Form 8109-B to make deposits only if:

- You are a new employer and you have been assigned an EIN, but you have not received your initial supply of Forms 8109 or

- You have not received your resupply of preprinted Forms 8109.

Deposit record. For your records, a stub is provided with each FTD coupon in the coupon book. The FTD coupon itself will not be returned. It is used to credit your account. Your cancelled check, bank receipt, or money order receipt is your deposit record.

How to claim credit for overpayments. If you deposited more than the right amount of taxes for a quarter, you can choose on Form 941 for that quarter (or on Form 944 for that year) to have the overpayment refunded or applied as a credit to your next return. Do not ask the depository or EFTPS to request a refund from the IRS for you.

Deposit Penalties



Although the deposit penalties information provided below refers specifically to Form 941, these rules also apply to Form 945 and Form 944 (if the employer required to file Form 944 does not qualify for the exception to the deposit requirements discussed on page 21 under [Payment with return](#)).

Penalties may apply if you do not make required deposits on time, if you make deposits for less than the required amount, or if you do not use EFTPS when required. The penalties do not apply if any failure to make a proper and timely deposit was due to reasonable cause and not to willful neglect. The IRS may also waive penalties if you inadvertently fail to deposit in the first quarter that you were required to deposit any employment tax, or in the first quarter during which your frequency of deposits changed, if you timely filed your employment tax return.

For amounts not properly or timely deposited, the penalty rates are as follows.

- 2% - Deposits made 1 to 5 days late.
- 5% - Deposits made 6 to 15 days late.
- 10% - Deposits made 16 or more days late. Also applies to amounts paid within 10 days of the date of the first notice the IRS sent asking for the tax due.
- 10% - Deposits made at an unauthorized financial institution, paid directly to the IRS, or paid with your tax return. But see [Depositing without an EIN](#) earlier and [Payment with return](#) on page 21 for exceptions.
- 10% - Amounts subject to electronic deposit requirements but not deposited using EFTPS.
- 15% - Amounts still unpaid more than 10 days after the date of the first notice that the IRS sent asking for the tax due or the day on which you received notice and demand for immediate payment, whichever is earlier.

Late deposit penalty amounts are determined using calendar days, starting from the due date of the liability.

Special rule for former Form 944 filers. If you filed Form 944 for the prior year and must file Forms 941 for the current year because your employment tax liability for the prior year exceeded the Form 944 eligibility requirement (\$1,000 or less), the failure-to-deposit penalty will not apply to a late deposit of employment taxes for the first month of the current year if the taxes are deposited in full by March 15 of the current year.

Order in which deposits are applied. Deposits generally are applied to the most recent tax liability within the quarter. If you receive a failure-to-deposit penalty notice, you may designate how your deposits are to be applied in order

to minimize the amount of the penalty if you do so within 90 days of the date of the notice. Follow the instructions on the penalty notice that you received. For more information on designating deposits, see Revenue Procedure 2001-58. You can find Revenue Procedure 2001-58 on page 579 of Internal Revenue Bulletin 2001-50 at www.irs.gov/pub/irs-irbs/irb01-50.pdf.

Example. Cedar, Inc. is required to make a deposit of \$1,000 on June 15 and \$1,500 on July 15. It does not make the deposit on June 15. On July 15, Cedar, Inc. deposits \$2,000. Under the deposits rule, which applies deposits to the most recent tax liability, \$1,500 of the deposit is applied to the July 15 deposit and the remaining \$500 is applied to the June deposit. Accordingly, \$500 of the June 15 liability remains undeposited. The penalty on this underdeposit will apply as explained above.

Trust fund recovery penalty. If federal income, social security, and Medicare taxes that must be withheld are not withheld or are not deposited or paid to the United States Treasury, the trust fund recovery penalty may apply. The penalty is the full amount of the unpaid trust fund tax. This penalty may apply to you if these unpaid taxes cannot be immediately collected from the employer or business.

The trust fund recovery penalty may be imposed on all persons who are determined by the IRS to be responsible for collecting, accounting for, and paying over these taxes, and who acted willfully in not doing so.

A **responsible person** can be an officer or employee of a corporation, a partner or employee of a partnership, an accountant, a volunteer director/trustee, or an employee of a sole proprietorship. A responsible person also may include one who signs checks for the business or otherwise has authority to cause the spending of business funds.

Willfully means voluntarily, consciously, and intentionally. A responsible person acts willfully if the person knows that the required actions are not taking place.

Separate accounting when deposits are not made or withheld taxes are not paid. Separate accounting may be required if you do not pay over withheld employee social security, Medicare, or income taxes; deposit required taxes; make required payments; or file tax returns. In this case, you would receive written notice from the IRS requiring you to deposit taxes into a special trust account for the U.S. Government. You would also have to file monthly tax returns on Form 941-M, Employer's Monthly Federal Tax Return.



You may be charged with criminal penalties if you do not comply with the special bank deposit requirements for the special trust account for the U.S. Government.

“Averaged” failure-to-deposit penalty. IRS may assess an “averaged” failure-to-deposit (FTD) penalty of 2% to 10% if you are a monthly schedule depositor and did not properly complete line 15 of 2008 Form 941 (line 17 of 2009 Form 941) when your tax liability (line 10) shown on Form 941 equaled or exceeded \$2,500.

The IRS may also assess an “averaged” FTD penalty of 2% to 10% if you are a semiweekly schedule depositor and your tax liability (line 10) shown on Form 941 equaled or exceeded \$2,500 and you:

- Completed line 15 of 2008 Form 941 (line 17 of 2009 Form 941) instead of Schedule B (Form 941),
- Failed to attach a properly completed Schedule B (Form 941), or
- Improperly completed Schedule B (Form 941) by, for example, entering tax deposits instead of tax liabilities in the numbered spaces.

