

Federal, State and Local Governments Newsletter

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FEDERAL

CONTENTS

2 IRS Launches Abusive
Transaction Settlement Initiative

3 FSLG 2005 Fiscal Year Results

4 Amounts Paid to Inmates

6 New Legislation and Qualified
Disaster Mitigation Payments

9 Directory of FSLG Contacts

STATE



LOCAL

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IRS LAUNCHES ABUSIVE TRANSACTION SETTLEMENT INITIATIVE

BY SUNITA LOUGH, FSLG DIRECTOR

On October 27, 2005, the IRS issued Announcement 2005-80, providing a settlement initiative for taxpayers to voluntarily come forward and resolve their civil tax disputes with regard to certain listed abusive and potentially abusive transactions. Under the initiative, taxpayers concede the improper tax benefits they claimed and are provided some tax relief for transaction costs and civil penalties. Included in the settlement initiative are three types of transactions that may be of interest to federal, state and local governments:

- (1) "Reimbursements" to employees for salary reduction amounts previously excluded from gross income under section 106 of the Code. (See Rev. Rul. 2002-3).
- (2) "Advance reimbursements" or "loans" without regard to whether an employee has incurred medical expenses. (See Rev. Rul. 2002-80).
- (3) "Reimbursement" for parking expenses previously paid by an employer or an employee through salary reduction. (See Rev. Rul. 2004-98).

The settlement initiative covers excise, employment, self-employment and income taxes. Under the terms of the settlement initiative taxpayers will concede 100 percent of all tax benefits. Accuracy related penalties may be assessed. To participate in the settlement initiative, the taxpayer must file an election on or before January 23, 2006, using Form 13750, Election to Participate in Announcement 2005-80 Settlement Initiative, providing complete information necessary to determine eligibility and calculate the taxes, interest and applicable penalties.

Form 13750 must be sent to the IRS address specified in Ann. 2005-80. If the taxpayer is under audit, a copy must be sent to the examining agent. Full payment (or a payment plan acceptable to the Service) of all taxes, interest and penalties will be required as a condition to settling and executing a closing agreement with the IRS.

If you need additional information, please contact Stephen Wharton (Manager OPR) at 202-283-9799.

THE SETTLEMENT INITIATIVE COVERS EXCISE, EMPLOYMENT, SELF-EMPLOYMENT AND INCOME TAXES.

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Governments Customer
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Access the Web site of Federal,
State and Local Governments

www.irs.gov/govts

For a written response, send
correspondence to:

Internal Revenue Service

**Federal, State and Local
Governments T:GE:FSL**

**Attn: Steve Wharton,
Operations Manager**

**1111 Constitution Avenue NW
Washington, DC 20224**

The explanations and examples in this publication reflect the interpretation by the IRS of tax laws, regulations, and court decisions. The articles are intended for general guidance only, and are not intended to provide a specific legal determination with respect to a particular set of circumstances. You may contact the IRS for additional information. You also may want to consult a tax advisor to address your situation.

FSLG FISCAL YEAR 2005 RESULTS

BY STEPHEN WHARTON, FSLG OPR MANAGER

Fiscal Year (FY) 2005 was a year of changes for FSLG. While we maintain our commitment to effective outreach, our emphasis continued to shift from customer education to compliance. FSLG conducted 326 outreach events for FY 2005, an increase of 12 from FY 2004. However, this represents a 60% decrease from FY 2003. Similarly, total customers reached at these events increased 16.7% to 22,116 in FY 2005, a 46% decrease from FY 2003.

In FY 2005 FSLG began two strategic initiatives: Federal Agency Examinations and Large Entity Examinations. FSLG hired 26 Specialists to replace attrition losses. These Specialists reported to FSLG for training in May and completed 5 weeks of FSLG training by the end of September.

