

2019 Annual Year-End Payroll and Tax Information

Are you involved in an S Corporation? See page 2 for special reporting requirements.

Form W-2: Your Employees' Year-End Wage and Tax Statements

Each year, the IRS publishes the “General Instructions for Forms W-2 and W-3”. This booklet includes specific, line-by-line instructions for the preparation of these forms. To access the entire 2019 publication, go to: <https://www.irs.gov/pub/irs-pdf/iw2w3.pdf>. The following hints may assist you:

- It is **very important** that your employee’s wages are reported under the correct name and taxpayer identification number. The name on the W-2 should match the employee’s name as it appears on their social security card to ensure that wages are credited to them.
- **Box 3, Social Security Wages** includes wages and fringe benefits subject to social security withholding, but not more than the maximum wage base for 2019 of \$132,900.
- **Box 10, Dependent Care Benefits** should include the total amount of dependent care benefits, under Section 129, paid or incurred by you for an employee. Include the fair market value of employer-provided or employer-sponsored day care facilities and amounts paid or incurred under a Section 125 plan. Any amount exceeding \$5,000 must be included in boxes 1, 3, 5.
- **Box 12 reporting:** A number of items are required to be reported in box 12. Each item must be referenced with a code letter as provided in the instructions. Please refer to the instructions for all of the codes that apply. Some of the more common items to be reported in box 12 are:
 - **Code C** – The taxable cost of group-term life insurance provided to your employee for coverage over \$50,000. This is often referred to as “excess group-term life insurance coverage.” There are tables based on age to determine the dollar amount that must be included in the employee’s wages for this benefit. Please contact us if you need this information.
 - **Code D** – The elective deferral to a section 401(k) plan or a deferral under a SIMPLE retirement account that is part of a section 401(k) arrangement.
 - **Code F** – The elective deferral to a section 408(k)(6) salary reduction SEP.
 - **Code P** – Excludable moving expense reimbursements paid directly to members of the armed forces.
 - **Code S** – Employee salary reduction contributions to a section 408(p) SIMPLE retirement account.
 - **Code DD** – The cost of employer-sponsored health care coverage, this amount is not taxable. Employers that provide “applicable employer-sponsored coverage” under a group health plan are required to report the values of employer-sponsored health coverage in box 12 using this code.
 - **Code FF** – The total amount of permitted benefits under a qualified small employer health reimbursement arrangement (QSEHRA). QSEHRAs allow eligible employers to pay or reimburse medical care expenses of eligible employees after the employees provide proof of coverage. The maximum reimbursement for an eligible employee under QSEHRA for 2019 is \$5,150, and \$10,450 for family members.
- **Box 13 – The “Retirement Plan”** box should be checked if the employee was an active participant (for any part of the year) in a qualified pension, profit-sharing, SIMPLE, SEP or stock bonus plan. An employee may be an active participant even if they did not contribute to a company sponsored plan depending on your plan requirements.
- **Box 13 – The “Statutory Employee”** box should be checked for an employee whose earnings are subject to social security and Medicare taxes but not subject to federal income tax withholding. Contact us for more information regarding statutory employees.
- **Box 14, Other** is designated for certain items included in wages, which can include personal use of a business automobile, shareholder health insurance, state disability insurance taxes withheld and educational assistance payments.



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Special Reporting for Employer-paid Insurance Benefits

S-CORPORATIONS:

The following insurance items need to be included in an S corporation shareholder's W-2:

- Health insurance paid directly by an S corporation, or reimbursed to the shareholder, by December 31st for a 2% or more shareholder who is also an employee. It is not subject to social security, Medicare or unemployment taxes.
- A 2% shareholder-employee in an S corporation may pay the premiums directly and be reimbursed by the S corporation or the premiums may be paid by the S corporation. In either case, the premiums must be reported to the 2% shareholder-employee as wages on Form W-2 and the 2% shareholder-employee must report this amount as gross income on his or her Form 1040.

If you are a 2% or more shareholder that pays for health insurance outside of the company, please have the company reimburse you for the expense BEFORE DECEMBER 31st so the business can take the deduction.

- If the company funds a Health Savings Account for a shareholder, the amount funded is included in the employee's W-2 and is treated the same as health insurance. All amounts should be reported separately in Box 14 of the W-2.
- All group-term life insurance paid for a 2% or more shareholder must be included in gross compensation and is subject to all taxes except federal withholdings and unemployment tax.
- Any life insurance payments made by the company where the beneficiary is not the company. This is subject to all applicable taxes.
- Any disability insurance payments made by the company. This is subject to all applicable taxes.
- Any long-term care insurance paid by the company. This is treated the same as health insurance.
- If the company provides a Section 125 Cafeteria Plan for its employees, a 2% or more shareholder may **NOT** participate in the plan.

ALL EMPLOYERS:

The following insurance items need to be included for employees, including C corporation shareholders:

- Health insurance paid by an S corporation for the spouse, children, grandchildren and/or parents of a 2% or more shareholder who are also employees. This is not subject to social security, Medicare or unemployment taxes.
- Group-term life insurance with coverage in excess of \$50,000 paid by the company must be included in gross compensation and is subject to social security and Medicare tax, federal withholding is optional. The amount to be reported is based on IRS tables and should be included in Box 12, Code C.
- Any Health Savings Account amount funded by the employer for the employee's benefit up to \$3,500 for self-only coverage and \$7,000 for family coverage is included in Box 12, Code W.