The FTD penalty is figured by distributing your total tax liability shown on line 10 of Form 941 equally throughout the tax period. As a result, your deposits and payments may not be counted as timely because the actual dates of your tax liabilities cannot be accurately determined.

You can avoid an “averaged” FTD penalty by reviewing your return before you file it. Follow these steps before submitting your Form 941.

- If you are a monthly schedule depositor, report your tax liabilities (not your deposits) in the monthly entry spaces on line 15 of 2008 Form 941 (line 17 of 2009 Form 941).
- If you are a semiweekly schedule depositor, report your tax liabilities (not your deposits) on Schedule B (Form 941) in the lines that represent the dates your employees were paid.
- Verify that your total liability shown on line 15 of 2008 Form 941 (line 17 of 2009 Form 941) or the bottom of Schedule B (Form 941) equals your tax liability shown on line 10 of Form 941.
- Do not show negative amounts on line 15 of 2008 Form 941 (line 17 of 2009 Form 941) or Schedule B (Form 941). If a prior period correction results in a decrease to your tax liability, reduce your liability for the day that you discovered the error by the tax decrease resulting from the error, but not below zero. Apply any remaining decrease to subsequent liabilities.
- For prior period errors discovered after December 31, 2008, **do not** adjust your tax liabilities reported on line 15 of 2008 Form 941 (line 17 of 2009 Form 941) or on Schedule B (Form 941).

12. Filing Form 941 or Form 944

Form 941. Each quarter, all employers who pay wages subject to income tax withholding (including withholding on sick pay and supplemental unemployment benefits) or social security and Medicare taxes must file Form 941, Employer’s QUARTERLY Federal Tax Return, unless the employer is required to file Form 944 or the following exceptions apply. Form 941 must be filed by the last day of the month that follows the end of the quarter. See the [Calendar](#) on page 2.

Form 944. If you receive written notification that you qualify for the Form 944 program, you must file Form 944, Employer’s ANNUAL Federal Tax Return, instead of Form 941. If you received this notification, but prefer to file Form 941, you can request to have your filing requirement changed to Form 941 if you satisfy certain requirements. See the Instructions for Form 944 for details. Employers who must file Form 944 have until the last day of the month that follows the end of the year to file Form 944.

Exceptions. The following exceptions apply to the filing requirements for Forms 941 and 944.

- **Seasonal employers who no longer file for quarters when they regularly have no tax liability because they have paid no wages.** To alert the IRS that you will not have to file a return for one or more quarters during the year, check the “Seasonal employer” box on line 17 of 2008 Form 941 (line 19 of 2009 Form 941). When you fill out Form 941, be sure to check the box on the top of the form that corresponds to the quarter reported. Generally, the

IRS will not inquire about unfiled returns if at least one taxable return is filed each year. However, you must check the “Seasonal employer” box on **every** Form 941 that you file. Otherwise, the IRS will expect a return to be filed for each quarter.

- **Household employers reporting social security and Medicare taxes and/or withheld income tax.** If you are a sole proprietor and file Form 941 or Form 944 for business employees, you may include taxes for household employees on your Form 941 or Form 944. Otherwise, report social security and Medicare taxes and income tax withholding for household employees on Schedule H (Form 1040), Household Employment Taxes. See Publication 926, Household Employer’s Tax Guide, for more information.
- **Employers reporting wages for employees in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or Puerto Rico.** If your employees are not subject to U.S. income tax withholding, use Form 941-SS or Form 944-SS. Employers in Puerto Rico use Form 941-PR or Form 944-PR. If you have both employees who are subject to U.S. income tax withholding and employees who are not subject to U.S. income tax withholding, you can file only Form 941 (or Form 944) and include all your employees’ wages on that form. For more information, see Publication 80 (Circular SS).
- **Agricultural employers reporting social security, Medicare, and withheld income taxes.** Report these taxes on Form 943, Employer’s Annual Federal Tax Return for Agricultural Employees.

Form 941 e-file. The Form 941 e-file program allows a taxpayer to electronically file Form 941 or Form 944 using a personal computer, modem, and commercial tax preparation software. For more information, visit the IRS website at www.irs.gov and click on the *e-file* link, or call 1-866-255-0654. See Publication 1855, Technical Specifications Guide for the Electronic Filing of Form 941, Employer’s QUARTERLY Federal Tax Return, for technical specifications.

Electronic filing by reporting agents. Reporting agents filing Forms 941 or Form 944 for groups of taxpayers can file them electronically. See *Reporting Agents* in section 7 of Publication 15-A.

Penalties. For each whole or part month that a return is not filed when required (disregarding any extensions of the filing deadline), there is a failure-to-file penalty of 5% of the unpaid tax due with that return. The maximum penalty is generally 25% of the tax due. Also, for each whole or part month that the tax is paid late (disregarding any extensions of the payment deadline), there is a failure-to-pay penalty of 0.5% per month of the amount of tax. For individual filers only, the failure-to-pay penalty is reduced from 0.5% per month to 0.25% per month if an installment agreement is in effect. You must have filed your return on or before the due date of the return to qualify for the reduced penalty. The maximum amount of the failure-to-pay penalty is also 25% of the tax due. If both penalties apply in any month, the failure-to-file penalty is reduced by the amount of the failure-to-pay penalty. The penalties will not be charged if you have a reasonable cause for failing to file or pay. If you receive a penalty notice, you can provide an explanation of why you believe reasonable cause exists.

Note. In addition to any penalties, interest accrues from the due date of the tax on any unpaid balance.

If income, social security, or Medicare taxes that must be withheld are not withheld or are not paid, you may be personally liable for the trust fund recovery penalty. See [Trust fund recovery penalty](#) in section 11.

