

November 30, 2019

Dear Client:

Once again, the end of the year is upon us, and it is time to focus on year-end tax reporting requirements and changes that will affect your business next year.

*Please review the following key items for your years ending 2019 and 2020. We encourage you to share this letter with anyone that handles payroll or accounting tasks within your business. We have included additional detailed information for your reference below. If have any questions or concerns after reviewing the key items, please contact our office.*

**Independent Contractors & 1099 reporting:**

It is your responsibility, as a business, to provide Form 1099-MISC to eligible vendors by 1/31/20 and in most cases to IRS by 1/31/20 (or be subject to penalties). Those vendors include anyone you paid \$600 or more for services. For complete details, see reference 1.01.

In December, take time to review your vendors and make sure you have W-9s on file for any vendors that might qualify for a Form 1099-Misc. If you need additional information about the Form W-9, see reference 2.01.

The best practice is to request a W-9 on all new vendors before you send them the first payment, especially when you are paying them for services. If you are unsure if someone is a contractor or an employee, see reference 3.01.

Both forms and instructions are available on IRS website: [www.irs.gov](http://www.irs.gov).

**If we are preparing Form(s) 1099-Misc for you, we must receive your vendor information (summary or QuickBooks data file) by Wednesday, January 15, 2020 in order to ensure the deadline is met.**

**Employees, payroll taxes and benefits:**

Be sure to update your payroll system (install any payroll updates) before you run your first payroll of 2020. This includes changing your TWC (or State Unemployment rate). If you use a payroll service, be sure to communicate to them your 2020 SUTA rate and any changes in your IRS deposit requirements.

IRS announced the 2020 Social Security wage limit will increase to \$137,700 (up from \$132,900 in 2019). See reference 10.01 for additional information.

IRS requires you to obtain an updated W-4 for all employees by February 15<sup>th</sup> each year. Please check the IRS website for the 2020 Form W-4. The final version is expected by the end of November 2019. The final version of the corresponding new Publication 15-T (Federal Income Tax Withholding Methods) is expected to be issued in December 2019. The IRS website is: <https://www.irs.gov/forms-instructions>. Please see reference 13.01 re: W-4 and I-9 requirements.

**Federal law requires you to report all new employees (new hire reporting) to the State within 20 days of their date of hire.** Faxing the completed Form W-4 to the State of Texas will satisfy that requirement (fax 1-800-732-5015). See reference 12.01 for additional information.

If you provide your employees with a company vehicle, **a calculation needs to be done before year-end** to determine the taxable amount of that fringe benefit. That benefit needs to be reported in box 14 of the employees W-2. Please review reference 6.01.

If you operate an S-Corporation or a Partnership & the owners' health insurance premiums are paid by the entity – **that is considered taxable income and there are special reporting requirements that need to be considered before year-end.** – See reference 9.01 for details on how to report.

**Other payroll related items to consider include:**

If you pay moving expenses for employees, these benefits will need to be calculated in December and added to the employees W-2. See reference 7.01 for additional information.

If you provide health insurance for your employees, federal law requires you to report the cost for medical insurance on the employees W-2 in box 12. Please refer to 4.01 for additional information.

If your entity is self-insured for medical coverage, federal law requires you to file Form 1095 to report the details. Reference 17.01 reports additional information.

If your business offers sick pay benefits or has a small business HRA and you are not using a third-party administrator, please contact us to discuss your reporting requirements. Additional information is located in reference 8.01.

Employee expense reimbursements are not taxable when paid under an accountable plan. Please see attached reference 5.01 for additional information.

If you are paying an individual for household services (cleaning, child care, etc.) you may be responsible for payroll taxes for that individual. See reference 15.01 for more information.

Please let us know if we can provide any additional information or answer any questions on the above items.

Sincerely,

JUDD, THOMAS, SMITH & COMPANY, P.C.

Enclosures

**Reference:**

- 1.01 Information returns, Form 1099-Misc, for 2019
- 2.01 W-9
- 3.01 The independent contractor/employee dilemma
- 4.01 Employer reporting of health care insurance on W-2s
- 5.01 Reimbursement of employee business expenses
- 6.01 Reporting of employee use of company automobiles
- 7.01 Reporting employer-paid moving expenses on Form W-2
- 8.01 Employer reporting of sick pay payments made by third parties
- 9.01 S Corporations or Partnerships paying health insurance for owners
- 10.01 Payroll tax rate and deposit changes for 2020
- 11.01 Electronic federal tax payment system requirements
- 12.01 New Hire Reporting
- 13.01 W-4 and I-9 Requirements
- 14.01 Wage Compensation for S Corporation Officers
- 15.01 Household Employment
- 16.01 Patient Protection and Affordable Care Act Tax Provision
- 17.01 Health Care Reporting Information

## INFORMATION RETURNS, FORM 1099-MISC

If you paid \$600 or more to any non-corporate entities (regarding attorneys see below) such as any individual, partnership, attorney, or any health care provider during 2019 in the course of your trade or business for personal services, then you must file Form 1099-Misc. Certain other payments, exclusive of personal services, also require a Form 1099-Misc.

The following is a list of payments that require Form 1099-Misc. The list is not an all-inclusive list.

Rents, royalties, commissions, prizes and awards, payments to unincorporated contractors, professional fees (**including all attorneys, incorporated and unincorporated**) CPA's, director's fees, non-employee compensation, and bartering. Non-employee compensation includes payments for parts and materials if the entity selling the items does not sell them in his ordinary course of business but uses them in the course of performing services. Fees and allowances paid to non-employees for whom the employer receives no formal accounting are also considered non-employee compensation.