Noncompliance by federal agencies with applicable tax laws has been identified as a concern by the General Accounting Office (GAO), Treasury Inspector General for Tax Administration (TIGTA), and the Office of Management and Budget (OMB), Congress, and by the IRS itself in various internal documents. Both OMB and GAO have recommended that the IRS establish a program to conduct examinations on each federal agency on a recurring cycle every 3-6 years. FSLG established a Federal Agency group in FY 2005 with 12 Specialists. During FY 2005, the Federal Agency group opened examinations on 8 entities and closed 2. For FY 2006, the group will open examinations on at least 15 entities and expects to close 6.

In FY 2005, FSLG also committed to implementing a compliance program that addresses large non-federal government taxpayers and began 21 large case examinations. Historically, these taxpayers, with annual payrolls in excess of \$40 million, have generally not been examined by the IRS, and are large enough to have significant impact on the social security and Medicare trust funds. These taxpayers employ over 80% of all non-federal government employees.

For FY 2005, FSLG completed 1,116 examinations, an increase of 3.5% over FY 2004 and 272 % over FY 2003. The average time to conduct an examination was 208 days in 2005, a 20% decrease from 2004. FSLG conducted 807 compliance checks, an increase of 8.5% over 2004.

This table summarizes FSLG's accomplishments for FY 2005 and goals for FY 2006.

	Full-Year Performance		FY2005		FY 2006
	FY2003	FY2004	FY2005	% Chg	
Education & Outreach FTE	49.7	29.6	25.0	-15.5%	16
Number of Outreach Efforts	779	314	326	3.8%	300
Customers Reached	41,145	18,956	22,116	16.7%	20,000
Examination FTE	44.3	61.6	76	23.4%	100.0
Examination Cases Closed	411	1,078	1,116	3.5%	1,484
Compliance Checks Completed	690	744	807	8.5%	825
Examination Quality	—	74%	83%	9%	77%
Examination Timeliness	—	260	208	20%	238

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AND
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COMPENSATION
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EMPLOYER-
MODEL
PIECP
ENTITY
ARE WAGES
SUBJECT
TO
ITW
AND
FICA

AMOUNTS PAID TO INMATES

BY DENISE Y. BOWEN, FSLG TAX LAW SPECIALIST

Generally, prison inmates are required to work if they are medically able. Inmate work programs involving compensation may require compliance with employment tax withholding and payment requirements. As a result, government entities throughout the United States are requesting guidance on the proper tax treatment of compensation paid for prison labor.

Institution work assignments include employment in a variety of programs, and it is necessary to distinguish the various inmate work programs and their related employment tax requirements. This article discusses the proper employment tax treatment of compensation paid to prison inmates performing services in a state or local prison under the “employer model” of the Prison Industry Enhancement Certification Program (“PIECP”). The Office of Chief Counsel recently issued a Chief Counsel Advice (IRS CCA 200526018) concerning the PIECP program, which may be referred to for additional information. This discussion provides general information and does not consider a PIECP operated by a specific taxpayer. Different inmate work programs may be discussed in subsequent newsletters.

PIECP

PIECP was created by Congress in 1979 to encourage states and units of local government to establish employment opportunities for prisoners that approximate private sector work opportunities. The program is designed to place inmates in a realistic working environment, pay them the local prevailing wage for similar work, and enable them to acquire marketable skills to increase their potential for successful rehabilitation and meaningful employment upon release. There are several PIECP models, but the employer and customer models are the most commonly used.

Under the employer model, the private sector owns and operates the business within a prison and has direct control over hiring, firing, training, and payment of the inmate work force. The company also provides materials, equipment, utilities, supervision, and management. The department of corrections provides space, security and support services but does not direct production, and exercises minimal control over inmate workers. PIECP guidelines provide that inmates cannot be required to perform services and must voluntarily work in the program.

Law and Analysis

There are three federal employment taxes, income tax withholding (ITW), Federal Unemployment Insurance Tax (FUTA), and social security and Medicare taxes under the Federal Insurance Contributions Act (FICA). Similar rules apply to all three taxes. Generally, employment taxes are imposed on wages. The term “wages” is defined as all remuneration for employment unless a specific exception applies. “Employment” includes any service, of whatever nature, performed by an employee for the person employing him unless a specific exception applies. A useful starting point for deciding whether an employment tax liability exists is to determine whether the legal relationship of employer and employee exists.