Use of a reporting agent or other third-party payroll service provider does not relieve an employer of the responsibility to ensure that tax returns are filed and all taxes are paid or deposited correctly and on time.

Do not file more than one Form 941 per quarter or more than one Form 944 per year. Employers with multiple locations or divisions must file only one Form 941 per quarter or one Form 944 per year. Filing more than one return may result in processing delays and may require correspondence between you and the IRS. For information on making adjustments to previously filed returns, see [section 13](#).

Reminders about filing.

- Do not report more than 1 calendar quarter on a Form 941.
- Use the preaddressed form mailed to you. If you do not have the form, get one from the IRS in time to file the return when due.
- If you use a form that is not preaddressed, show your name and EIN on it. Be sure that they are exactly as they appeared on earlier returns.
- See the Instructions for Form 941 or the Instructions for Form 944 for information on preparing the form.

Final return. If you go out of business, you must file a final return for the last quarter (last year for Form 944) in which wages are paid. If you continue to pay wages or other compensation for periods following termination of your business, you must file returns for those periods. See the Instructions for Form 941 or the Instructions for Form 944 for details on how to file a final return.

If you are required to file a final return, you are also required to furnish Forms W-2 to your employees by the due date of your final return. File Forms W-2 and W-3 with the SSA by the last day of the month that follows the due date of your final return. Do not send an original or copy of your Form 941 or Form 944 to the SSA. See the Instructions for Forms W-2 and W-3 for more information.

Filing late returns for previous years. If possible, get a copy of Form 941 or Form 944 (and separate instructions) with a revision date showing the year for which your delinquent return is being filed. See *Quick and Easy Access to IRS Tax Help and Tax Products* on page 40 for various ways to secure any necessary forms and instructions. Contact the IRS at 1-800-829-4933 if you have any questions.

Table 3. Social Security and Medicare Tax Rates (for 3 prior years)

Calendar Year	Wage Base Limit (each employee)	Tax Rate on Taxable Wages and Tips
2008–Social Security	\$102,000	12.4%
2008–Medicare	All Wages	2.9%
2007–Social Security	\$97,500	12.4%
2007–Medicare	All Wages	2.9%
2006–Social Security	\$94,200	12.4%
2006–Medicare	All Wages	2.9%

Reconciling Forms W-2, W-3, and 941 or 944. When there are discrepancies between Forms 941 or Form 944 filed with the IRS and Forms W-2 and W-3 filed with the SSA, the IRS must contact you to resolve the discrepancies.

To help reduce discrepancies:

1. Report bonuses as wages and as social security and Medicare wages on Forms W-2 and on Form 941 or Form 944,
2. Report both social security and Medicare wages and taxes separately on Forms W-2, W-3, 941, and 944,
3. Report employee share of social security taxes on Form W-2 in the box for social security tax withheld (box 4), not as social security wages,
4. Report employee share of Medicare taxes on Form W-2 in the box for Medicare tax withheld (box 6), not as Medicare wages,
5. Make sure the social security wage amount for each employee does not exceed the annual social security wage base limit (for example, \$102,000 for 2008),
6. Do not report noncash wages that are not subject to social security or Medicare taxes as social security or Medicare wages,
7. If you used an EIN on any Form 941 or Form 944 for the year that is different from the EIN reported on Form W-3, enter the other EIN on Form W-3 in the box for “Other EIN used this year,”
8. Be sure that the amounts on Form W-3 are the total of amounts from Forms W-2, and
9. Reconcile Form W-3 with your four quarterly Forms 941 or annual Form 944 by comparing amounts reported for:
 - a. Income tax withholding;
 - b. Social security wages, social security tips, and Medicare wages and tips. Form W-3 should include Form 941 or Form 944 adjustments only for the current year (that is, if the Form 941 or Form 944 adjustments include amounts for a prior year, do not report those prior year adjustments on the current-year Forms W-2 and W-3);
 - c. Social security and Medicare taxes. The amounts shown on the four quarterly Forms 941 or the annual Form 944, including current-year adjustments, should be approximately twice the amounts shown on Form W-3. This is because

Form 941 and Form 944 include both the employer and employee shares of social security and Medicare taxes; and

d. Advance earned income credit (EIC).

Do not report on Form 941 or Form 944 backup withholding or income tax withholding on nonpayroll payments such as pensions, annuities, and gambling winnings. Nonpayroll withholding must be reported on Form 945, Annual Return of Withheld Federal Income Tax. See the Instructions for Form 945 for details. Income tax withholding required to be reported on Forms 1099 or W-2G must be reported on Form 945. Only taxes and withholding properly reported on Form W-2 should be reported on Form 941 or Form 944.

Amounts reported on Forms W-2, W-3, and Forms 941 or Form 944 may not match for valid reasons. If they do not match, you should determine that the reasons are valid. Keep your reconciliation so that you will have a record of why amounts did not match in case there are inquiries from the IRS or the SSA. See the Instructions for Schedule D (Form 941) if you need to explain any discrepancies that were caused by an acquisition, statutory merger, or consolidation.

13. Reporting Corrections to Form 941 and Form 944



There is a new process for correcting errors on a previously filed Form 941 or Form 944, beginning with errors discovered in 2009. Corrections to a previously filed Form 941 or Form 944 will be made on new Form 941-X or new Form 944-X. For more information, see the Instructions for Form 941-X (or the Instructions for Form 944-X). Current period adjustments will continue to be reported on Form 941 or Form 944. See the Instructions for Form 941 (or the Instructions for Form 944). There are also new Forms 943-X, 945-X, and CT-1-X to report corrections on the corresponding returns. All of the X forms will be used by employers or payers to make corrections or claim refunds or abatements of employment taxes.