Direct Sales – Box 9. Payer made Direct Sales of \$5,000 or more – Enter an “X” in the checkbox for sales by you of \$5,000 or more of consumer products to a person on a buy-sell, deposit-commission, or other commission basis for resale (by the buyer or any other person) anywhere other than in a permanent retail establishment. Do not enter a dollar amount in this box.

If you are reporting an amount in box 7, you may also check box 9 on the same Form 1099-MISC.

The report you must give to the recipient for these direct sales need not be made on the official form. It may be in the form of a letter showing this information along with commissions, prizes, awards, etc.

**If we are preparing the 1099-Misc for you, we need your vendor information (summary or QuickBooks data file) in our office no later than Wednesday, January 15, 2020.**

In order to ensure all of your data is accurate through 12/31, we recommend you have your bank reconciliation completed before sending your information to us. We will process the information and return the forms to you in time for you to furnish them to the recipients by January 31, 2020.

IRS requires, when you are reporting nonemployee compensation payments in Box 7, copy A of the Form 1099 and Form 1096 should be filed by January 31, 2020 (regardless of paper or electronic filing). Unless you indicate otherwise, we will electronically file all IRS government copies to ensure timely filing. If no amounts are in Box 7, the deadline is March 2, 2020 for paper filing & March 31, 2020 for electronic filing.

**Again, please note: We must receive your vendor data by Wednesday, January 15, 2020 in order to ensure the deadline is met.**

**Form W-9**

If you need a copy of the IRS Form W-9, please visit their website at: <https://www.irs.gov/pub/irs-pdf/fw9.pdf>

This is the form you should be using to request the taxpayer identification number (TIN) for someone when you anticipate you will be required to provide them with a 1099. When preparing 1099 forms, you should follow the steps below to avoid getting those ominous letters from the IRS saying that the recipient's name and TIN do not match and backup withholding is required:

- A) If the TIN used is a social security number, be sure the first line on the 1099 is the name of the individual, not the business. For example, John M. Doe, not Doe Construction Co. You may list their dba on the second line for identification purposes.
  
- B) If the TIN is an EIN the first line on the 1099 recipient section should be the name that matches this EIN. This could be the individual's name or the name of the business, depending on what name was used to apply for the EIN. If you have had the vendor complete the W-9, presumably he would complete it based on this.
  
- C) Disregarded entities – this has created a lot of “matching” issues for the IRS. Sometimes disregarded entities income is reported by an individual or another business entity. The IRS has added an additional line on the W-9 because of this issue. However, the taxpayer completing the W-9 may be confused about what name to list on the first line, especially when it is a disregarded one owner LLC. The LLC could have an EIN and if the taxpayer lists the EIN on his Sch C and lists the EIN on the W-9, then the IRS should be able to match the 1099 data.

## THE INDEPENDENT CONTRACTOR/EMPLOYEE DILEMMA

### *ARE YOU AT RISK?*

Whether you own a business or work for one, you should know about the high cost involved in independent contractor issues. The IRS has lost revenues in unreported income taxes and payroll taxes due to workers calling themselves independent contractors when they are really employees. In an effort to raise revenues, the IRS has increased its focus on the worker classification to the point where it now looks at the issue in every business audit. By reclassifying these workers as employees, the IRS can collect these lost taxes from employers. Businesses must understand the controversy and take appropriate measures to avoid IRS challenges to worker classification. Workers must also understand the issues to ensure tax compliance and protect their personal financial goals.

Whether a worker is classified as an employee or an independent contractor hinges on the common law definition of employment. The IRS has provided some guidance by listing 20 factors used in determining independent contractor status. This checklist can be used to assess the applicable factors in your situation.

In some industries & professions, the Internal Revenue Code may classify some workers as statutory employees or statutory non-employees. For these workers their status is defined by statute and the 20-factor test does not apply. As a result, statutory employees will have FICA tax withheld from their pay and will not otherwise be subject to the self-employment tax.

	<i>Employee</i>	<i>Independent Contractor</i>
(1) <b>Instructions</b> -A worker who is required to comply with another person's instructions about when, where, and how he or she is to work ordinarily is an employee.	_____	_____
(2) <b>Training</b> -Requiring a worker to attend meetings, work with a more experienced worker, or otherwise perform in a particular manner or method indicates employee status.	_____	_____
(3) <b>Integration</b> -The degree to which a business depends on the worker's services tends to indicate employee status.	_____	_____
(4) <b>Services rendered personally</b> -If services must be rendered personally, employee status is indicated.	_____	_____

	<i>Employee</i>	<i>Independent Contractor</i>
(5) <b>Hiring, supervising, and paying assistants</b> -If services can be delegated or subcontracted at the worker's election, with that worker paying for such help, then independent contractor status is indicated.	_____	_____
(6) <b>Continuing relationship</b> -A continuing relationship, even one which is recurring at irregular intervals, indicates employee status.	_____	_____
(7) <b>Set hours of work</b> -The establishment of set hours of work by the person for whom the work is performed shows control (i.e. employee status).	_____	_____
(8) <b>Full time required</b> -If a worker is required to devote substantially full time to the business and there is an implicit or explicit restriction on doing other gainful work, employee status is indicated.	_____	_____
(9) <b>Doing work on employer's premises</b> -If work is performed on the premises of the person for whom the services are performed, this suggests control over the worker, especially if such work could be performed elsewhere.	_____	_____
(10) <b>Order or sequence set</b> -If the worker must perform services in the order set by the person for whom the services are performed, this indicates employee status.	_____	_____
(11) <b>Oral or written reports</b> -A requirement that the worker submit regular reports to the person for whom services are performed indicates employee status.	_____	_____
(12) <b>Payment method</b> -An employee usually is paid by the hour, week, or month, while the independent contractor is paid by the job.	_____	_____
(13) <b>Payment of business expenses</b> -The payment of the worker's business and traveling expenses indicates employee status.	_____	_____
(14) <b>Furnishing of tools and materials</b> -The furnishing of significant tools, materials, or	_____	_____