An employee is “any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.” Code § 3121(d)(2). Generally, such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. Employment Tax Regulations § 31.3121(d)-1(c).

Revenue Ruling 75-325, 1975-2 C.B. 415, considered whether prison inmates who performed services for the Federal Prisons Industry, Inc. (“FPI”) were employees for purposes of income tax withholding. The workers in the ruling were inmates in United States penal and correctional institutions who performed services for FPI. They were paid an hourly wage less than the minimum rate prescribed by the Fair Labor Standards Act of 1938. The ruling holds that the relationship between the inmates and FPI arose from the incarceration of the inmates and the legal duty of the corporation to provide rehabilitative labor and was not the legal relationship of employer and employee. Thus, income tax withholding did not apply. (Rev. Rul. 75-325 does not address social security and Medicare because those taxes did not apply on a mandatory basis to government employees in 1975.)

Although there are similarities between the FPI workers described in Rev. Rul. 75-325 and PIECP workers, the PIECP and FPI programs are distinguishable. PIECP workers must receive the prevailing wage rate in the locality, whereas FPI workers were paid below the minimum wage. PIECP workers participate on a voluntary basis and voluntarily agree to the financial arrangements of their participation. In contrast, FPI workers were required to work by the penal authorities. Thus, PIECP inmates enter into a voluntary relationship with the entity operating the PIECP program that does not arise solely from an obligation to provide employment to all physically fit inmates. The Chief Counsel Advice concludes that the relationship between the PIECP entity and the inmate workers does not arise solely from the incarceration and is more similar to the traditional employer employee relationship in a non-prison environment. Thus, the holding in Rev. Rul. 75-325 that an employment relationship does not exist is inapplicable and the workers are employees for ITW purposes. Accordingly, the PIECP entity is liable for withholding and paying income taxes on wages paid to PIECP inmates. Similarly, the PIECP worker's status as employees under the common law makes their compensation subject to FICA. There is, however, a specific exception from FICA for certain inmate workers. Code §3121(b)(7)(F)(ii) provides an exception from FICA for services performed by inmates for a state or local government entity. This exception will not apply to the PIECP employer model because the inmate is an employee of a private entity operating the PIECP program, not the state or local government.

Conclusion

Compensation paid to PIECP inmates performing services under an employer-model PIECP entity are wages subject to ITW and FICA. FUTA does not apply because services performed by inmates are excepted from the definition of employment. Notwithstanding the above conclusion, under circumstances described in IRS CCA 200526018, a PIECP entity may be eligible for relief from employment tax liability under Section 530 of the Revenue Act of 1978, Pub. L. No. 95-600, as amended. Contact your local FSLG Specialist for more information.

www.irs.gov/govts

COMMENTS OR SUGGESTIONS?

We welcome
your comments
and
your suggestions
for information
you would like
to see in this newsletter.

Please
contact us
through our website at
www.irs.gov/govts.

NEW LEGISLATION EXCLUDES QUALIFIED DISASTER MITIGATION PAYMENTS FROM GROSS INCOME

BY WANDA VALENTINE, FSLG ANALYST

Legislation passed in April 2005 has expanded and redefined the tax treatment of disaster mitigation payments for information reporting and income tax exclusion.

Disaster mitigation payments are used to reduce and prevent the risk of damage as a result of future disasters rather than relieve the effects of current disasters. These payments are generally provided to state governments, which in turn provide some additional funding and administer program guidelines for local communities as set forth by the Federal Emergency Management Agency (FEMA).

Public Law No. 109-7 amends the Internal Revenue Code of 1986 to exclude qualified disaster mitigation payments from gross income. Under the new law, a "qualified disaster mitigation payment" is defined as any amount which is paid to or for the benefit of the owner or any property for hazard mitigation with respect to such property under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) or the National Flood Insurance Act (NFIA).