Current Period Adjustments

In certain cases, amounts reported as social security and Medicare taxes in column 2 of lines 5a, 5b, and 5c of Form 941 (column 2 of lines 4a, 4b, and 4c for Form 944) must be adjusted to arrive at your correct tax liability (for example, excluding amounts withheld by a third-party payor or amounts you were not required to withhold). Current period adjustments are reported on lines 7a, 7b, and 7c of Form 941 (line 6a of the 2008 Form 944, line 6 of the 2009 Form 944) and include the following:

Adjustment of tax on tips. If, by the 10th of the month after the month you received an employee's report on tips, you do not have enough employee funds available to withhold the employee's share of social security and Medicare taxes, you no longer have to collect it. However, report the entire amount of these tips on lines 5b (social security tips) and 5c (Medicare wages and tips) (lines 4b and 4c of Form 944). Include as a negative adjustment on line 7c (line 6a of the 2008 Form 944, line 6 of the 2009 Form 944) the total uncollected employee share of the social security and Medicare taxes.

Adjustment of tax on group-term life insurance premiums paid for former employees. The employee share of social security and Medicare taxes on group-term life insurance over \$50,000 for a former employee is paid by the

former employee with his or her tax return and is not collected by the employer. However, include all social security and Medicare taxes for such coverage on lines 5a and 5c (social security and Medicare taxes) (lines 4a and 4c of Form 944), and back out the amount of the employee share of these taxes as a negative adjustment on line 7c (line 6a of the 2008 Form 944, line 6 of the 2009 Form 944). See Publication 15-B for more information on group-term life insurance.

Adjustment of tax on third-party sick pay. Report both the employer and employee shares of social security and Medicare taxes for sick pay on lines 5a and 5c of Form 941 (lines 4a and 4c of Form 944). Show as a negative adjustment on line 7b (line 6a of the 2008 Form 944, line 6 of the 2009 Form 944) the social security and Medicare taxes withheld on sick pay by a third-party payor. See section 6 of Publication 15-A for more information.

Fractions-of-cents adjustment. If there is a small difference between total taxes after adjustment for advance EIC (line 10) (line 9 of Form 944) and total deposits (line 11) (line 10 of Form 944), it may have been caused, all or in part, by rounding to the nearest cent each time you computed payroll. This rounding occurs when you figure the amount of social security and Medicare tax to be withheld and deposited from each employee's wages. The IRS refers to rounding differences relating to employee withholding of social security and Medicare taxes as "fractions-of-cents" adjustments. If you pay your taxes with Form 941 (or Form 944) instead of making deposits because your total taxes for the quarter (year for Form 944) are less than \$2,500, you also may report a fractions-of-cents adjustment.

To determine if you have a fractions-of-cents adjustment, multiply the total wages and tips for the quarter subject to:

- Social security tax (reported on lines 5a, column 1, and 5b, column 1) (or lines 4a and 4b of column 1 on Form 944) by 6.2% (.062) and
- Medicare tax (reported on line 5c, column 1) (line 4c of column 1 on Form 944) by 1.45% (.0145).

Compare these amounts (the employee share of social security and Medicare taxes) with the total social security and Medicare taxes actually withheld from employees for the quarter (from your payroll records). The difference, positive or negative, is your fractions-of-cents adjustment to be reported on line 7a (line 6a of the 2008 Form 944, line 6 of the 2009 Form 944). If the actual amount withheld is less, report a negative adjustment using a minus sign (if possible) in the entry space. If the actual amount is more, report a positive adjustment.



For the above adjustments, prepare and retain a brief supporting statement explaining the nature and amount of each. Do not attach the statement to Form 941 or Form 944.

Example. Cedar, Inc. was entitled to the following current period adjustments.

- **Third-party sick pay.** Cedar, Inc. included taxes of \$2,000 for sick pay on lines 5a, column 2 and 5c, column 2 for social security and Medicare taxes. However, the third-party payor of the sick pay withheld and paid the employee share (\$1,000) of these taxes. Cedar, Inc. is entitled to a \$1,000 sick pay adjustment (negative) on line 7b.
- **Fractions of cents.** Cedar, Inc. determined that the amounts withheld and deposited for social security and Medicare taxes during the quarter were a net \$1.44 more than the employee share of the amount

Current Period Adjustment Example (Form 941)

7 TAX ADJUSTMENTS (Read the instructions for line 7 before completing lines 7a through 7c.):

7a Current quarter's fractions of cents		1.44	
7b Current quarter's sick pay		-1000.00	
7c Current quarter's adjustments for tips and group-term life insurance		-200.00	
7d TOTAL ADJUSTMENTS (Combine all amounts: lines 7a through 7c.)	7d		-1198.56

figured on lines 5a, column 2, 5b, column 2, and 5c, column 2 (social security and Medicare taxes). This difference was caused by adding or dropping fractions of cents when figuring social security and Medicare taxes for each wage payment. Cedar, Inc. must report a positive \$1.44 fractions-of-cents adjustment on line 7a.

- **Life insurance premiums.** Cedar, Inc. paid group-term life insurance premiums for policies in excess of \$50,000 for former employees. The former employees must pay the employee share of the social security and Medicare taxes (\$200) on the policies. However, Cedar, Inc. must include the employee share of these taxes with the social security and Medicare taxes reported on lines 5a, column 2 and 5c, column 2 of Form 941. Therefore, Cedar, Inc. is entitled to a negative \$200 adjustment on line 7c.

Cedar, Inc. reported these adjustments on line 7 of Form 941 as shown in the *Current Period Adjustment Example* above.