	<i>Employee</i>	<i>Independent Contractor</i>
other equipment by the user indicates employee status.	_____	_____
(15) <b>Significant investment</b> -The lack of investment in facilities indicates dependence on the person for whom services are performed (i.e. employee status).	_____	_____
(16) <b>Realization of profit or loss</b> -A worker who can realize profit or suffer a loss as a result of his or her services is generally an independent contractor; a worker who cannot do so is an employee.	_____	_____
(17) <b>Working for more than one firm at a time</b> -If a worker performs more than de minimis services for a number of persons at the same time, this indicates independent contractor status.	_____	_____
(18) <b>Making service available to general public</b> -An independent contractor generally makes his or her services available to the general public.	_____	_____
(19) <b>Right to discharge</b> -The right to discharge a worker indicates employee status; an independent contractor's termination depends upon contractual terms.	_____	_____
(20) <b>Right to terminate</b> -If a worker has the right to end his or her relationship at any time, this indicates employee status; an independent contractor is contractually bound to complete an assignment.	_____	_____

**EMPLOYER REPORTING OF HEALTH CARE INSURANCE ON W-2s**

Federal law requires employers to report the value of the health insurance cost for employees on their annual W-2. However, IRS Notices have delayed this requirement for some employers. If you filed fewer than 250 W-2 forms for 2018, then you meet the criteria for this small employer relief and are not required to report this information in the 2019 W-2s. See section 16.01 in this letter for additional discussion on this topic.

This amount should be reported in box 12 of the W-2 using code DD. The amount reported is the aggregate cost of applicable employer-sponsored coverage. This includes both the portion of the cost paid by the employer and the portion of the cost paid by the employee. The reportable amount will also include any portion of the cost of coverage under an employer-sponsored group health plan that is includible in the employee's gross income, for example, the cost of coverage for a person other than an employee, the spouse of the employee, a dependent of the employee, or a child of the employee.

This reporting is for informational purposes only, to show employees the value of their health care benefits so they can be more informed consumers. The amount reported does not affect tax liability, as the value of the employer contribution to health coverage continues to be excludible from an employee's income and it is not taxable.

## **REIMBURSEMENT OF EMPLOYEE BUSINESS EXPENSES**

### **TAX TREATMENT OF REIMBURSED EMPLOYEE BUSINESS EXPENSES**

The Family Support Act of 1988 changed the way both employers and employees report business expense reimbursements for income tax purposes. In general, there are two types of reimbursement plans--accountable and non-accountable, as defined by the Internal Revenue Code regulations. The tax treatment is different under each plan and is outlined below.

#### **ACCOUNTABLE PLANS**

Accountable plans require that an employee provide the employer with substantiation for his reimbursed business expenses, including allowances and advances. The records should include the amount, time, place, and business purpose for each expense. Any amounts advanced to an employee that are not subsequently substantiated must be repaid to the employer. If an employer pays per diem or mileage allowances as set by the Internal Revenue Service, the amount of expense is deemed to be substantiated to the extent of the established allowance.

If reimbursements are made under an accountable plan, the amount of the reimbursement is not included in the employee's gross wages and is not reflected on Form W-2.

Should the IRS determine that a plan is non-accountable, there are multiple ramifications resulting in significant additional tax to the employer and the employee. The employee will be required to include the reimbursements and allowances as wage income subject to all payroll taxes. The employer will be required to reclassify the payments as wages, resulting in amended payroll tax returns, additional taxes and quite likely, penalties and interest.

An accountable plan, must comply with these requirements:

1. Business Connection
2. Substantiation
3. Return of All Unused Funds Provided in Advance
4. Timeliness

**NON ACCOUNTABLE PLANS**

Non accountable plans do not require the employee to substantiate his reimbursed business expenses to his employer. In addition, if an employee is allowed to retain payments in excess of the amounts he does substantiate, the excess is considered to be paid under a non-accountable plan. If the employer pays per diem or mileage allowances in excess of the rate established by the Internal Revenue Service, the excess is considered to be paid under a non-accountable plan and must be included in the income of the employee.

Amounts paid under this type of plan are included in the employee's gross income as wages. The income is subject to all of the payroll tax requirements that apply to wages. Taxable reimbursements may be added to regular wages in order to determine withholding taxes, or a flat 22% federal withholding tax rate (plus FICA & Medicare) can be applied to the non-accountable plan payment.

The information contained herein is only a brief summary of the expense reimbursement rules. If you have questions concerning this or any other tax areas, please let us know and we will be glad to provide you with information and assistance.

**AUTO MILEAGE RATE:** In 2019, the standard mileage rate for business use is 58 cents per mile. The rate for 2020 has not yet been released.

## **REPORTING OF EMPLOYEE USE OF COMPANY AUTOMOBILES**

### **TAXABILITY OF FRINGE BENEFITS-EMPLOYEE USE OF COMPANY AUTOMOBILES**

Generally, an employer must report as taxable income to the employee the fair market value of the employee's personal use of a company car. Personal use includes both personal use at night and weekends as well as commuting between home and office. Certain exclusions can apply depending on the reason the employee takes the auto home at night. Listed below are the steps needed to calculate the taxable income of the employee fringe benefit.

