



Social Security Coverage and Reporting

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In this December 2007 addition of the Social Security Coverage and Reporting Newsletter we discuss:

- 2008 Tax information
- 403 (b) Tax-Sheltered Annuities for school districts
- Firefighters and Emergency Workers
- Election Workers Status as employees
- Correcting Fringe Benefit Reporting: An Example

2008 Tax Information Updated

The Internal Revenue Service and the Social Security Administration have posted the 2008 information. For example, the Federal Standard Business Mile rate will be 50.5 cents per mile up from 48.5 cents per mile for 2007. The maximum wages for Social Security in 2008 will be increased to \$102,000.

For a list of the changes please visit our tax chart on our web site or go directly to <http://finance.ky.gov/NR/rdonlyres/697AA60A-D321-49C7-BD2A-49BD927ABFD2/0/taxchart.pdf>.

403(b) Tax-Sheltered Annuities (School Districts)

Revenue Procedure 2007-71 sets forth model amendments that may be used by school districts for their written section 403(b) tax-sheltered annuities. You can see this by going to the following web site: <http://www.irs.gov/pub/irs-drop/rp-07-71.pdf>.

Election Workers Status as Employees

There has been some confusion over Election Workers in the State of Kentucky. Kentucky workers are considered employees and are subject to receive W-2's. An Election Worker should never receive a 1099. Kentucky election workers who receive less than \$600 per year for their services are generally not required to have these earnings reported to the Internal Revenue Service by their county. Revenue Ruling 2000-6 provides guidance concerning the tax reporting requirements for wages paid election workers.

Wages paid for election worker services are not subject to federal income tax withholding according to IRS regulation §31.3401(a)-(b)(2). Wages paid election workers are not subject to FICA (neither social security nor Medicare) if the remuneration paid is less than an established threshold (\$1,300 in 2007) according to section 218(c)(8) of the Social Security Act.

KRS 141.010 excludes income earned by precinct workers from gross income for state income tax purposes. Various KRS sections also prohibit the imposition of a license fee or occupational tax against election worker income. Section 6041(a) of the Internal Revenue Code, and the regulations there under, is the applicable section for information return reporting requirements for election workers.

There is no reporting requirement with respect to an election worker who is paid less than \$600 per calendar year. The wages are, however, reportable on Form W-2 if the election worker is paid \$600 or more. Annual wages of \$1,300 or more in 2007 are subject to FICA withholding and Form W-2 reporting but not federal income tax withholding. NOTE: Special rules apply if a regular county employee also serves as an election worker. Contact the Division of Local Government Services for details.

The applicable laws, withholding and reporting requirements are illustrated in the following examples:

1) An election worker is paid \$599 in 2007.

* No FICA, federal income, state income or local occupational tax withholding is required and no Form W-2 is required.

2) An election worker is paid \$1,299 in 2007.

* No FICA, federal income, state income or local occupational tax withholding is required, but a Form W-2 will be issued reflecting \$1,299 in box 1 (Wages, tips and other compensation).

3) An election worker is paid \$1,300 in 2007.

* FICA withholding is required, but no federal income, state income or local occupational tax is withheld. The election worker will be issued a Form W-2 reflecting \$1,200 in boxes 1, 3 and 5 and the appropriate FICA tax withholding in boxes 4 and 6.

Note: The 2008 Election Exclusion will increase to \$1400.

The Commonwealth of Kentucky does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the providing of services and will provide, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

Firefighters And Emergency Workers

(Adapted from the FSLG web site)

FSLG receives many inquiries asking whether any special tax rules apply to firefighters. Firefighters are generally treated in the same manner as all other workers (i.e. employees), however, the Internal Revenue Code provides an exception from social security and Medicare taxes for certain emergency workers.

The law provides that wages paid to certain employees hired by federal, state, or local governments to respond to an emergency are not subject to social security and Medicare taxes. In order for this exemption to apply the employee must be hired to perform serves on a temporary basis on account of a storm, snow, earthquake, flood, or similar emergency.

To be an emergency worker for this purpose, the employee must have been hired specifically to perform services in connection with the emergency and is not intended to become a permanent employee. The exemption applies only with respect to wages paid for services performed related to the emergency for which the employee was hired. How long the employee remains employed on an emergency basis depends upon the facts and circumstances of the case. If a temporary employee becomes permanent, the employee is subject to general rules for social security and Medicare coverage.

Long-term or permanent federal, state, or local government employees who perform services in emergency situations, such as municipal firefighters, are not eligible for this exception. Even if such employees work part-time, intermittently, or additional time because of an emergency situation, their wages are subject to the regular rules for social security and Medicare coverage. They may be subject to mandatory social security coverage, covered under a section 218 Agreement through their state Social Security Administrator, or exempt from social security because they participate in a public retirement system. For more information, see Publication 963, Federal State Reference Guide.

If firefighters receive compensation for services performed, regardless of the form it takes, how it is paid, or is cash or some other benefit, these amounts are treated as wages subject to withholding and tax unless a specific exclusion applies. For a further discussion, including treatment of reimbursement for expenses, see Publication 963 or section 5 of Circular E, Employer's Tax Guide (Publication 15).

The following questions and answers provide guidance on how the emergency exception is to be applied:

Q-1. Are wages paid by a local government to temporary employees hired to clean up hurricane debris exempt from social security and Medicare taxes under the emergency exemption?