No change to record of federal tax liability. Do not make any changes to your record of federal tax liability reported on line 15 of 2008 Form 941 (line 17 of 2009 Form 941) or Schedule B (Form 941) (line 13 of 2008 Form 941 (line 15 of 2009 Form 941) or Form 945-A for Form 944 filers) for current period adjustments. The amounts reported on the record reflect the actual amounts you withheld from employees' wages for social security and Medicare taxes. Because the current period adjustments make the amounts reported on lines 5a, column 2, 5b, column 2, and 5c, column 2 of Form 941 (lines 4a, 4b, and 4c of column 2 for Form 944) equal the actual amounts you withheld (the amounts reported on the record), no additional changes to the record of federal tax liability are necessary for these adjustments.

Prior Period Adjustments

New forms. The Internal Revenue Service has developed Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund, and Form 944-X, Adjusted Employer's ANNUAL Federal Tax Return or Claim for Refund, to replace Form 941c, Supporting Statement to Correct Information. There are also new Forms 943-X,

945-X, and CT-1-X to report corrections on the corresponding returns.

Form 941-X and Form 944-X also replace Form 843, Claim for Refund or Request for Abatement, for employers to request a refund or abatement of overreported employment taxes. Continue to use Form 843 when requesting a refund or abatement of assessed interest or penalties.

Background. Treasury Decision 9405 changed the process for making interest-free adjustments to employment taxes reported on Form 941 and Form 944 and for filing a claim for refund of employment taxes. Treasury Decision 9405, 2008-32 I.R.B. 293, is available at www.irs.gov/irb/2008-32_irb/ar13.html. You will use the revised adjustment process if you underreported employment taxes and are making a payment, or if you overreported employment taxes and will be applying the credit to the Form 941 or Form 944 period during which you file Form 941-X or Form 944-X. You will use the revised claim process if you overreported employment taxes and are requesting a refund or abatement of the overreported amount. We use the terms "correct" and "corrections" to include interest-free adjustments under sections 6205 and 6413, and claims for refund and abatement under sections 6402, 6414, and 6404 of the Internal Revenue Code.

New process for correcting employment taxes. After December 31, 2008, when you discover an error on a previously filed Form 941 or Form 944, you **must**:

- correct that error using Form 941-X or Form 944-X,
- file a separate Form 941-X or Form 944-X for each Form 941 or Form 944 you are correcting, and
- file Form 941-X or Form 944-X separately. **Do not** file with Form 941 or Form 944.

Beginning with the first quarter of 2009, Form 941 will no longer provide adjustment lines (formerly lines 7d through 7g) for correcting prior quarter errors. Beginning with calendar year 2009, Form 944 will no longer provide adjustment lines (formerly lines 6b through 6e) for correcting prior year errors. However, continue to report current quarter adjustments for fractions of cents, third-party sick pay, tips, and group-term life insurance on Form 941 using lines 7a through 7c, and on Form 944 using line 6.

Report the correction of underreported and overreported amounts for the same tax period on a single Form 941-X or Form 944-X unless you are requesting a refund. If

you are requesting a refund and are correcting both underreported and overreported amounts, file one Form 941-X or Form 944-X correcting the underreported amounts only and a second Form 941-X or Form 944-X correcting the overreported amounts.

See the chart on the back of Form 941-X or Form 944-X for help in choosing whether to use the adjustment process or the claim process. See the Instructions for Form 941-X for details on how to make the adjustment or claim for refund or abatement.

Income tax withholding adjustments. Correct prior quarter income tax withholding errors by making the correction on Form 941-X when you discover the error.

You may make an adjustment only to correct income tax withholding errors discovered during the same calendar year in which you paid the wages. This is because the employee uses the amount shown on Form W-2 as a credit when filing his or her income tax return (Form 1040, etc.).

You cannot adjust amounts reported as income tax withheld in a prior calendar year unless it is to correct an administrative error. An administrative error occurs if the amount you entered on Form 941 or Form 944 is not the amount you actually withheld. For example, if the total income tax actually withheld was incorrectly reported on Form 941 or Form 944 due to a mathematical or transposition error, this would be an administrative error. The administrative error adjustment corrects the amount reported on Form 941 or Form 944 to agree with the amount actually withheld from employees.

Collecting underwithheld taxes from employees. If you withheld no income, social security, or Medicare taxes or less than the correct amount from an employee's wages, you can make it up from later pay to that employee. But you are the one who owes the underpayment. Reimbursement is a matter for settlement between you and the employee. Underwithheld income tax must be recovered from the employee on or before the last day of the calendar year. There are special rules for tax on tips (see [section 6](#)) and fringe benefits (see [section 5](#)).

Refunding amounts incorrectly withheld from employees. If you withheld more than the correct amount of income, social security, or Medicare taxes from wages paid, repay or reimburse the employee the excess. Any excess income tax withholding must be repaid or reimbursed to the employee before the end of the calendar year in which it was withheld. Keep in your records the employee's written receipt showing the date and amount of the repayment or record of reimbursement. If you did not repay or reimburse the employee, you must report and pay each excess amount when you file Form 941 for the quarter (or Form 944 for the year) in which you withheld too much tax.

Correcting filed Forms W-2 and W-3. When adjustments are made to correct wages and social security and Medicare taxes because of a change in the wage totals reported for a previous year, you also need to file Form W-2c, Corrected Wage and Tax Statement, and Form W-3c, Transmittal of Corrected Wage and Tax Statements, with the SSA. Up to five Forms W-2c per Form W-3c may now be filed per session over the Internet, with no limit on the number of sessions. For more information, visit the Social Security Administration's Employer W-2 Filing Instructions & Information webpage at www.socialsecurity.gov/employer.