This law is retroactive and applies to disaster mitigation payments that may have been received prior to the new legislation. If these payments were treated as taxable income, the grant recipient may be eligible to file amended tax returns or file a claim for refund. More information is available on the IRS website www.irs.gov.

Highlights of the New Legislation

- Mitigation payments under the Stafford Act or NFIA that help reduce damage from future disasters are excluded from gross income.
- There will be no increase in basis or adjusted basis of property resulting from any amount excluded from income with respect to such property.
- No deductions or credits are allowed for mitigation payments that are excluded from gross income under Section 139.
- For property sold or transferred to federal, state, local, or Indian tribal government to implement hazard mitigation under the Stafford Act, sale or transfer is treated as an involuntary conversion. However, property sold independently of the mitigation program would not qualify under this law.

Mitigation Programs Administered by FEMA

Mitigation is a critical part of emergency management and has an ongoing objective to reduce the impact and damage caused by future disasters. Projects often focus on preventing flood damage, reinforcing bridges, elevating structures, creating effective building codes and other pre-disaster activities.

FEMA currently has three mitigation grant programs: the Hazard Mitigation Grant Program (HGMP), the Pre-Disaster Mitigation program (PDM), and the Flood Mitigation Assistance (FMA) program.

Hazard Mitigation Grant Program (HGMP)

The Hazard Mitigation Grant Program provides grants to state and local governments, Indian tribes or other tribal government organizations, and certain private non-profit organizations that are located in areas where there has been a prior Presidential disaster declaration. The objective of this program is to prevent and reduce loss of life and property from future disasters through implementation of long-term solutions and strategies. Some examples of the type of projects that can be funded through this program include:

- Demolition or relocation of structures and conversion of property to open space use; acquisition of real property that is in danger of or has been subjected to repeated damage.
- Elevation of flood-prone structures and other flood control projects, including ring levees and floodwall systems built to protect critical areas.
- Post-disaster building code related activities upgrades.
- Retrofitting structures and facilities to reduce damage from wind, earthquake, fire or other natural hazards.

Individual homeowners and businesses are not allowed to apply directly to the program but can be the recipients of these funds. Funds may be used to protect either public or private property.

Flood Mitigation Assistance (FMA) Program

The Flood Mitigation Assistance Program is designed to reduce and eliminate long-term risk of flood damage. These funds may be used by the state to help administer the program.

There are three types of grants available to States and National Flood Insurance Program (NFIP)-participating communities under FMA: Planning, Project, and Technical Assistance.

- FMA Planning Grants are made available to assist in the preparation of mitigation plans. This can include development of countywide or multi-jurisdictional hazard mitigation plans. Communities receiving FMA Planning and Project Grants must be participating in the NFIP.
- FMA Project Grants are available to states and NFIP-participating communities to implement measures to reduce flood losses in states and communities with approved mitigation plans. Examples of eligible FMA Projects include elevation, acquisition and/or relocation of NFIP-insured structures.
- Ten percent of the Project Grant amount may be used by the state as a Technical Assistance Grant to help administer the FMA Program.

FMA, a voluntary grant program, is part of FEMA's on-going partnership with the State Emergency and Floodplain Management Agencies.

Pre-Disaster Mitigation Program (PDM)

The Pre-Disaster Mitigation Program is designed to reduce and prevent injuries and risk to people and structures by assisting state and local governments (including Indian tribal governments) with the implementation of cost-effective and comprehensive hazard mitigation programs. The PDM program will provide technical assistance and funding for hazard mitigation planning and evaluation prior to a disaster event. PDM grants are awarded on a competitive basis. Funding for the program is provided through the National Pre-Disaster Mitigation Fund.

More information on these and other programs is available at www.fema.gov.