If you are using a third-party payroll service provider, it is your responsibility to make sure you provide the insurance information that must be included in the W-2. More importantly, it's critical that the provider accounts for the insurance payments properly. If the insurance amounts are not included, or if they are not treated correctly, the reports will need to be amended. The typical cost of amending the payroll reports is \$100 per form.

If the S corporation health insurance is not included on the W-2, the entire expense will not be deductible on the income tax return for the business or the individual.

Health Insurance Credit for Small Businesses

In order to claim this credit, the qualified health plan must be offered through a Small Business Health Options Program (SHOP) Marketplace. Additionally, for tax years beginning after 2013, the credit is only available for 2-consecutive-tax-year credit periods.



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Affordable Care Act (ACA)/Tax Provisions*

- If an employer wishes to increase an employee's wages with the intention of the employee obtaining individual coverage, in order to be compliant with the law, the employer may not dictate that the increase in wages be used to purchase health insurance coverage or stipulate a specific carrier/policy. This increase must be built into the employee's base salary or hourly rate, it may not be shown separately on the payroll stub.
- If an employer has received Section 530 relief from the IRS regarding independent contractors, the relief does not apply when determining if the business is an applicable large employer and any potential excise taxes (see page 11).
- If an employer uses leased employees or staffing firms, it may not excuse them from providing health insurance coverage. In general, if the staffing firm offers insurance, the employer will be considered to have offered the insurance; provided that the fee the employer pays for an employee accepting insurance is greater than the fee paid for the same employee if they did not accept insurance. The easiest way to determine if your payroll provider is considered a staffing firm is to verify the EIN shown on the W-2s. If the EIN does not belong to your business, you are most likely using a staffing firm. Consult with your payroll provider to ensure you are in compliance.
- Applicable large employers must offer an eligible plan to full-time employees and their dependents or pay a **NONDEDUCTIBLE** excise tax.

Who is considered an "applicable large employer"?

A business having an average of 50 or more full-time (FT) and/or full-time equivalent (FTE) employees during the preceding calendar year. The FT and FTE figures are calculated by month and then used to determine the average for the year.

Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)

On December 13, 2016, President Obama signed the 21st Century Cures Act (Cures Act) which permits an eligible employer to provide a qualified small employer health reimbursement arrangement (QSEHRA) to eligible employees. In simple terms, this means that certain small employers are able to reimburse their employees for individual health insurance premiums and other eligible medical expenses without violating the group health insurance rules set forth in the Affordable Care Act. There are very specific requirements if you intend to take advantage of this opportunity, some of which are provided below. We also suggest reading IRS Notice 2017-67 which includes some very helpful FAQs.

The Cures Act provides that a QSEHRA must meet the following criteria:

1. The arrangement is funded solely by an eligible employer, and no salary reduction contributions may be made under the arrangement;
2. The eligible employee(s) must provide proof of coverage for the payment or reimbursement of medical expenses incurred by the employee or the employee's covered family member(s);
3. The 2019 amount set aside for an eligible employee cannot exceed \$5,150 (\$5,250 projected for 2020) for an employee with a single plan, or \$10,450 (\$10,600 projected for 2020) for an employee with a family plan; and
4. The same terms must be offered to all eligible employees.

'Eligible Employer' means an employer that does not offer a group health plan, including a health reimbursement arrangement or a health flexible spending arrangement, to any of its employees and is not considered an Applicable Large Employer. A group health plan includes a plan that provides only excepted benefits, such as, a vision or dental plan if that plan is offered by an employer to its employees.

'Eligible Employee' means any employee of an eligible employer, except for those permitted under the terms of a QSEHRA to be excluded, such as:

- Employees who have not completed 90 days of service with the employer,
- Employees under age 25 as of the beginning of the plan year, and
- Part-time (typically less than 35 hours per week) or seasonal (customary annual employments is less than 9 months) employees, in most instances.

QSEHRA plans require an eligible employer to furnish a written notice to each eligible employee at least 90 days before the beginning of each year or for an employee that is not eligible to participate at the beginning of the year, the date on which the employee is first eligible to participate. Employers that fail to provide the written notice can be assessed penalties of up to \$50 per employee.

For more information on the ACA, go to www.irs.gov/aca or www.healthcare.gov.

*This is meant as a broad overview regarding various aspects of the ACA legislation. It should not be considered all inclusive. Additionally, these were the highlights at the time of this printing.

Other Important Information

2020 Social Security and Medicare Taxes

The rates for social security and Medicare taxes will remain at 6.2% and 1.45%, respectively; additionally, the limit for social security wages has been raised to \$137,700, for a maximum tax liability of \$8,537.40 for both the employee and the employer. There is no limit on Medicare wages. The Additional Medicare Tax withholding of 0.9%, for a total Medicare withholding rate of 2.35%, on wages paid in excess of \$200,000 will remain in effect. This additional tax is imposed only on the employee; the employer is not required to match this additional amount.

Cost-of-Living Adjustment for 2020

Monthly Social Security and Supplemental Security Income (SSI) benefits will increase to 1.6% in 2020. The 1.6% adjustment will begin with Social Security beneficiaries in January 2020 and SSI beneficiaries on December 31, 2019.

Arizona Sales Tax – Important Reminders

If your sales tax liability is greater than \$1,000,000 annually, or have reason to believe it will be over \$1,000,000, you are required to make an estimated tax payment for June. The payment must be either 50% of the actual May liability or the liability for June 1st through 15th. The payment must be made electronically and is due June 20th of each year.