Exceptions to interest-free corrections of employment taxes. A correction will **not** be eligible for interest-free treatment if

- the failure to report relates to an issue that was raised in an IRS examination of a prior return or

- the employer knowingly underreported its employment tax liability.

A correction will **not** be eligible for interest-free treatment after the **earlier** of the following:

- Receipt of an IRS notice and demand for payment after assessment or
- Receipt of an IRS Notice of Determination of Worker Classification (Letter 3523).

Wage Repayments

If an employee repays you for wages received in error, do not offset the repayments against current-year wages unless the repayments are for amounts received in error in the current year.

Repayment of current year wages. If you receive repayments for wages paid during a prior quarter in the current year, report adjustments on Form 941-X to recover income tax withholding and social security and Medicare taxes for the repaid wages (as discussed earlier).

Repayment of prior year wages. If you receive repayments for wages paid during a prior year, report an adjustment on Form 941-X or Form 944-X to recover the social security and Medicare taxes. You may not make an adjustment for income tax withholding because the wages were wages and income to the employee for the prior year.

You also must file Forms W-2c and W-3c with the SSA to correct social security and Medicare wages and taxes. Do not correct wages (box 1) on Form W-2c for the amount paid in error. Give a copy of Form W-2c to the employee.

Employee reporting of repayment. The wages paid in error in the prior year remain taxable to the employee for that year. This is because the employee received and had use of those funds during that year. The employee is not entitled to file an amended return (Form 1040X) to recover the income tax on these wages. Instead, the employee is entitled to a deduction (or credit in some cases) for the repaid wages on his or her income tax return for the year of repayment.

14. Federal Unemployment (FUTA) Tax

The Federal Unemployment Tax Act (FUTA), with state unemployment systems, provides for payments of unemployment compensation to workers who have lost their jobs. Most employers pay both a federal and a state unemployment tax. A list of state unemployment agencies, including addresses and phone numbers, is available in the Instructions for Form 940. Only the employer pays FUTA tax; it is not withheld from the employee's wages. For more information, see the Instructions for Form 940.



Services rendered after December 20, 2000, to a federally recognized Indian tribal government (or any subdivision, subsidiary, or business wholly owned by such an Indian tribe) are exempt from FUTA tax, subject to the tribe's compliance with state law. For more information, see Internal Revenue Code section 3309(d).

Who must pay? Use the following three tests to determine whether you must pay FUTA tax. Each test applies to a different category of employee, and each is independent of the others. If a test describes your situation, you are subject to FUTA tax on the wages that you pay to employees in that category during the current calendar year.

1. General test.

You are subject to FUTA tax in 2009 on the wages that you pay employees who are not farmworkers or household workers if in the current or preceding calendar year:

- a. You paid wages of \$1,500 or more in any calendar quarter in 2008 or 2009, or
- b. You had one or more employees for at least some part of a day in any 20 or more different weeks in 2008 or 20 or more different weeks in 2009.

2. Household employees test.

You are subject to FUTA tax if you paid total cash wages of \$1,000 or more to household employees in any calendar quarter in 2008 or 2009. A household employee is an employee who performs household work in a private home, local college club, or local fraternity or sorority chapter.

3. Farmworkers test.

You are subject to FUTA tax on the wages that you pay to farmworkers if:

- a. You paid cash wages of \$20,000 or more to farmworkers during any calendar quarter in 2008 or 2009, or
- b. You employed 10 or more farmworkers during at least some part of a day (whether or not at the same time) during any 20 or more different weeks in 2008 or 20 or more different weeks in 2009.

Computing FUTA tax. For 2008 and 2009, the FUTA tax rate is 6.2%. The tax applies to the first \$7,000 that you pay to each employee as wages during the year. The \$7,000 is the federal wage base. Your state wage base may be different. Generally, you can take a credit against your FUTA tax for amounts that you paid into state unemployment funds. This credit cannot be more than 5.4% of taxable wages. If you are entitled to the maximum 5.4% credit, the FUTA tax rate after the credit is 0.8%.

Successor employer. If you acquired a business from an employer who was liable for FUTA tax, you may be able to count the wages that employer paid to the employees who continue to work for you when you figure the \$7,000 FUTA wage base. See the Instructions for Form 940.

Depositing FUTA tax. For deposit purposes, figure FUTA tax quarterly. Determine your FUTA tax liability by multiplying the amount of taxable wages paid during the quarter by .008 (0.8%). Stop depositing FUTA tax on an employee's wages when he or she reaches \$7,000 in taxable wages for the calendar year. If any part of the wages subject to FUTA is exempt from state unemployment tax, you may have to deposit more than the tax using the 0.8% rate. For example, in certain states, wages paid to corporate officers, certain payments of sick pay by unions, and certain fringe benefits are exempt from state unemployment tax.

If your FUTA tax liability for a quarter is \$500 or less, you do not have to deposit the tax. Instead, you may carry it forward and add it to the liability figured in the next quarter to see if you must make a deposit. If your FUTA tax liability for any calendar quarter in 2009 is over \$500 (including any FUTA tax carried forward from an earlier quarter), you must deposit the tax using EFTPS or at an authorized financial institution using Form 8109. See [section 11](#) for information on these two deposit methods.

Household employees. You are not required to deposit FUTA taxes for household employees unless you report their wages on Form 941, Form 944, or Form 943. See Publication 926, Household Employer's Tax Guide, for more information.

When to deposit. Deposit the FUTA tax by the last day of the first month that follows the end of the quarter. If the due date (below) for making your deposit falls on a Saturday, Sunday, or legal holiday, you may make your deposit on the next business day.

If your liability for the fourth quarter (plus any undeposited amount from any earlier quarter) is over \$500, deposit the entire amount by the due date of Form 940 (January 31). If it is \$500 or less, you can make a deposit, pay the tax with a major credit card, or pay the tax with your Form 940 by January 31.