THE
FLOOD
MITIGATION
ASSISTANCE
PROGRAM IS
DESIGNED
TO REDUCE
AND
ELIMINATE
LONG-TERM
RISK
OF
FLOOD
DAMAGE

Exclusions Under Section 139 of the Internal Revenue Code

Payments made to individuals to assist with certain expenses incurred due to a Presidentially-declared disaster are already excluded from income under the general welfare exclusion. . As amended, § 139 now excludes qualified disaster mitigation payments from gross income. The text of § 139 is as follows:

§ 139. Disaster relief payments

(g) Qualified disaster mitigation payments.--

(1) In general.--Gross income shall not include any amount received as a qualified disaster mitigation payment.

(2) Qualified disaster mitigation payment defined.--For purposes of this section, the term "qualified disaster mitigation payment" means any amount which is paid pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date) to or for the benefit of the owner of any property for hazard mitigation with respect to such property. Such term shall not include any amount received for the sale or disposition of any property.

(3) No increase in basis.--Notwithstanding any other provision of this subtitle, no increase in the basis or adjusted basis of any property shall result from any amount excluded under this subsection with respect to such property.

Information Reporting

Mitigation payments can be made directly to the homeowner or by the state and/or local government to a contractor on behalf of the homeowner. Under the new legislation, the mitigation payments made directly to the homeowner under authorized mitigation programs will not require an information return. However, under Section 6041, there may be an information return reporting requirement for payments made directly to a contractor by a government entity.

Section 6041 requires all persons engaged in a trade or business and making payment in the course of such trade or business to another person of compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$ 600 or more in any taxable year, to file an information return with the Service and to furnish an information statement to the payee. Section 1.6041-1(b) (1) and (i) provide that payments made by a state or a political subdivision are subject to this reporting requirement.

Scenario 1: *State government agency pays \$2000 in disaster mitigation payments to a homeowner to elevate his home to prevent future flood damage. Is the state government required to report this payment on an information return under Section 6041?*

NO: Current law does not require an information return to be filed because these mitigation payments are excluded from gross income under Section 139.

Scenario 2: *A local government agency pays \$2000 directly to a contractor for services provided under the mitigation program. The contractor is paid funds from the mitigation program to elevate a home to prevent future flood damage. Is the local government required to file an information return 1099-MISC for funds paid directly to the contractor?*

YES: State and local governments are required to file information returns for payments made directly to a contractor under § 6041 if the payments are \$600 or more during a calendar year unless an exception applies (e.g., information reporting is not required if a payee is a corporation or the payment is for materials). No information return is required for the homeowner.

More information on 1099-MISC reporting requirements is available at the Federal, State and Local Governments website www.irs.gov/govts.

FEDERAL, STATE AND LOCAL GOVERNMENTS CONTACTS

STATE	SPECIALIST	TELEPHONE NUMBER	EXT.
Alabama	John Givens Judy Nichols	(251) 340-1761 (251) 340-1781	
Alaska	Gary Petersen	(775) 325-9282	
Arkansas	Jan Germany	(501) 324-5328	253
Arizona	Kim Savage	(928) 214-3309	5
California	Charis Martinez Nancy Roberts Leslie Van Buren	(916) 974-5349 (530) 722-1257 (408) 817-6356	
Colorado	Steven McDonald Chuck Sandoval	(303) 446-1242 (303) 446-1156	
Connecticut	Mary Robert	(401) 826-4754	
Delaware	Hilton Finney	(215) 861-3732	
District of Columbia	Christina Chang	(703) 285-2608	116
Florida	Sheree Cunningham Fernando Echevarria Mae Whitlow	(727) 568-2505 (954) 423-7406 (407) 660-5822	293
Georgia	Denver Gates	(404) 338-8205	
Hawaii	Sue Ann Jansen	(503) 326-5057	
Idaho	Chris Casteel	(208) 334-1050	
Illinois	Ted Knapp Joyce Reinsma	(618) 244-3453 (312) 566-3879	
Indiana	Beverly Elsner Raelane Hoff	(812) 378-1254 (812) 234-6815	227
Iowa	David Prebeck	(515) 573-4120	
Kansas	Gary Decker Allison Jones	(316) 352-7475 (316) 352-7443	
Kentucky	Ray McLennan	(270) 442-2607	127
Louisiana	Claire Bullock Robert Lettow Lynette Thibodaux	(318) 869-6311 (318) 869-6312 (504) 558-3144	
Maine	Bob Westhoven	(207) 784-6988	
Maryland	Hilton Finney	(215) 861-3732	
Massachusetts	Mark A. Costa	(617) 320-6807	
Michigan	Brian Blake Lori Hill	(231) 932-2063 (906) 228-7831	
Minnesota	Steve Bruzda Pat Wesley	(651) 312-7722 (218) 720-5305	225
Mississippi	John Givens Robert Lettow	(251) 340-1761 (318) 869-6312	
Missouri	Sharon Boone Joe Burke Dena Jones	(417) 841-4535 (636) 940-6389 (816) 966-2346	