The Arizona Department of Revenue's (ADOR) mandatory electronic payment threshold applies to businesses with an annual transaction privilege tax and use tax liability of \$10,000 or more during the 2019 calendar year. Taxpayers are required to file and pay electronically. For 2020, the threshold has been lowered to \$5,000 of annual liability. Taxpayers who do not make the payment by EFT will be subject to a 5% penalty of the tax amount, or a minimum of \$25. To make EFT payments please visit www.AZTaxes.gov and register your business.

Every business licensed with ADOR is required to renew their Arizona TPT license, which is due January 1, 2020. ADOR will be sending out renewal letters to businesses in November to renew their 2020 Arizona Transaction Privilege Tax (TPT) License.

FUTA Rate

Employers who pay their state unemployment tax timely and in full receive a 5.4% credit against the FUTA rate

of 6.0%, resulting in a net FUTA rate of 0.6%. However, the Social Security Act requires a reduction in the FUTA tax credit when a state has outstanding federal loans for two consecutive Januarys. The reduction in the FUTA tax credit is 0.3% for the first year and an additional 0.3% for each succeeding year until the loan is repaid. States with outstanding federal loans that originated in 2017 or earlier are subject to the credit reduction in 2019. As of October 24, 2019, only the Virgin Islands is subject to a credit reduction in 2019, go to <https://workforcesecurity.doleta.gov/unemploy/budget.asp>.

FUTA Benefit Cost Rate Add-on Credit Reduction

The BCR Add-on credit reduction takes effect when a state has had outstanding federal loans for five consecutive Januarys. The computation for calculating this credit reduction is based on various unemployment statistics; and states may apply for relief.

2020 Standard Mileage Rate

The IRS has not yet announced the standard mileage rate for business auto use in 2020. Please visit the IRS website for updated information.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

Limitations to Section 125 Plans

For the 2019 tax year, a Flexible Spending Account (FSA) that is part of a Section 125 plan must have a maximum contribution limit of \$2,700 in order for it to be considered a qualified benefit. If the plan does not have this limit, then an employee who has withholding reductions in excess of \$2,700 will be subject to tax on distributions taken from the plan.

Arizona Paid Sick Time – Prop 206

Arizona's paid sick time (PST) requirements took effect on July 1, 2017. Employees are now entitled to earn PST and accrue a minimum of 1 hour of paid sick time for every 30 hours worked immediately upon hire. For more information on mandatory paid sick time you can visit the Industrial Commission of Arizona's frequently asked question page at <https://www.azica.gov/frequently-asked-questions-about-wage-and-earned-paid-sick-time-laws>. If you have any questions regarding your business's compliance with Proposition 206 please seek legal counsel.

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Arizona Minimum Wage

Effective January 1, 2020, the minimum wage will be \$12.00 for non-tipped employees and \$9.00 for tipped employees. With Proposition 206 being passed in 2016, Arizona's minimum wage will increase each year by the cost of living percentage starting on January 1, 2021.

Forms that need to be completed by new and rehired employees

- Form W-4 – federal withholding, to be completed by the employee
- State withholding, if applicable – to be completed by the employee (Form A-4 in Arizona)
- Form I-9 – used by the employer for E-Verify, to be completed by the employee
- New Hire Reporting Form – to be completed and submitted by the employer

Arizona Department of Economic Security

Effective April 1, 2019, the department will no longer mail quarterly Unemployment Tax and Wage reports (UC-018) Forms. Additionally, employers are not required to pay their quarterly unemployment tax liability if it is \$9.99 or less.

Increase in Penalties for Form W-2

Depending on your situation, you could incur penalties for the unintentional and/or willful failure to file W-2s

with the IRS and/or provide W-2s to employees. The amount of the penalty is based on when you file the correct W-2s. Penalties for unintentional and/or willful failure to file W-2s are as follows:

- \$50 per information return if you correctly file within 30 days; maximum penalty \$556,500 per year (\$194,500 for small businesses).
- \$110 per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty \$1,669,500 per year (\$556,500 for small businesses).
- \$270 per information return if you file after August 1, do not file corrections, or you do not file required information returns; maximum penalty \$3,339,000 per year (\$1,113,000 for small businesses).
- \$550 minimum per information return and no max penalty for failing to timely file a correct Form W-2 due to intentional disregard.

Mandated Sick-pay

Beginning in 2016, if you are a federal government contractor, you are now required to offer your employees seven paid days of sick leave per year, including paid leave to care for family members and family like individuals. Additionally, the Healthy Families Act, if passed, will require all employers to provide paid sick time. For additional information, visit the Wage and Hour Division Website: www.wagehour.dol.gov

Using a Third-Party Payroll Provider

The decision to outsource payroll processing to a third-party service, such as ADP or Paychex, can save businesses time and money. However, these providers do not always handle all aspects of the payroll cycle. The ultimate responsibility for the accuracy, completeness, and timeliness of reporting and paying wages and taxes remains with the employer.