Table 4. When to Deposit FUTA Taxes

Quarter	Ending	Due Date
Jan.–Feb.–Mar.	Mar. 31	Apr. 30
Apr.–May–June	June 30	July 31
July–Aug.–Sept.	Sept. 30	Oct. 31
Oct.–Nov.–Dec.	Dec. 31	Jan. 31

Reporting FUTA tax. Use Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, to report FUTA tax. File Form 940 by February 2, 2009. However, if you deposited all FUTA tax when due, you may file on or before February 10, 2009. If you do not receive Form 940, you can get a form by calling 1-800-TAX-FORM (1-800-829-3676).

Household employees. If you did not report employment taxes for household employees on Form 941, Form 944, or Form 943, report FUTA tax for these employees on Schedule H (Form 1040), Household Employment Taxes. See Publication 926 for more information. You must have an EIN to file Schedule H (Form 1040).

Electronic filing by reporting agents. Reporting agents filing Forms 940 for groups of taxpayers can file them electronically. See the *Reporting Agent* discussion in section 7 of Publication 15-A.

15. Special Rules for Various Types of Services and Payments

Section references are to the Internal Revenue Code unless otherwise noted.

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes		
	Income Tax Withholding	Social Security and Medicare	Federal Unemployment
Aliens, nonresident.	See pages 16 and 18 and Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, and Publication 519, U.S. Tax Guide for Aliens.		
Aliens, resident 1. Service performed in the U.S. 2. Service performed outside U.S.	Same as U.S. citizen. Withhold	Same as U.S. citizen. (Exempt if any part of service as crew member of foreign vessel or aircraft is performed outside U.S.) Taxable if (1) working for an American employer or (2) an American employer by agreement covers U.S. citizens and residents employed by its foreign affiliates.	Same as U.S. citizen. Exempt unless on or in connection with an American vessel or aircraft and either performed under contract made in U.S., or alien is employed on such vessel or aircraft when it touches U.S. port.
Cafeteria plan benefits under section 125.	If employee chooses cash, subject to all employment taxes. If employee chooses another benefit, the treatment is the same as if the benefit was provided outside the plan. See Publication 15-B for more information.		
Deceased worker: 1. Wages paid to beneficiary or estate in same calendar year as worker's death. See the Instructions for Forms W-2 and W-3 for details. 2. Wages paid to beneficiary or estate after calendar year of worker's death.	Exempt Exempt	Taxable Exempt	Taxable Exempt
Dependent care assistance programs.	Exempt to the extent that it is reasonable to believe that amounts are excludable from gross income under section 129.		
Disabled worker's wages paid after year in which worker became entitled to disability insurance benefits under the Social Security Act.	Withhold	Exempt, if worker did not perform any service for employer during period for which payment is made.	Taxable
Employee business expense reimbursement: 1. Accountable plan. a. Amounts not exceeding specified government rate for per diem or standard mileage. b. Amounts in excess of specified government rate for per diem or standard mileage. 2. Nonaccountable plan. See page 11 for details.	Exempt Withhold Withhold	Exempt Taxable Taxable	Exempt Taxable Taxable
Family employees: 1. Child employed by parent (or partnership in which each partner is a parent of the child). 2. Parent employed by child. 3. Spouse employed by spouse. See section 3 for more information.	Withhold Withhold Withhold	Exempt until age 18; age 21 for domestic service. Taxable if in course of the son's or daughter's business. For domestic services, see section 3 . Taxable if in course of spouse's business.	Exempt until age 21 Exempt Exempt
Fishing and related activities.	See Publication 334, Tax Guide for Small Business.		
Foreign governments and international organizations.	Exempt	Exempt	Exempt

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes		
	Income Tax Withholding	Social Security and Medicare	Federal Unemployment
Homeworkers (industrial, cottage industry): 1. Common law employees. 2. Statutory employees. See section 2 for details.	Withhold Exempt	Taxable Taxable if paid \$100 or more in cash in a year.	Taxable Exempt
Hospital employees: 1. Interns 2. Patients	Withhold Withhold	Taxable Taxable (Exempt for state or local government hospitals.)	Exempt Exempt
Household employees: 1. Domestic service in private homes. Farmers, see Publication 51 (Circular A). 2. Domestic service in college clubs, fraternities, and sororities.	Exempt (withhold if both employer and employee agree). Exempt (withhold if both employer and employee agree).	Taxable if paid \$1,700 or more in cash in 2009. Exempt if performed by an individual under age 18 during any portion of the calendar year and is not the principal occupation of the employee. Exempt if paid to regular student; also exempt if employee is paid less than \$100 in a year by an income-tax-exempt employer.	Taxable if employer paid total cash wages of \$1,000 or more in any quarter in the current or preceding calendar year. Taxable if employer paid total cash wages of \$1,000 or more in any quarter in the current or preceding calendar year.
Insurance for employees: 1. Accident and health insurance premiums under a plan or system for employees and their dependents generally or for a class or classes of employees and their dependents. 2. Group-term life insurance costs. See Publication 15-B for details	Exempt (except 2% shareholder-employees of S corporations). Exempt	Exempt Exempt, except for the cost of group-term life insurance that is includible in the employee's gross income. Special rules apply for former employees.	Exempt Exempt
Insurance agents or solicitors: 1. Full-time life insurance salesperson. 2. Other salesperson of life, casualty, etc., insurance.	Withhold only if employee under common law. See section 2 . Withhold only if employee under common law.	Taxable Taxable only if employee under common law.	Taxable if (1) employee under common law and (2) not paid solely by commissions. Taxable if (1) employee under common law and (2) not paid solely by commissions.
Interest on loans with below-market interest rates (foregone interest and deemed original issue discount).	See Publication 15-A.		
Leave-sharing plans: Amounts paid to an employee under a leave-sharing plan.	Withhold	Taxable	Taxable
Newspaper carriers and vendors: Newspaper carriers under age 18; newspaper and magazine vendors buying at fixed prices and retaining receipts from sales to customers. See Publication 15-A for information on statutory nonemployee status.	Exempt (withhold if both employer and employee voluntarily agree).	Exempt	Exempt