CALENDAR OF EVENTS

The following upcoming national events may be of interest to you. FSLG representatives may be present. For more information, contact the hosting organization.

Federation of Tax Administrators

2006 FTA Compliance Workshop
February 26-28, 2006
San Diego CA
taxadmin.org

National Association of State Comptrollers Annual Conference

March 22-24
Alexandria, VA
nasact.org

National Association of Counties

2006 Legislative Conference
March 4-8, 2006
Washington, DC
naco.org

Government Finance Officers Association

100th Annual Conference
May 7-10, 2006
Montreal, Quebec
gfoa.org

Federation of Tax Administrators

Annual Meeting
June 4-7, 2006
Little Rock, AR
taxadmin.org

National State Auditors Association

Annual Conference
June 8-10, 2006
Salt Lake City, UT
nasact.org

STATE	SPECIALIST	TELEPHONE NUMBER	EXT.
Montana	Katherine Dees	(406) 761-1825	229
Nebraska	Thomas Goman	(402) 361-0202	
Nevada	Gary Petersen	(775) 325-9282	
New Hampshire	Bob Westhoven	(207) 784-6988	
New Jersey	Pat Regetz	(908) 301-2119	
New Mexico	Toni Holcomb George Vega	(505) 527-6900 (505) 837-5554	232
New York	Martin Boswell Dave Coulon Dianne Morse Jean Redman Fran Reina Granville Shannon	(315) 233-7302 (315) 233-7305 (716) 961-5319 (607) 734-1063 (315) 793-8171 (212) 719-6537	108
North Carolina	Jammie Owens Catherine Wides	(336) 378-2961 (919) 402-0918	
North Dakota	Rhonda Kingsley Al Klamann	(701) 239-5400 (701) 227-0133	261
Ohio	Trudee Billo Amy Genter Wendy Speelman	(419) 522-2359 (419) 522-2259 (419) 526-2607	
Oklahoma	Pat O'Neil	(405) 297-4895	
Oregon	Marilee Basaraba Sue Ann Jansen	(503) 326-5030 (503) 326-5057	
Pennsylvania	Hilton Finney Jean Redman	(215) 861-3732 (607) 734-1063	108
Rhode Island	Mary Robert	(401) 826-4754	
South Carolina	Clifford Brown	(803) 253-3523	
South Dakota	Rhonda Kingsley Al Klamann	(701) 239-5400 (701) 227-0133	261
Tennessee	Ray McLennan	(270) 442-2607	127
Texas	Robert Jackson JoAnn Lacey Steve O'Brien Donna Richard	(281) 721-7993 (512) 464-3609 (512) 464-3120 (512) 499-5033	
Utah	Katherine Dees	(406) 761-1825	229
Vermont	Fran Reina	(315) 793-8171	
Virginia	Christina Chang Lisa Suardi	(703) 285-2608 (804) 916-8207	116
Washington	Clark Fletcher	(425) 489-4042	
West Virginia	Christina Chang Lisa Suardi	(703) 285-2608 (804) 916-8207	116
Wisconsin	David Rasmussen Ruthann Watts	(262) 513-3424 (262) 513-3520	
Wyoming	Dwayne Jacobs	(307) 672-7425	33