

Internal Revenue Service
Office of Federal, State and Local Governments

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FSLG Newsletter – July 2012

This is the semiannual newsletter of the office of Federal, State and Local Governments (FSLG) of the Internal Revenue Service. Our mission is to ensure compliance by Federal, state, and local governmental entities with Federal employment and other tax laws through review activities, as well as through educational programs.

For more information, visit our web site at www.irs.gov/govt/fslg. For account-related assistance, contact Customer Account Services at 1-877-829-5500. To identify a local FSLG Specialist, see the directory at the end of this newsletter.

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 may also want to consult a tax advisor to address your situation.

Federal, State and Local Governments

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REQUIREMENTS FOR FURNISHING FORM 1099-G ELECTRONICALLY

Government entities that make certain payments, including unemployment compensation and income tax refunds, are required to report these payments on Form 1099-G, Certain Government Payments. Because these payments may be taxable to recipients, government entities that make these payments are required to report unemployment compensation of \$10 or more in box 1 of Form 1099-G. Income tax refunds of \$10 or more issued by states and other government entities must be reported on Form 1099-G, box 2.

In general, the reporting requirement is met by providing a paper copy of Form 1099-G to the recipient by January 31 of the year following the year of payment. However, a government entity may elect to establish a system for furnishing the form electronically. In order to do this, the payer is **required to obtain written consent** from each recipient to whom a statement will be furnished electronically. In addition, the payer is required to make certain notifications to each consenting individual.

The requirements for furnishing Form 1099-G (and other information returns) are specified in Revenue Procedure 2011-60, also available as [Publication 1179](#), General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.

A government entity may furnish the statement electronically instead of on paper if the recipient has affirmatively consented to receive it electronically, and has not withdrawn the consent before the statement is furnished. The consent by the recipient must be made electronically in a way that shows that he or she can access the statement in the electronic format in which it will be furnished.

If the government entity makes any hardware or software changes that create a risk that the recipient will not be able to access the statement, a notice must be provided to the recipient before changing the hardware or software. The notice must inform the recipient that a new consent to receive the form in the revised electronic format must be provided. After implementing the revised hardware and software, the furnisher must obtain from the recipient a new consent or confirmation of consent to receive the form electronically.

The government entity must place electronically posted statements on the applicable website by the January 31 due date, and the statements must remain available until October 15 of that year. When statements are posted, the issuing entity must notify the recipients, either electronically or by mail.

Prior to furnishing the statement electronically, the government entity must provide the recipient a statement with all the following prominently displayed:

- If the recipient does not consent, a paper copy will be provided.
- The scope and duration of the consent.
- How to obtain a paper copy after giving consent.
- How to withdraw the consent.
- Conditions under which an electronic statement will no longer be furnished.
- Procedures to update recipient information (for example, termination of employment)
- A description of hardware and software required to access, print and retain a statement, and when it will no longer be available.

All electronic statements must be in a format that conforms to the requirements stated in [Publication 1179](#). For general information reporting requirements for Form 1099-G, see the [Instructions for Form 1099-G](#).

VOW TO HIRE HEROES CREDIT NOT AVAILABLE TO GOVERNMENTAL ENTITIES

Section 51 of the Internal Revenue Code provides a Work Opportunity Tax Credit (WOTC) for employers who hire individuals who are members of certain targeted groups. In general, this credit is not applicable to the wages of individuals hired after December 31, 2011. However, the VOW to Hire Heroes Act of 2011 (the Act), enacted Nov. 21, 2011, extended the credit for businesses that hire eligible unemployed veterans, and for the first time also made the credit available to certain tax-exempt organizations. On February 9, 2012, the IRS released [Notice 2012-13](#), providing details on the new provisions.

The Act made the credit available to qualified tax-exempt organizations that hire qualified veterans for which the WOTC would have been allowable if the organization were not a qualified tax-exempt organization. Specifically, the Act adds new section 3111(e) to the Internal Revenue Code, permitting qualified tax-exempt organizations that hire qualified veterans on or after November 22, 2011, to claim a credit against the employer share of social security tax. Notice 2012-13 provides additional information and clarifies the eligibility of tax-exempt organizations and procedures for claiming the WOTC credit.

Qualified tax-exempt organizations may claim the credit for qualified veterans who begin work on or after Nov. 22, 2011, and before January 1, 2013.

The Act, for purposes of this credit, defines a “qualified tax-exempt organization” as an employer that is an organization described in section

501(c) and exempt from taxation under section 501(a). Accordingly, an employer that is an agency or instrumentality of the federal government, or of a state, local, or Indian tribal government is generally **not** a qualified tax-exempt organization.

For more information on how qualifying businesses or exempt organizations can claim the credit, see [the article on irs.gov](#) and [Notice 2012-13](#).

EXCISE TAXES FOR GOVERNMENTAL GAMBLING ACTIVITIES

Government entities that conduct sales of lottery cards and other wagering activities need to be aware of excise taxes that apply under IRC 4401 and 4411 of the Internal Revenue Code. Taxes on wagers do not apply to sweepstakes, wagering pools, or lotteries conducted by state agencies, either directly or indirectly, through their authorized agents. However, this exemption generally does not apply to political subdivisions or instrumentalities of government, such as local governments.