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes		
	Income Tax Withholding	Social Security and Medicare	Federal Unemployment
Noncash payments: 1. For household work, agricultural labor, and service not in the course of the employer's trade or business. 2. To certain retail commission salespersons ordinarily paid solely on a cash commission basis.	Exempt (withhold if both employer and employee voluntarily agree). Optional with employer, except to the extent employee's supplemental wages during the year exceed \$1,000,000.	Exempt Taxable	Exempt Taxable
Nonprofit organizations.	See Publication 15-A.		
Officers or shareholders of an S Corporation. Distributions and other payments by an S corporation to a corporate officer or shareholder must be treated as wages to the extent the amounts are reasonable compensation for services to the corporation by an employee. See the Instructions for Form 1120S.	Withhold	Taxable	Taxable
Partners: Payments to general or limited partners of a partnership. See Publication 541, Partnerships, for partner reporting rules.	Exempt	Exempt	Exempt
Railroads: Payments subject to the Railroad Retirement Act.	Withhold	Exempt	Exempt
Religious exemptions.	See Publication 15-A and Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers.		
Retirement and pension plans: 1. Employer contributions to a qualified plan. 2. Elective employee contributions and deferrals to a plan containing a qualified cash or deferred compensation arrangement (for example, 401(k)). 3. Employer contributions to individual retirement accounts under simplified employee pension plan (SEP). 4. Employer contributions to section 403(b) annuities. 5. Employee salary reduction contributions to a SIMPLE retirement account. 6. Distributions from qualified retirement and pension plans and section 403(b) annuities. See Publication 15-A for information on pensions, annuities, and employer contributions to nonqualified deferred compensation arrangements.	Exempt Generally exempt, but see section 402(g) for limitation. Generally exempt, but see section 402(g) for salary reduction SEP limitation. Generally exempt, but see section 402(g) for limitation. Exempt Withhold, but recipient may elect exemption on Form W-4P in certain cases; mandatory 20% withholding applies to an eligible rollover distribution that is not a direct rollover. See Publication 15-A.	Exempt Taxable Exempt, except for amounts contributed under a salary reduction SEP agreement. Taxable if paid through a salary reduction agreement (written or otherwise). Taxable Exempt	Exempt Taxable Taxable Exempt
Salespersons: 1. Common law employees. 2. Statutory employees. 3. Statutory nonemployees (qualified real estate agents, direct sellers, and certain companion sitters). See Publication 15-A for details.	Withhold Exempt Exempt	Taxable Taxable Exempt	Taxable Taxable, except for full-time life insurance sales agents. Exempt
Scholarships and fellowship grants: (includible in income under section 117(c)).	Withhold	Taxability depends on the nature of the employment and the status of the organization. See <i>Students</i> on next page.	
Severance or dismissal pay.	Withhold	Taxable	Taxable

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes		
	Income Tax Withholding	Social Security and Medicare	Federal Unemployment
Service not in the course of the employer's trade or business , other than on a farm operated for profit or for household employment in private homes.	Withhold only if employee earns \$50 or more in cash in a quarter and works on 24 or more different days in that quarter or in the preceding quarter.	Taxable if employee receives \$100 or more in cash in a calendar year.	Taxable only if employee earns \$50 or more in cash in a quarter and works on 24 or more different days in that quarter or in the preceding quarter.
Sick pay. See Publication 15-A for more information.	Withhold	Exempt after end of 6 calendar months after the calendar month employee last worked for employer.	
Students, scholars, trainees, teachers, etc.:			
1. Student enrolled and regularly attending classes, performing services for:			
a. Private school, college, or university	Withhold	Exempt	Exempt
b. Auxiliary nonprofit organization operated for and controlled by school, college, or university.	Withhold	Exempt unless services are covered by a section 218 (Social Security Act) agreement.	Exempt
c. Public school, college, or university.	Withhold	Exempt unless services are covered by a section 218 (Social Security Act) agreement.	Exempt
2. Full-time student performing service for academic credit, combining instruction with work experience as an integral part of the program.	Withhold	Taxable	Exempt unless program was established for or on behalf of an employer or group of employers.
3. Student nurse performing part-time services for nominal earnings at hospital as incidental part of training.	Withhold	Exempt	Exempt
4. Student employed by organized camps.	Withhold	Taxable	Exempt
5. Student, scholar, trainee, teacher, etc., as nonimmigrant alien under section 101(a)(15)(F), (J), (M), or (Q) of Immigration and Nationality Act (that is, aliens holding F-1, J-1, M-1, or Q-1 visas).	Withhold unless excepted by regulations.	Exempt if service is performed for purpose specified in section 101(a)(15)(F), (J), (M), or (Q) of Immigration and Nationality Act. However, these taxes may apply if the employee becomes a resident alien. See the special residency tests for exempt individuals in chapter 1 of Publication 519.	
Supplemental unemployment compensation plan benefits.	Withhold	Exempt under certain conditions. See Publication 15-A.	
Tips:			
1. If \$20 or more in a month.	Withhold	Taxable	Taxable for all tips reported in writing to employer.
2. If less than \$20 in a month. See section 6 for more information.	Exempt	Exempt	Exempt
Worker's compensation.	Exempt	Exempt	Exempt



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