Some of the more common misconceptions about providers' services include:

1. **E-Verify** - Most do not perform or offer this service. E-verify is required in Arizona for all new employees, and in some circumstances for re-hires. The employer uses information from the employee's Form I-9 to establish a case in E-Verify, and must be created within the third business day after the employee starts work for pay. Civil and criminal penalties may be assessed for unlawful employment and unlawful discrimination. Examples of illegal practices include knowingly hiring an unauthorized alien, continuing to employ an unauthorized alien, failure to comply with the employment eligibility verifications requirements, engaging in unfair immigration-related employment practice and unlawful discrimination. Employers who violate the law may be subject to civil and/or criminal penalties. Department of Homeland Security will issue a Notice of Intent to Fine (NIF) when it intends to impose penalties.
2. **New Hire Reporting** – Some do not automatically handle but offer this as an additional service, typically with an additional fee attached. New Hire Reporting is required in all 50 states. It is required that all employers report newly hired, and re-hired employees to a state directory within 20 days of their hire date, but could be shorter depending on the state.
3. **Workers Compensation Coverage** – This is offered by most providers, but is not part of the basic service package and does carry an additional fee. Most states require workers compensation coverage even for employers with just one employee.
4. **Taxable Fringe Benefits** – Employers should educate themselves about the tax effects of all benefits offered to employees to ensure benefits are properly reported to the payroll provider for inclusion in the annual reporting, including Form W-2. Many benefits are not permitted by the IRS to be provided tax free; see IRS Publication 15-B at www.irs.gov for more information.
5. **Obtaining Tax Identification Numbers and State Tax Registrations** – Though some providers will offer to handle this on behalf of new employers, it is best to request our guidance. Payroll providers will complete only the forms necessary for payroll registration, but many states have other registration requirements as well.

Employers should read their payroll service contracts carefully to verify that all expected and necessary services are covered.

E-Verify

E-Verify is a system sponsored by the U.S. Department of Homeland Security that allows employers to determine the eligibility of new employees to work in the United States. This system is accessed via the internet, and in many cases the use of E-Verify is voluntary. Employers in Arizona, however, are **required** to determine eligibility of employees under a law that went into effect January 1, 2008.

Additionally, effective September 8, 2009, employers with federal contracts or subcontracts that contain the Federal Acquisition Regulation (FAR) E-Verify clause are required to use E-Verify to determine eligibility for employment.

For more information regarding E-Verify, please visit the website at www.e-verify.gov.

Federal and State New Hire and Rehire Reporting

Federal and state laws require employers to report new hire and re-hires. This information must be reported within 3 days to the federal government and 20 days to the Arizona Department of Revenue after the employee is hired. Some states may allow employers to provide a copy of the person's legible W-4 form for reporting purposes (be sure to write the employee's hire date and the employer's name, address and EIN in an available blank space). New and rehire reporting is required in all 50 states, as well as Washington DC and various US territories. For more information, go to <https://www.acf.hhs.gov/css/resource/state-new-hire-reporting-contacts-and-program-requirements>. In Arizona, this information is submitted to the Arizona Department of Economic Security (DES).

Information for Payroll Tax Deposits/Payments

Employers are classified by the IRS as being either **monthly** or **semiweekly** depositors. Each November, the IRS mails out notifications to employers of their deposit status for the coming year. It is, however, the employer's responsibility to determine the proper payment method. Relying on the IRS letter without personally verifying it could cause problems. Generally, you must use electronic funds transfer, like EFTPS, to make all federal tax deposits.

The requirement for depositing payroll taxes, monthly vs. semiweekly, is calculated using a "look back" period. For calendar year 2020, the "look back" period is July 1, 2018 through June 30, 2019. To calculate, add up the total payroll tax liability for that period (taxes withheld and the employer portion of FICA). If this total is \$50,000 or less, the deposits should be made using the **monthly** method. The tax liability for each calendar month will be due on or before the 15th day of the following month.

If the total is more than \$50,000, the deposits must be made using the **semiweekly** method. The tax liability for each pay date will be due as follows:

- If your **pay date** is on Wednesday, Thursday or Friday, your tax deposit is due by the following Wednesday.
- If your **pay date** is on Saturday, Sunday, Monday or Tuesday, your tax deposit is due by the following Friday.

Exceptions to this rule are: (1) if your taxes are less than \$2,500 for the entire quarter, then no deposits are necessary and the taxes may be paid with Form 941 when filed; or (2) if your tax liability is \$100,000 or more for any day during a deposit period, the deposit

is due by the **next banking day**. Under this rule, if the depositor is a monthly depositor, they immediately become a semiweekly depositor for the remainder of the calendar year and for the next year.

The **Arizona Department of Revenue** measures deposit frequency using the average Arizona withholding tax for the preceding four quarters (or number of quarters in business if less than four).

When the average tax for the preceding four quarters is less than \$1,500 per quarter, Arizona withholding is due on a quarterly basis with Form A1-QRT. Remittances should be postmarked no later than the last day of the month succeeding the end of the quarter.

When the average tax for the preceding four quarters is more than \$1,500 per quarter, Arizona payments are due on the same due dates as the federal tax deposits and are remitted with Form A1-WP.

Taxpayers with \$2,500 average quarterly liability for withholding tax during the prior tax year are required to file electronically. There is also a mandatory electronic funds transfer (EFT) threshold for businesses with a withholding tax liability of \$20,000, or more, to make Arizona tax payments electronically. Taxpayers who do not make the payment by EFT will be subject to a 5% penalty. To make EFT payments please visit www.AZTaxes.gov and register your business.

If you are an employer in a state other than Arizona, check with that state for their regulations, or **HBL CPAs, P.C.** can research it for you upon request.

Q & A – Our Most Frequently Asked Questions

Every year we receive calls concerning year-end events. The following are those questions that are regularly asked and the answers to them:

Q: Our pay period ends on December 31st, but we won't be paying our employees until January 2, 2020. Do we include these wages in the 2019 W-2s?

A: No, the W-2s should include only the wages paid in 2019. The IRS considers the pay date, not the pay period in determining when wages are reportable.

Q: We would like to give our employees nominal bonuses for Christmas. Do we have to include this in our employees' wages and is it subject to taxes?