1. Determine the percentage of personal/commuting miles to the total miles the auto was driven during the year, or the portion of the year, that the employee used the auto.
2. Determine the fair market value of the automobile. Usually this is the purchase price without regard to any trade-in. This is calculated in the first year and used for the next four years. The fair market value of the vehicle is determined again on January 1 of the fifth year, and at the end of each four-year period thereafter.
3. Using the fair market value determined in (2) above, the annual lease value of the auto is determined by the IRS table (see table attached). This value is multiplied by the personal use percentage calculated in step 1. If the automobile was not used by that specific employee for the full year, the above result is multiplied by a ratio of the total days the employee has use of the auto over the total number of days in the year (365).
4. If the company also furnished the gasoline for the auto, then the personal use miles determined in step 1 must be multiplied by 5.5 cents per mile. This must be added to the taxable fringe benefit amount determined in step 3.

A workpaper has been attached for use in the calculations required in steps 1, 3 and 4.

An alternative method of calculating the fringe benefit taxable income exists where the employee using the auto is neither an officer nor a shareholder of the company. If you have an employee in this category who, because of company reasons, must take an auto home at night and the company has a written and ENFORCED policy against personal use, then the employee is considered to have taxable income to the extent of \$3 per round-trip commute.

The fringe benefit taxable income must be reported on the employee's W-2 for that year. Unless the employer has elected not to withhold Federal income taxes on this additional income, he is required to withhold Federal income tax and social security tax in the same manner as any other employee compensation. An election not to withhold Federal income tax is valid only if the employees have received notification of this election at the time, they become subject to these rules. If employees have not been properly notified, the employer must withhold the Federal income tax. Social security taxes must be withheld in all cases. Since this is noncash income, the employer must deduct from the employee's net cash on a payroll check the taxes that have been reported as withheld. If we are preparing your W-2s, please provide us with the automobile information at the same time you provide us with your fourth quarter payroll data.

We have enclosed a sample letter that can be used by an employer to obtain automobile information from employees driving company cars. The letter contains information necessary to determine fringe benefit income for W-2 purposes, as well as written documentation of the employee's use of the automobile. We suggest that you use this letter, or some other written form containing the same basic information, to support the calculation of fringe benefit income to each employee due to personal use of a company car.

Please note that the methods of calculating the fringe benefit income explained above do not cover all possible conditions and situations. Therefore, to minimize the tax burden to your employees, it might be necessary to examine your particular situation in further detail.

If we can be of further assistance in providing you with additional guidance in this mandatory reporting requirement, please let us know.

**INCOME FROM PERSONAL USE OF EMPLOYER PROVIDED VEHICLE  
ANNUAL LEASE VALUE METHOD  
FOR CALENDAR 2019  
(Annual Determination)**

Employee \_\_\_\_\_

Prepared By \_\_\_\_\_

Assigned Vehicle \_\_\_\_\_

Date \_\_\_\_\_

Dates Vehicle Was Used: From: \_\_\_\_\_

To \_\_\_\_\_

Fair Market Value As Of:

	<u>Example</u>	<u>Actual</u>
I. Fair market value/annual lease value method.		
Employee's personal miles driven	(A) <u>9,796</u>	_____
Total miles driven	(B) <u>15,800</u>	_____
(A) / (B) =	* <u>62%</u>	_____
Automobile fair market	(D) <u>12,800</u>	_____
Annual lease value (see table attached)	(E) <u>3,600</u>	_____
(E) x * =	(F) <u>2,232</u>	_____
Number of days vehicle was used by employee	(G) <u>304</u>	_____
(G) / 365 =	(H) <u>83%</u>	_____
(H) x (F) =	(I) <u>1,853</u>	_____
If employer pays for gas and oil Multiply (A) x 5.5 =	(J) <u>539</u>	_____
II. Fringe benefit income (I) + (J) =	<u>2392</u>	_____
Income tax to be withheld-II x 22% (Flat rate method)	<u>526</u>	_____
FICA		
(a) if FICA wages are less than \$132,900 - II x 6.2%	<u>148.30</u>	_____
Medicare		
(b) II x 1.45% (no wage limit)	<u>34.69</u>	=====
Additional Medicare Tax		
(c) If Medicare wages are over \$200,000 then - II x .9%	<u>21.53</u>	=====

**ANNUAL LEASE VALUE TABLE**

<i>(1)</i> <u>Automobile Fair Market Value</u>	<i>(2)</i> <u>Annual Lease Value</u>
\$ 000 - 999	600
1,000 - 1,999	850
2,000 - 2,999	1100
3,000 - 3,999	1350
4,000 - 4,999	1600
5,000 - 5,999	1850
6,000 - 6,999	2100
7,000 - 7,999	2350
8,000 - 8,999	2600
9,000 - 9,000	2850
10,000 - 10,999	3100
11,000 - 11,999	3350
12,000 - 12,999	3600
13,000 - 13,999	3850
14,000 - 14,999	4100
15,000 - 15,999	4350
16,000 - 16,999	4600
17,000 - 17,999	4850
18,000 - 18,999	5100
19,000 - 19,999	5350
20,000 - 20,999	5600
21,000 - 21,999	5850
22,000 - 22,999	6100
23,000 - 23,999	6350
24,000 - 24,999	6600
25,000 - 25,999	6850
26,000 - 27,999	7250
28,000 - 29,999	7750
30,000 - 31,999	8250
32,000 - 33,999	8750
34,000 - 35,999	9250
36,000 - 37,999	9750
38,000 - 39,999	10250
40,000 - 41,999	10750
42,000 - 43,999	11250
44,000 - 45,999	11750
46,000 - 47,999	12250
48,000 - 49,999	12750
50,000 - 51,999	13250
52,000 - 53,999	13750
54,000 - 55,999	14250
56,000 - 57,999	14750
58,000 - 59,999	15250