A-1. Yes. The wages are exempt from social security and Medicare taxes under the emergency exemption because the employees were hired on a temporary basis to perform services in response to an emergency.

Q-2. A local government requires its police officers to work overtime to enforce a curfew imposed following a hurricane. Are the overtime wages paid by the local government exempt from social security and Medicare taxes under the emergency exemption?

A-2. No. The police officers were not newly hired on a temporary basis to perform services in response to an emergency. Their overtime wages are subject to the regular rules for social security and Medicare coverage.

Contact FSLG with any questions you have regarding federal tax rules that apply to government employees.

Correcting Fringe Benefit Reporting: An Example

By Nicholas C. Merrill, Jr., Accounting Division Manager, State Employees' Retirement System Of Illinois,
And Stewart Rouleau, Fslg Senior Analyst

Errors in reporting fringe benefits are among the most common discovered in an IRS examination, and confusion about proper reporting of employee personal vehicle use is a very common situation. In this article, we attempt to illustrate a common situation where a vehicle benefit is reported incorrectly. We explain the error, how it should be corrected with the IRS, and the procedures for correcting for other reporting purposes.

Employee Use of Employer Vehicle

In general, employee use of an employer vehicle for personal use is a taxable fringe benefit. This applies to an employer-provided vehicle that does not qualify as a nonpersonal use vehicle and is used by the employee for personal use, including commuting.

It is the employer's responsibility to determine the actual value of this fringe benefit and to include the taxable portion in the employee's income. In order to determine the correct amount, Regulations 1.61-21(d) provides specific guidance, including three methods for determining the value of the benefit:

- Lease-valuation rule
- Cents-per-mile rule
- Commuting valuation rule

Each of these rules has specific requirements and may be optional, mandatory, or unavailable in certain situations.

In this example, City A maintains several vehicles for use by employees in their official duties. In some cases, employees are allowed to use the vehicle for personal use. All of the following apply to the vehicle:

- The vehicle was a standard passenger vehicle, and not a qualified nonpersonal use vehicle.
- The personal use was not for commuting and did not meet the de minimis test, discussed in Publication 15-B.
- In 2005, it was driven 2,000 miles per year for all use.
- The vehicle was first placed in service in 2005, with a fair-market value of \$16,500.

Original Reporting

In 2006, Employee X drove the vehicle for 400 miles for personal use, or 20% of the total use of 2,000 miles. To figure the taxable amount, the employer used the cents-per-mile rule. Multiplying the 400 miles of personal use by the standard mileage rate of .445, a total of \$178 was computed for the value. This amount was included in the employee's wages on Form W-2 for 2006, and on Form 941, line 2. The income tax withheld was shown on line 3, and the total social security and Medicare tax of \$27.23 ($\$178 \times .153$ combined employer and employee tax rate) was included in the amount shown on line 5, and deposited properly.

Correct Reporting

To value the personal use of a vehicle under the cents-per-mile rule, certain requirements must be met. Because the vehicle was not driven 10,000 miles by all employees in 2005, it does not qualify for the cents-per-mile rule. In addition, the vehicle had a value in 2006 of more than \$15,000, so it would not be eligible for the cents-per-mile rule regardless of the miles driven. The value of the personal use of the vehicle must be determined using the lease valuation rule, discussed in Publication 15-B.

*Continued on page 5, See **Fringe Benefit***

Fringe Benefit....continued from page 4

The lease valuation table in Regulation 1.61-21(d) and in Publication 15-B indicates that it has an annual lease value of \$4,600. The correct calculation of the taxable fringe benefit is as follows:

\$4,600 is multiplied by the percentage of personal use (20%) for a total of \$920. In addition, the employer provided all the fuel that was used in the vehicle. The Regulations state that 5.5 cents per mile should be added to this amount and included in the taxable employee benefit. 400 miles x 5.5 cents = \$22.50. The total of \$920 + \$22.50, or \$942.50, should have been included on the employee's Form W-2 as wages, subject to income tax, social security and As a result of the examination, the employee's wages were corrected to include this \$942.50. The difference between this amount and the amount originally reported (\$178) is \$764.50. City A paid additional social security and Medicare tax of \$116.96 on this amount, as follows:

7.65% (employer share) x \$764.50 = \$58.48, plus

7.65% (employee share) x \$764.50 = \$58.48

City A filed Form W-2c for Employee X (and for any others for whom there are adjustments) showing an increase in wages of \$764.50 for 2006 in boxes 1, 3, and 5 and additional tax in boxes 4 and 6. Form W-3c was used as a transmittal form for all Forms W-2c filed by City A. See Circular E for a complete explanation of reporting adjustments for a prior year.

Other Corrections

City A also participates in a Public Employees' Retirement System (PERS). According to the PERS plan document, employee and employer retirement contributions must be made on all forms of remuneration received by the employee, including vehicle usage income. The increase in employee taxable wages resulting from the additional value of personal vehicle use is subject to employee and employer retirement contributions. City A must notify the PERS of the original reporting error and provide the corrected payroll information, along with the required employee and employer retirement contributions. The additional income from the vehicle use will also be used in the calculation of the employee's average final compensation for retirement benefit purposes, in accordance with the PERS plan document.

If you have questions about correcting the Federal tax reporting, contact an FSLG Specialist in your area. Contact state officials concerning state tax reporting or your public retirement system.

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