A: Yes, you do need to include this bonus in the employees' wages and withhold taxes on it. The IRS considers gifts, including gift cards, to be compensation.

Q: Someone told me that I don't have to send a W-2 form to an employee if I paid them less than \$600. Is this true?

A: No, regardless of the amount paid, you must send a W-2 to any employee where any amount of social security, Medicare and/or income taxes were withheld.

Q: Is it permissible to hand-write Forms W-2 or 1099?

A: While it is not required that you type either of these forms, the IRS does encourage you to type them and asks that they be legible, in black ink and that you do not use dollar signs, commas, ampersands or other symbols, whether they are typed or hand-written. If any item shows a change in the dollar amount and one of the amounts is zero, enter "0". Do not leave the box blank.

Q: We sent a Form W-2 to an ex-employee and it came back. What should we do?

A: If you are unable to deliver a Form W-2, you are required to retain the form for four years.

Q: Do I send my federal copies of the W-2s to the IRS?

A: No. Federal copies of the W-2s should be sent to:
Social Security Administration
Direct Operations Center
Wilkes-Barre, PA 18769-0001

If you are sending the W-2s by certified mail, change the zip code to 18769-0002.

Filing Due Dates

By 1/31/2020

- Mail/distribute W-2s, copies B, C and 2 to employees
- File Form W-3 along with copy A of the W-2s with the Social Security Administration
- Form 1099 – mail/ distribute copy B to recipients
- Form 1096 with copy A of the 1099-MISC, if reporting Box 7 (Nonemployee compensation) – due to the IRS via paper or electronic filing
- File Forms 941 or 944, 940, Arizona quarterly withholding and unemployment tax reports
- File Form 945 (Pension tax deposits and 1099 backup withholding)
- Forms 1095-A, 1095-B and 1095-C – due to individuals
- File Form A1-R, along with copy 1 of the W-2s with the Arizona Department of Revenue (for W-2s with Arizona withholdings).

By 2/28/2020

- Form 1096 with copy A of the 1099s, if not reporting Box 7 – due to the IRS via paper filing (Please note: you must file a separate 1096 for each type of Form 1099 submitted.)
- Forms 1094-B, 1095-B, 1094-C and 1095-C – need to be paper filed by this time

By 3/31/2020

- Form 1096 with copy A of the 1099s, if not reporting Box 7 – due to the IRS via electronic filing (Please note: you must file a separate 1096 for each type of Form 1099 submitted.)
- Forms 1094-B, 1095-B, 1094-C and 1095-C – need to be electronically filed by this time

Due dates may vary with other states; please check with those particular states for filing deadlines and form requirements.



Cash Payments Received

Any person in a trade or business who receives more than \$10,000 cash in a single transaction (or in related transactions) must file Form 8300 with the Internal Revenue Service within 15 days after receiving the cash, and be sure to keep a copy of the form for at least five years from the date of filing. Related transactions are any transaction between a buyer (or an agent of the buyer) and a seller that occur within a 24-hour period. You must treat these transactions as one transaction and report the payments on Form 8300. In addition, if the transactions occur more than 24 hours apart and *you know, or have reason to know*, that each one is in a series of connected transactions, this also must be reported on Form 8300. The \$10,000 “cash” is not limited to currency alone. The term cash also includes certain cashier’s checks, bank drafts, traveler’s checks and money orders that you receive in your trade or business. Cash does not include a check drawn on an individual’s personal account. Additionally, you must provide a statement to each person that was named on Form 8300 on or before January 31 of the following year in which the cash was received. There is a minimum penalty of up to \$25,000 for the willful failure to file Form 8300.

DOL's Final Overtime Rules

A final rule from the U.S. Department of Labor has established the minimum salary requirement for employees who are considered exempt from overtime. Effective January 1, 2020, the salary threshold for exempt employees will be set at \$684 per week (or \$35,568 per year), and for highly compensated employees from \$100,000 to \$107,432. Employers may use non-discretionary bonuses, incentive payments and commissions, to satisfy up to 10% of the minimum salary requirement for exempt employees. You can read more about this update on <https://www.dol.gov/whd/overtime2019/index.htm>. Please seek legal counsel if you need assistance in determining exempt or non-exempt status for your employees.



DOL has Tool for Calculating Overtime Pay

The U.S. Department of Labor provides the FLSA Overtime Calculator Advisor, which helps employers and workers understand and calculate overtime pay. This Advisor computes the amount of overtime pay based on information it gathers from the user. FLSA overtime pay is due on the regular pay day for the period in which the overtime was worked. The Overtime Calculator Advisor can be accessed on the internet at www.dol.gov/elaws/otcalculator.htm.

Reasonable Compensation

As part of its business expenses, a corporation can pay its owners/officers a reasonable amount for salaries and other compensation for personal services performed on behalf of the corporation. Just what constitutes a reasonable amount has probably resulted in more disagreements between taxpayers and representatives of the IRS than any other question affecting the deduction, and in each instance the taxpayer has the burden of overcoming the IRS's determination as to what is a reasonable amount. As a general rule of thumb, the amount of salary and benefits that a corporation would have to pay to an unrelated employee to perform the same functions that are currently being performed by the owner/officer, would be considered reasonable compensation for the owner/officer.

Employee's Use of a Company-Owned Vehicle = W-2 Wages

If an employee uses a company vehicle for personal use, **which includes commuting to and from work**, the employer must include an amount for personal use in the employee's W-2 at year-end.

If **HBL CPAs, P.C.** prepares your payroll reports, please include the automobile information needed to calculate personal use with your year-end payroll information. If you wish to compute the additional compensation resulting from the personal use of a company vehicle, please contact our office, and we will be happy to provide you with the spreadsheet to calculate.