***For vehicles having a fair market value in excess of \$59,999, the Annual Lease Value is equal to: (.25 x automobile fair market value) + \$500.***

**STATEMENT FROM EMPLOYEE TO EMPLOYER REGARDING  
USE OF EMPLOYER - PROVIDED VEHICLE  
FOR CALENDAR YEAR 2019**

*Dear Employee:*

The IRS requires employers to provide certain information on their tax return with respect to the vehicle provided to you. The information contained in this form will be used to calculate an amount to be included in your 2019 W-2 income. We will select the method that is most beneficial to you. The IRS generally requires that written records be maintained to document the use of business vehicles. Since our policy requires you to maintain the detailed records, please provide answers to the following questions. If you were provided more than one vehicle, you need to prepare one of these statements for each vehicle provided.

If you have any questions regarding the requirement that you maintain sufficient evidence to support your answers to the following questions, contact your supervisor immediately.

1. Description of vehicle - model, make, etc.
2. Reporting period from \_\_\_\_\_ to \_\_\_\_\_.
3. Please provide the number of miles for each category below:

Total business miles \_\_\_\_\_  
Total commuting miles \_\_\_\_\_  
Total other personal (non-commuting miles) \_\_\_\_\_  
TOTAL MILES \_\_\_\_\_

4. Did the employer pay the cost of fuel consumed by this vehicle?                      YES                      NO

Please sign and date in the space provided below and return to your supervisor.

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**(EMPLOYEE'S SIGNATURE AND DATE)**

## **REPORTING EMPLOYER-PAID MOVING EXPENSES ON FORM W-2**

Employers who reimburse, or pay directly, moving expenses for an employees are required to include those payments on the employee's W-2. These payments are subject to Federal withholding, Social Security, and Medicare taxes and are reported as gross wages on the W-2. An exclusion is available in the case of a member of the U.S. Armed Forces on active duty who moves because of a permanent change of station.

If an employer reimburses or pays an employee for these types of expenses, the payments are considered additional compensation. These payments are subject to Federal withholding, Social Security, and Medicare taxes and are reported as gross wages on the W-2, along with any other wages paid to the employee.

## EMPLOYER REPORTING OF SICK PAY PAYMENTS MADE BY THIRD PARTIES

### ***THIRD PARTY PAYER IS AN AGENT OF THE EMPLOYER***

If a third party makes sick pay payments as an *agent* of the employer, the employer retains all responsibilities for collecting and reporting the taxes applicable to the sick pay payments. Whether or not the agency relationship exists depends on the terms of the agreement between the employer and the third party. In general terms, however, the third party is an agent of the employer if the third party bears no insurance risk and is reimbursed for its services on a cost-plus-fee basis for payment of sick pay. In this type of situation, unless there is an agreement to the contrary, the employer will report all sick pay payments and the related taxes on its own payroll reports, including the W-2s filed at the end of the year. The third-party payer has no employment tax responsibilities.

### ***THIRD PARTY PAYER IS NOT AN AGENT OF THE EMPLOYER***

#### ***Situation 1-Third party payer transfers reporting liability to employer***

[Liability is considered transferred to the employer if the third-party payer properly withholds and deposits the employee's share of social security and Medicare taxes and provides the employer with the details of these payments within the time the taxes must be deposited by the third-party payer.]

#### ***Form 941 and Form 940***

- Include the sick pay paid in wages and other compensation (ln 2).
- Include the sick pay paid in social security and Medicare wages, up to the statutory limits (lns 5a, 5c).
- Report the employment taxes withheld by the sick pay payer as a reduction in taxes to be paid on the Form 941 (ln 8, sick pay adj).
- The employer is responsible for the FUTA tax due on the sick pay.

**Form W-2 and Form W-3**

- All payments of sick pay and the related taxes withheld must be reported by the employer to the employee on Form W-2 in the respective boxes.
- If the employee contributed any after-tax dollars to the sick pay plan, report his share of sick pay payments that were excluded from income in box 12 with a code of "J".
- On Form W-3, report the income tax withheld on the sick pay (if any) by the third-party payer in box 14.

**Situation 2-Third party payer does not transfer reporting liability to employer**

**Form 941 and Form 940**

- Report only those payments made directly by the employer to the employee. Do not report any sick pay payments made by the third-party payer on Form 941 or Form 940.

**Form W-2 and Form W-3**

- Report only the wages and taxes that the employer paid or withheld.

## **S CORPORATIONS OR PARTNERSHIPS PAYING HEALTH INSURANCE FOR OWNERS (AND THEIR DEPENDENTS)**

S corporations and Partnerships must include health insurance payments for their more than 2% shareholders and partners in the earned income of those individuals. The specific details are as follows:

### **S CORPORATIONS**

Health insurance premiums paid by the corporation for shareholders owning over 2% of the stock must be included in the wages of each shareholder. The wages are subject to federal income tax withholding but are not subject to social security, Medicare or FUTA tax. They should be reflected in gross income on Form W-2. The payments for the entire year can be accumulated into the fourth quarter for purposes of filing form 941, the quarterly tax statement. The premiums are deductible by the corporation as long as they are considered "ordinary and necessary" business expenses. The medical care coverage must have been established by the corporation, but can be in the name of the 2% shareholder if the corporation reimbursed the shareholder. The shareholder may be entitled to deduct a portion of the cost on his personal tax return, subject to certain other requirements in the tax laws.