Please note: If you are reimbursing employees for business use of a personal vehicle for either actual expenses submitted or up to the federal standard mileage rate for 2019 of 58.0 cents per mile, then **NO** reporting of that reimbursement is required.

Payroll Nexus

Nexus is the connection required to exist between a state and an out-of-state potential taxpayer whereby the state has the constitutional right to impose a tax. As an employer, if you have any employees traveling out of state for business purposes, you need to be aware of any nexus (presence) issues that may arise. When a business triggers nexus, it will likely be required to register and pay corporate, sales, excise and employment taxes within that state and may overlap with payroll tax obligations that cross state boundaries.

Sales Tax Nexus

The United States Constitution limits the states' right to tax through the Due Process Clause and Commerce Clause. However on June 21, 2018, the justices in a 5-4 ruling against Wayfair Inc. overturned a 1992 Supreme Court precedent that had barred states from requiring businesses with no "physical presence" in that state to collect sales tax. This new ruling allows states to require out-of-state businesses, who do not have a physical presence, to collect and remit tax on sales from transactions in their state based on certain economic and transactional thresholds.

On May 31, 2019, Arizona Governor Doug Ducey signed H.B. 2757 into law which requires retailers who are remote sellers, and marketplace facilitators with no physical presence in Arizona but make sales into Arizona over certain threshold amounts, to begin filing and paying transaction privilege tax (TPT) in Arizona starting with taxable periods from and after October 1, 2019.

IRS Telephone Numbers

- **(800) 829-4933** – Questions on filing Forms 940 and 941
- **(800) 555-4477** – EFTPS Hotline
- **(267) 941-1099** – Employer Identification Number Requests – Available to international applicants only
- **(866) 455-7438** – Information Return Reporting Program Customer Service
- **(800) 829-1040** – The quick solution any time you are unsure about the legitimacy of an "IRS" call, letter, or fax is to simply ask for and write down the caller's "IRS" agent (badge) number. IRS agents are required to provide this number ANY time you request it. Tell them you will call back to verify the call is legitimate, and then call the number provided above. Any agent will be happy to help you confirm the call was real, or help you report the call if it was not.

Online Service Provided by the IRS

TIN (Taxpayer Identification Number) Matching – this free service allows payers and/or authorized agents to verify TIN and name combinations prior to filing Form 1099 (version B, DIV, INT, MISC, OID and PATR). This can alleviate some of the headache and worry from receiving a notice from the IRS stating that Form 1099-MISC was filled out incorrectly. To get started, go to <http://www.irs.gov/> and search for "e-Services". Please note this service would be most beneficial to large businesses (over 250 information returns) as the application process can be cumbersome.

Online Service Provided by the Social Security Administration (SSA)

BSO (Business Services Online) Suite of Services – this free service allows employers to electronically file their W-2s with the SSA. It allows employers to view any errors related to their W-2 submissions. Additionally, a one-time 15-day extension of the deadline for resubmitting wage data can be requested. For more information, go to <http://www.socialsecurity.gov/bsa/services.htm>

On the Web...

There is a wealth of information and forms available on the internet. The following websites are very helpful:

Visit our website:
www.hblcpa.com

Social Security Administration:
www.ssa.gov

Internal Revenue Service:
www.irs.gov

City of Tucson:
www.tucsonaz.gov

Arizona Department of Revenue:
www.azdor.gov

E-Verify by U.S. Department of Homeland Security:
www.uscis.gov

Arizona Department of Economic Security:
www.azdes.gov

U.S. Department of Labor:
www.dol.gov

A search engine for government services with links to all states:
www.usa.gov

CopperPoint Mutual Insurance Company:
www.copperpoint.com

Out of State Workers Compensation
www.workerscompensationinsurance.com

Independent Contractors vs. Employees

Employers who misclassify their employees as independent contractors face serious issues and consequences. Misclassified employees generate losses to both federal and state governments in the form of lower tax revenue, state unemployment insurance and worker's compensation insurance premiums. The IRS and DOL are working together to share information and establish enforcement actions to address concerns regarding employee benefits and protections that employees are entitled to such as minimum wage, overtime compensation, family and medical leave, unemployment insurance and safe workplaces. The IRS also notifies state unemployment agencies when payroll costs lack parity with contract labor and/or outside services, etc. This potential notification will result in employers being selected for a state unemployment audit.

Classifying an individual as an independent contractor rather than an employee may seem expedient, since it would eliminate the employer payroll tax burden associated with an employee wages. However, if an individual is treated as an independent contractor and it is later discovered that they should have been treated as an employee, the employer will most likely be the party responsible for paying all of the payroll taxes.

What is the difference between an employee and an independent contractor?

The IRS uses a general rule that defines individuals as independent contractors if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. Employers need to be aware of the type of relationship that exists with the individuals they hire. Statutes and policies set forth by federal and state agencies should be considered when classifying individuals. It is imperative that employers understand the classification distinction in order to overcome potential legal action against misclassification by providing supportive evidence of control, factors of independence, and updated contractual records to ensure that individuals are genuine independent contractors. According to the IRS, the Common Law Rules that provide evidence of the degree of control and independence fall into three categories: Behavioral, Financial and Type of Relationship.

What are the Common Law Rules?

1. *Behavioral* – Refers to facts that show whether there is a right to direct or control how the worker does the work. Control factors include types of

instructions given, degree of instruction, evaluation systems and training.

2. *Financial* – Refers to facts that show whether or not the business has the right to control the economic aspects of the worker's job. Control factors include significant investments, unreimbursed expenses, opportunity for profit or loss, services available to the market, and method of payment.
3. *Type of Relationship* – Refers to facts that show how the worker and business perceive their relationship to each other. Control factors include written contracts, employee benefits, permanency of the relationship, and services provided as key activity of the business.

You can visit the IRS website at <https://www.irs.gov/small-businesses-self-employed/independent-contractor-self-employed-or-employee> to get more detailed information.

We recommend making sure the employer has a current W-9 on file for all independent contractors prior to issuing the first payment for services.

Are there any problems with treating someone as an independent contractor? Yes. If an individual is treated as an independent contractor and elects to file the two forms described below, it could potentially cost the employer more money to correct the situation than if the individual had been treated as an employee from the beginning. The potential costs include responsibility for both the employer and employee share of social security and Medicare taxes, federal withholding, unemployment taxes, penalties and interest, and audit representation fees to accountants. In addition, if the IRS determines that the independent contractor should have been treated as an employee, the IRS could take a closer look at the employer's relationship with other independent contractors.

The IRS has two forms that may be filed to make a determination of independent contractor or employee status. These can work against a business if a worker has been classified incorrectly.

Form SS-8, "Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding", can be filed by a business prior to hiring someone to determine if the worker would qualify to be classified as an independent contractor.

The form can also be filed by the individual when they feel that they should be treated as an employee rather than an independent contractor. This form allows the business and/or the individual to present the factors and reasoning behind the decision to treat an individual as an independent contractor, and the IRS will make a determination of status based on the information presented.

Form 8919, “Uncollected Social Security and Medicare Tax on Wages”, is a form the individual can file with their personal income tax return, either after filing or in conjunction with filing Form SS-8. An individual who believes they were incorrectly classified as an independent contractor and files both of these forms may be excused from paying self-employment taxes by the IRS. Further, the IRS may look to the business to pay those taxes for the individual.

The IRS has a “Voluntary Classification Settlement Program” that allows employers to voluntarily reclassify independent contractors as employees. The benefit is that this applies to future tax periods with limited federal employment tax liability for past non-employee treatment. Certain eligibility requirements apply; please contact our office for more information.

Arizona Department of Economic Security’s employment audits

In Arizona, an employer can be randomly selected for an Unemployment Insurance Tax Audit at the discretion of the Arizona Department of Economic Security as a joint federal-state program authorized by Title 23, chapter 4 of the Arizona Revised Statutes in conformity with applicable provisions of the Federal Unemployment Tax Act. They will request copies of records for a specific selected audit period that will be required for the review. Record requests will include copies of cash disbursements, detailed general ledger, chart of accounts, detailed payroll journals, Form UC-018, A1-QRT, 941, 940, W-2, 1099’s, 1096, Income Tax Returns, IRS exclusion letters, financial statements and **Independent Contractor Agreements along with any paid invoices to those contractors.**

Once the audit review is complete, the Unemployment Insurance Tax Audit department will take department action which could include Employer/Employee Determination. You can be deemed as an employer of individuals performing services subject to direction, rule or control according to A.R.S. 23-613.01, or a

temporary services employer providing workers to perform services for client or customer organizations under A.R.S. 23-614. Statute A.R.S. 23-613.01 is implemented by independence and control factors detailed in the Arizona Administrative Code R6-3-1723. A.A.C. R6-3-1723 section E, is useful in detailing additional factors of control in the determination of independent contractor vs. employee such as the independent contractor’s availability to the public, compensation on job basis, realization of profit or loss, obligation, significant investment and simultaneous contacts.

The team at HBL CPAs, P.C. has experience in responding to these audits. If you have questions or need further assistance, please contact our office.

Section 530 Relief

Section 530 relieves employers from paying employment taxes on workers who were previously considered independent contractors when the IRS has determined they are employees. This relief is available if:

1. The employer **filed Form 1099** for the worker in the applicable years.
2. The employer was **consistent** in treating similar workers as independent contractors.
3. The employer had a **reasonable basis** for not treating the worker as an employee.

To read more information regarding Section 530 relief, please visit:

https://www.irs.gov/pub/irs-utl/irpac-br_530_relief_-_appendix_natrm_paper_09032009.pdf

NOTE: This relief does not extend to the worker, who may still be liable for the employee share of FICA, not self-employment tax. Further, this relief does not apply to Affordable Care Act legislation. For example, the independent contractor would need to be included in the employee count when determining if a business is an applicable large employer and in the calculation for any potential excise tax liability.

For more information, see Publications 15-A and 1779 on the IRS website at www.irs.gov.

The above explanations are brief by necessity. If you have any questions or concerns please contact our office and we will be happy to discuss your questions.

Workers Compensation Insurance

This article is a representation of the laws and statutes of the State of Arizona. If you are an Arizona employer and would like more information on points presented in this article please go to www.copperpoint.com. If you are an employer in another state, www.workerscompensationinsurance.com provides links to workers' compensation law for all fifty states.

In virtually every state, workers compensation insurance is mandatory on businesses for at least some classification of employee. In Arizona, fines for failing to maintain insurance can reach \$10,000, and the Industrial Commission of Arizona has the right to close the business until insurance is established. Assets of the employer may be at risk if a judgment is brought against a business that did not carry proper coverage.

If you are a public or private employer in Arizona with at least one employee you must carry workers compensation insurance; exceptions are domestic servants, working partners and sole proprietors. For these classes of workers, coverage is optional. All premiums must be paid entirely by the employer; the law prohibits the cost being deducted from employees' wages.