### **PARTNERSHIPS**

A partnership paying health insurance premiums for its partners must include the premium expense in guaranteed payments of each partner. The partnership is not required to file a 1099 or a W-2 reflecting the payments. As guaranteed payments, the premiums are deductible by the partnership and must be included in the gross income of the partners. The partner may be entitled to deduct a portion of the cost on his personal tax return, subject to certain other requirements in the tax laws.

## **PAYROLL TAX RATE AND DEPOSIT CHANGES FOR 2020**

Listed below are some of the relevant payroll changes effective January 1, 2020.

- \* The employee's and employer's FICA (social security) rate remains at 7.65%, making the total effective FICA (social security) rate 15.30%.
  - a) The OASDI portion of FICA is 6.2% and applies to wages paid up to \$137,700.
  - b) There is no upper limit on the Medicare portion of FICA. The rate remains at 1.45% and applies to all wages.
  - c) For 2020, a taxpayer that has earned income in excess of certain thresholds is liable for the .9% Medicare surcharge. The employer must withhold the surcharge whenever the employee reaches \$200,000 regardless of the taxpayer's status or whether they will be subject to the surcharge. The employer is not required to match the .9% Medicare surcharge.
  
- \* The Federal unemployment tax rate for employers remained at 0.6% on the first \$7,000 of wages paid to each employee, if you have deposited all the state unemployment in a timely basis. No deposit is required until the total liability reaches \$500. Due date of the Form 940 is January 31, 2020, however, employers who deposited all of their FUTA tax have additional time to file the return.

- \* Wages for calculating the Texas unemployment tax are \$9,000. The rate to calculate is based on your employer history.

**The Texas Workforce Commission has ruled that beginning January 1, 2014; all employers must submit their quarterly wage reports electronically via the Texas Workforce Commission web site. Any money that is due must also be paid electronically.**

**For more information, the website for Texas Workforce Commission is:**  
[www.twc.state.tx.us/ui/tax/emtaxinfo.html](http://www.twc.state.tx.us/ui/tax/emtaxinfo.html).

The current minimum wage in Texas is \$7.25 per hour. Should you need additional information, visit <http://www.dol.gov/whd/minwage/america.htm> for the minimum wage applicable to other states.

Also, any **supplementary wages** in excess of \$1M (such as stock options) now require **withholding at 37%**.

**The Social Security Administration (SSA) compares social security and Medicare wages and tips processed for each employer with the totals for Internal Revenue Service (IRS) employment tax records filed by the employer with IRS on quarterly Form 941 returns. It is very important that these records match.** Compare the amounts reported to SSA on Form W-3 with the sum of the amounts reported to IRS on the total of the quarterly Forms 941 for the tax year. It is also important to match the wages paid with the quarterly reports filed with Texas Workforce Commission. This would generally include reconciling the amounts back to your general ledger noting differences such as the auto fringe benefit & the cost of life or health insurance.

## **Deposit Requirements**

The Internal Revenue Service should have notified you in November as to what depositor type you are. This determination is based on a one-year lookback period that ended on June 30. The depositor types are as follows:

**Monthly** - If your total payroll liability per Form 941 during the lookback period was \$50,000 or less, you will be a monthly depositor. You must deposit payroll taxes by the 15th of the month following the month the wages were paid.

**Semi-Weekly** - If your total payroll liability per Form 941 during the lookback period was over \$50,000, you will be a semi-weekly depositor. Your payroll tax deposit will be due based on the day the wages are paid as follows:

Wages paid on Wednesday, Thursday or Friday - the deposit must be made on or before the following Wednesday.

Wages paid on Saturday, Sunday, Monday or Tuesday - the deposit must be made on or before the following Friday.

Regardless of the depositor type,

- 1) if an employer accumulates \$100,000 or more in employment taxes on any one day, the deposit is due within one banking day.
- 2) If the total amount of accumulated employment taxes for the quarter is less than \$2,500, the amount may be paid with the quarterly return.

These are the deposit requirements in general. There are rules that apply in certain situations which are not referenced herein. Please consult the information received from the Internal Revenue Service or contact us if you have any questions regarding the deposit requirements. In the case of an LLC that is treated as a disregarded entity for federal tax purposes, the employment taxes must be paid and reported in the name & EIN of the LLC.

## **ELECTRONIC FEDERAL TAX PAYMENT SYSTEM (EFTPS)**

On December 7, 2010, the IRS issued Final Regulations that now require the use of the Electronic Federal Tax Payment System (EFTPS) for all tax withholding payments, effective January 1, 2011.

Only taxpayers with an expected annual withholding of less than \$2,500 are allowed to pay taxes by check.

The following are the two kinds of enrollment available:

***ACH DEBIT*** - Under ACH Debit, a company initiates each tax payment by contacting the EFTPS Financial Agent of the US Treasury, and instructing the Agent to withdraw funds from their account. This method requires that the client provide the IRS with their bank account information.

***ACH CREDIT*** - Under ACH Credit, a Company initiates a tax payment directly through their bank by instructing them to send a payment directly to the Treasury's account at the Federal Reserve Bank. Also, some clients may be using banks that are not set up for initiating an ACH credit, and they may need to open a bank account elsewhere.

If your company has been notified by the IRS that you will be required to comply with these EFTPS rules, you should complete Form 9779, as soon as possible, if you have not already done so. Please call our office if you have any questions.

## **NEW HIRE REPORTING**

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 included code provisions which expanded the Federal Parent Locator Service. Under the new law, a state's wage and unemployment compensation information shall be furnished to the Secretary of Health and Human Services to develop the National Directory of New Hires. Various federal, state, and local agencies will use New Hire Reports to locate parents and enforce child support payment orders. New Hire Reports can also help states prevent fraudulent workers' compensation and unemployment claims.