There are special rules for corporate officers (including minimum and maximum wage limitations), partners and sole proprietors who are actively working in the business. These groups are covered automatically as employees under the law unless they choose to reject coverage. The decision to reject coverage must be made freely and voluntarily as rejectors forfeit their rights to receive benefits provided by the law in the event of injury or death by accident arising out of and in the course of employment. The employer is required

to supply "Rejection" forms for employees who choose to reject their employer's worker's compensation coverage.

What happens if an employer doesn't have coverage and an employee gets hurt?

Workers compensation provides benefits to the injured party by paying for medical expenses, disability, and rehabilitation and, in the case of death, payments to survivors.

If an employee is injured and the employer doesn't have coverage, the employer would be liable for all of the applicable payments. Plus a penalty of 10% of the benefits paid or \$1,000 whichever is greater, and interest on the total. Additionally, if a part-time employee is injured, the employer would also be liable for any lost wages from the employee's other job(s).

If employees travel out of state, the workers compensation policy needs to specify the necessary states. Otherwise, the insurance carrier may not provide the applicable benefit payments if the employee were to become injured while in another state.

Please keep in mind that a workers compensation policy is separate from an employer's liability policy. Check with your insurance provider to make sure that you are covered.

Federal Withholding on Pension Distributions

Federal Tax withheld from periodic distributions, which are made at regular intervals over a period of more than 1 year, are figured in the same manner as withholding from wages. This amount must be designated on Form W-4P. If an amount isn't specified on Form W-4P, then withholdings are held at the same rate as married claiming three allowances. Federal tax withheld is a flat 10% for non-periodic payments and 20% if distributions are rolled over to an IRA or another eligible retirement plan. You must report this tax on Form 945. Substantial penalties will be assessed for the failure to withhold taxes and the failure to file this return.

If your plan made **any distributions** during 2019, Form 1099-R must be provided to the recipients by January 31, 2020.

Employer Credit for Paid Family and Medical Leave

A credit available to employers that provide employees paid family and medical leave was created by the Tax Cuts and Jobs Act. This is a general business credit employers may claim, based on wages paid in 2019 to qualifying employees. Employees must have taken family and medical leave, and is subject to conditions. *The credit itself is a percentage of the amount of wages paid to a qualifying employee and limited to 12 weeks per taxable year.* In order to qualify for the credit, the amount you pay your employees while they are on leave must be at least 50% of the wages you normally pay them and you must have a written policy satisfying certain requirements. Additionally, the paid family and medical leave must be a minimum of at least two weeks for full-time qualifying employees and prorated for part time qualifying employees. If you think you are eligible for this credit, and would like to know about the conditions, requirements and employee qualifications, we encourage you to visit the IRS website: <https://www.irs.gov/newsroom/how-the-employer-credit-for-family-and-medical-leave-benefits-employers>

Deductions for Travel, Meals and Entertainment

	100% DEDUCTIBLE	50% DEDUCTIBLE	NOT DEDUCTIBLE
<p>TRAVEL: Business Trips, Conventions and Meetings within the U.S.: <i>(Note: Special rules apply to foreign travel)</i></p>	<ul style="list-style-type: none"> • Hotel lodging and transportation expenses • Cleaning and laundry • Cost of meeting rooms • Registration fees • Tips (other than for meals and entertainment) 	<ul style="list-style-type: none"> • Employee meals during business travel • Tips for meals 	<ul style="list-style-type: none"> • Lavish or extravagant expenses • Luxury water travel
<p>Client/Customer:</p>	<ul style="list-style-type: none"> • Transportation to/from restaurant for Client business meal • Meal expenses reimbursed to a client or customer • Holiday cards and decorations 	<ul style="list-style-type: none"> • Client business meals if business is conducted, taxpayer or employee is present and not lavish or extravagant • Food and beverages that is separately stated from the cost of the entertainment on one or more bills, invoices or receipts 	<ul style="list-style-type: none"> • All business-related entertainment expenses • Food and beverages that are provided during entertainment and are shown on the same receipts as the cost of the entertainment
<p>Expenses/Dues/Public:</p>	<ul style="list-style-type: none"> • Food offered to the public for free • Items available to the general public as a means of advertising or promoting goodwill in the community • Expenses included in income of individuals who are not employees – prizes or awards. • Dues to professional organization, business leagues, trade associations and boards of trade, chamber of commerce, real estate boards, civic organizations and public service organizations 	<ul style="list-style-type: none"> • Meals for business leagues, Chamber of Commerce, Boards, etc. • Expenses for attendance at a business meeting or convention of a section 501(c)(6) 	<ul style="list-style-type: none"> • Sporting event tickets • Charitable event tickets • Country club memberships • Theater tickets • Golf club dues • Athletic clubs • Social clubs
<p>Employer/Employee:</p>	<ul style="list-style-type: none"> • Office holiday parties or picnics • Office snacks and beverages • Meals included as a taxable compensation to employee or independent contractor • Expenses associated with recreational or social activities for employees • Cash gifts to employees required to be included in compensation • Non-cash gifts to employees – value in excess of \$25 – must be included in compensation 	<ul style="list-style-type: none"> • Employee meals, catered lunches, company cafeterias, meals for company meetings or food provided to enable an employee to work overtime • Meals provided for the convenience of the employer 	





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*We encourage you to call us with any questions you may have regarding the information in this newsletter or any other matter. Any items in **red** are new for this year.*

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5470 E. Broadway Blvd.
Tucson, Arizona 85711

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