Federal law requires all employers to report information about every new employee to the appropriate state agency within 20 days of their date of hire. New Hire Reports must contain the employee's name, address, and social security number. They must also include the name, address, and federal identification number of the employer. Reports must be made either on the W-4 form or an equivalent form developed by the employer.

Information on where and how to send the New Hire Reports will be provided by the state.

Texas has specified mailing to:

ENHR Operations Center  
P O Box 149224  
Austin, TX 78714-9224

You may also fax forms to the State of Texas toll-free at 1-800-732-5015.

Please visit the website for the Attorney General of Texas for complete information and forms.

<https://texasattorneygeneral.gov/>

## W-4 and I-9 REQUIREMENTS

Employers are no longer required to send IRS copies of each Form W-4 unless directed to do so by the IRS by written notice or as directed in published guidance. This notification is called a “lock-in letter”.

An employer must withhold tax in accordance with the lock-in letter as of the date specified in the letter. Once a lock-in rate is effective, an employer can’t decrease withholding unless approved by IRS.

An employer who does not follow IRS’s lock-in instructions will be liable for paying the additional amount of tax that should have been withheld.

**Many employers are currently struggling with reporting for individuals who either do not have Social Security Numbers (SSN) or who use bogus SSNs or SSNs of other persons. The IRS cautions employers not to accept Individual Taxpayer Identification Numbers (ITINs) in place of an SSN for employee identification or for work. Individual Taxpayer Identification Numbers (ITIN) are formatted like SSNs and begin with the number “9”.** An ITIN is available to resident and nonresident aliens who are not eligible for U.S. Employment and need identification for other tax purposes. Employers may receive “no match” letters from the Social Security Administration for many reasons, including situations whereby an employee has provided an ITIN rather than a valid SSN.

Also, please note that an ITIN form is **NOT** on the list of acceptable documents for Form I-9. Form I-9 is required for all employees. Form I-9 and instructions and a Form I-9 handbook is available at <https://www.uscis.gov/i-9-central/handbook-employers-m-274>.

**NOTE: You can now enroll in a program operated jointly by the Department of Homeland Security and the Social Security Administration (SSA). Participating employers can check the employment eligibility of new hires online by comparing information from an employee's Form I-9, Employment Eligibility Verification, against SSA and Department of Homeland Security databases. E-Verify is a voluntary program for employers. NOTE: Federal contractors and subcontractors are required to use E-Verify beginning September 8, 2009.**

Enrollment can be accessed on the internet at [www.uscis.gov/](http://www.uscis.gov/) or by calling 1-888-464-4218.

## **WAGE COMPENSATION FOR S CORPORATION OFFICERS**

An IRS fact sheet provides useful information for S corporations and their owners concerning the proper tax treatment when corporate officers perform services for the entity. Specifically, it explains the proper employment tax treatment of payments made to officers of S corporation.

Fact Sheet 2008-25 warns S corporations not to attempt to avoid paying employment taxes by having their officers treat their compensation as cash distributions, payments of personal expenses, and/or loans rather than as wages. It goes on to stress that the fact that an officer is also a shareholder does not change the requirement that payments to the corporate officer be treated as wages. The fact sheet emphasizes that courts have consistently held that S corporation officer/shareholders who provide more than minor services to their corporation and receive or are entitled to receive payment are employees whose compensation is subject to federal employment taxes.

Fact Sheet 2008-25 notes that the instructions to the Form 1120S, U.S. Income Tax Return for an S Corporation, state “Distributions and other payments by an S corporation to a corporate officer must be treated as wages to the extent the amounts are reasonable compensation for services rendered to the corporation.”

The amount of the compensation can't exceed the amount received by the shareholder either directly or indirectly. However, if the shareholder received cash or property or the right to receive cash and property, a salary amount must be determined and the level of salary must be reasonable and appropriate.

There are no specific guidelines for reasonable compensation in the Code or regulations. The various courts that have ruled on this issue have based their determinations on the facts and circumstances of each case.

## **HOUSEHOLD EMPLOYMENT**

Employers must withhold or pay FICA taxes on wages of their household workers if cash wages paid in calendar year 2019 total \$2,100 or more. Employers must report and pay the required employment taxes for domestic employees on Schedule H of their own Form 1040. They are also required to provide the W-2 to the employee and W-2 Copy A and Form W-3 to the Social Security Administration by January 31, 2020.

If you paid cash wages of \$2,100 or more in 2019 to any one household employee, then you will need to withhold or pay social security and Medicare taxes. The taxes are 15.3% of cash wages. You are not required to withhold federal income tax from wages, however, if asked to do so and you agree, your household employee must complete a Form W-4. You are then responsible for paying these withheld taxes to the Internal Revenue Service.

If you paid cash wages of \$1,000 or more in any calendar quarter of 2019 to household employees, you may also owe state and federal unemployment taxes as well as social security and Medicare taxes.

Household employers must use an employer identification number (EIN), rather than their social security number, when reporting these taxes, even when reporting them on the individual tax return.

Please contact our office for questions regarding employment taxes on household employment. Form I-9 is also required for household employees. See section 13.01 for additional information regarding required forms and instructions.

## PATIENT PROTECTION & AFFORDABLE CARE ACT TAX PROVISIONS

The Patient Protection & Affordable Care Act (PPACA) was enacted on March 23, 2010. It contains some tax provisions that you need to be aware of as it affects employees & payroll reporting.

**Employer Provided Health Coverage** - The PPACA requires employers to report the value of the health insurance cost for employees on their annual W-2. However, IRS Notices have delayed this requirement for some employers. If you filed fewer than 250 W-2 forms for 2018, then you meet the criteria for this small employer relief and are not required to report this information on the 2019 W-2s. See section 4.01 in this letter for additional discussion on this topic.

This reporting is for informational purposes only, to show employees the value of their health care benefits so they can be more informed consumers. The amount reported does not affect tax liability, as the value of the employer contribution to health coverage continues to be excludible from an employee's income, and it is not taxable. Please visit <https://www.irs.gov/newsroom/employer-provided-health-coverage-informational-reporting-requirements-questions-and-answers> for further details about reporting requirements.

**Small Business Health Care Tax Credit** - This credit helps small businesses and small tax-exempt organizations afford the cost of covering their employees and is specifically targeted for those with low- and moderate-income workers. The credit is designed to encourage small employers to offer health insurance coverage for the first time or maintain coverage they already have. In general, the credit is available to small employers that pay at least half the cost of single coverage for their employees and have less than 25 full-time equivalent employees. Those employees must have average wages of less than \$54,200 for the 2019 year. To be eligible for this credit, you must have purchased coverage through the small business health options program, also known as the SHOP marketplace. Please contact us to discuss whether this may be something you could benefit from on your 2019 or 2020 income tax return.

**RE: 16.01**

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**Changes to Flexible Spending Arrangements** - For plan years beginning in 2019, IRS limits the maximum amount of a Flexible Spending Account contribution to \$2,700. The limit for 2020 is \$2,750. Additional details are available at [http://www.irs.gov/irb/2012-26\\_IRB/ar09.html](http://www.irs.gov/irb/2012-26_IRB/ar09.html).

**Health Coverage for Older Children (effective March 30, 2010)** - Health coverage for an employee's children under 26 years of age is now generally tax-free to the employee. This expanded health care tax benefit applies to various work place and retiree health plans. These changes immediately allow employers with cafeteria plans - plans that allow employees to choose from a menu of tax-free benefit options and cash or taxable benefits - to permit employees to begin making pre-tax contributions to pay for this expanded benefit. This also applies to self-employed individuals who qualify for the self-employed health insurance deduction on their federal income tax return.

## INFORMATION REPORTING OF HEALTH CARE COVERAGE

Beginning in 2015, the new requirement under the Affordable Care Act will require the completion and filing of Forms 1094 & 1095. Applicable Large Employers (ALE) employing at least 50 full-time employees (including equivalent employees) will be subject to the Employer Shared Responsibility provisions under section 4980H of the Internal Revenue Code (added to the Code by the Affordable Care Act).

Under the Employer Shared Responsibility provisions, if these employers do not offer affordable health coverage that provides a minimum level of coverage to their full-time employees (and their dependents); the employer may be subject to an Employer Shared Responsibility payment.

**The following forms will be used to report the information required by the Affordable Care Act about offers of health coverage and enrollment in health coverage.**

### **Form: 1095-B**

1. This filing requirement applies to all employers who provide health coverage to their employees and their dependents, including companies who have fewer than 50 full-time employees.
2. If company *sponsors an insured plan*, the insurance company is required to file Form 1095-B.
3. If company's *medical coverage is self-insured*, the plan sponsor is required to file Form 1095-B.
  - a. If a plan sponsor of a self-insured plan is also required to file Form 1095-C (company has more than 50 employees); they will not file Form 1095-B but will instead file the comparable information on Form 1095-C.
4. Form 1094-B Transmittal of Health Coverage Information Returns – Transmittal form for the 1095-B (the 1094 is comparable to Form 1096).

**Form 1095-C**

1. This filing requirement applies to Applicable Large Employers (ALE) employing at least 50 full-time employees (including equivalent employees).
2. Applicable large employers (ALE) must file Form 1095-C completing parts I & II to report information about offers of health coverage and enrollment in health coverage for their employees and their dependents.
  - a. ALE offering health coverage through self-insured plans must also complete Part III.
  - b. ALE offering health coverage through a sponsored insured health plan would not complete Part III. This information is provided by the issuer of the insurance directly to employee on a 1095-B.
3. Only large employers subject to the 4980H penalties (no coverage penalty and inadequate or unaffordable coverage penalty) are required to file Form 1095-C (i.e. Employers with 50 or more FTE's)
4. Form 1094-C Transmittal of Employer-Provided Health Insurance Offered and Coverage Information Return – Transmittal form for the 1095-C.

**Due Date:**

All forms must be filed with the IRS on or before February 28<sup>th</sup> (March 31<sup>st</sup> if filed electronically) of the year following the end of the calendar year. You must furnish the employee statement to the responsible individual on or before January 31<sup>st</sup> of the year following the end of the calendar year.

**Extension of time to file:**

You can get an automatic 30-day extension of time to file by completing Form 8809, Application for Extension of Time to File Information Returns. The form may be submitted on paper, or through the FIRE system either as a fill-in form or an electronic file. No signature or explanation is required for the extension. You must file Form 8809 on or before the due date of the returns in order to get the 30-day extension, however, you should apply for the extension as soon as you know that additional time is

needed. Under certain hardship conditions you may apply for an additional 30-day extension. See the instructions for Form 8809 for more information.

**Mandatory E-File:**

A company is required to file electronically if the reporting entity is filing 250 or more of the same type of return during the calendar year. The 250 return threshold applies separately to each type of return required to be filed. To file electronically, the reporting entity must submit the ACA Application online for the Transmitter Control Code (TCC), See IRS Publication 5164 “Test Package for Electronic Filers of Affordable Care Act (ACA) Information Returns (AIR)”.

***Please Note:*** *Forms and instructions have been delayed for the 2019 year. There may be significant changes since the individual portion of the mandate is no longer in place for 2019.*