Wagering as conducted by political subdivisions or governmental instrumentalities may include wagers placed:

- On a lottery conducted for profit. Lotteries include pull-tabs. “Instant Bingo”, “pickle jars,” and other punchboard devices, as well as “scratch-off cards,” are considered lottery devices for this purpose.
- On sports events or contests placed with a person in the business of accepting such wagers.
- In a wagering pool which involves a sports event or contest, if the pool is conducted for profit.

Wagering conducted through retail establishments, such as taverns, package liquor stores and restaurants, under license by a government entity, is considered to be conducted by the government entity.

There are two types of wagering taxes:

- An excise tax imposed on the amount of the wager (IRC 4401).
- An occupational (or stamp) tax imposed on the persons engaged in receiving wagers (IRC 4411).

These taxes are discussed below.

Wagering Tax

IRC 4401 imposes an excise tax on wagers. This tax is imposed on the gross amount of the wagers received, based on the total amount received before any payout of prizes or other expenses.

Example. If a box of \$1 pull-tabs contained 2,400 cards, and the entire box were sold, the tax would be computed using \$2,400 as the gross wagers received.

The amount of the tax depends upon whether the wager is authorized under state law.

- **Authorized Wagers.** If the wager is authorized under state law, the amount of the tax is 0.25 percent of the amount of the wager. Thus, if the gross wagers were \$1,000, the amount of the tax would be \$2.50 ($\$1,000 \times .0025$).
- **Unauthorized Wagers.** If the wager is not authorized under state law, the amount of the tax is 2 percent of the amount of the wager. Thus, if the gross wagers were \$1,000, the amount of the tax would be \$20 ($\$1,000 \times .02$).

Occupational Tax

The second of the two taxes on wagering is the occupational or stamp tax imposed under IRC 4411. This tax is an annual fee imposed on each person liable for the tax on wagers, or upon any person engaged in receiving wagers for or on behalf of any person so liable.

The tax is due from a "principal." A principal is a person or organization in the business of accepting wagers, or an employee or agent of such organization. This would include, for example, a clerk who is authorized by a political subdivision to sell pull-tabs at a retail outlet for the political subdivision. (An employer identification number (EIN) must be used, not a Social Security Number.) Form 11-C, Occupational Tax and Registration Return for Wagering, must be filed before such organizations or persons begin accepting wagers. After the return is filed and the fee paid, the IRS will issue a letter as proof of registration and payment. Once the initial return is filed, the responsible party must file a renewal return by July 1 for each year that the principal accepts wagers. An organization may be subject to a penalty for failure to file the form and for failure to pay the tax.

Example: XYZ, a local government, sells pull-tabs and authorizes 10 people to receive wagers on its behalf. It also employs a secretary and bookkeeper. Each of the 10 persons is liable for occupational tax. Each files Form 11-C. The

secretary and bookkeeper are not liable for the tax unless they accept wagers for XYZ.

The amount of the occupational tax depends on whether or not the wager is authorized under state law. If the wager is authorized under state law, the amount of the occupational tax is \$50 per year per person receiving wagers. If the wager is not authorized under state law, the amount of the tax is \$500 per year per person receiving wagers.

See [Form 11-C](#), Occupational Tax and Registration Return for Wagering, for additional information.

Exceptions to Tax

Bingo games (not "Instant Bingo") are specifically excluded from the application of the wagering tax (IRC Reg. Section 44.4421-1). Games where the wagers are placed, the winners determined, and the prizes delivered "in the presence of all persons placing the wagers in such game," are excluded from the wagering tax (see IRC Reg. Section 44.4421-1).

In addition, the term "wager" does not include drawings conducted by an organization exempt under IRC 501, provided that no part of the net proceeds of such drawing inures to the benefit of any private shareholder or individual. Therefore, if the entity is an instrumentality of government that has exemption under IRC 501, then it is generally not subject to the wagering taxes.

Form W-2G

The Form W-2G, Certain Gambling Winnings, must be filed by the payer when an individual wins a prize of \$600 or more (if the prize is 300 times the amount of the wager). The winner must provide the game operator with proper identification including his or her social security number or the game operator must withhold tax at the rate of 28 percent as backup withholding. Form W-9, Request for Taxpayer Identification Number and Certification, may be used to record the winners address and social security number. A single prize winning exceeding \$5,000.00, less the wager amount, requires the completion of Form W-2G, and regular gambling withholding of 25 percent of the net winnings. Withholding is reported on and paid with Form 945, Annual Return of Withheld Federal Income Tax. See the [Instructions for Forms W-2G and 5754](#) and [Instructions for Form 945](#) for additional information.

ELECTION WORKERS: REPORTING AND WITHHOLDING

This year, thousands of state and local government entities will hire temporary workers to conduct primary and general elections. To understand the correct tax treatment of these workers, you need to be aware of specific statutes that apply to these workers, as well as whether a Section 218 Agreement addresses them.

Who Are Election Workers?

Election workers are individuals hired by government entities to perform services at polling places in connection with national, state and local elections. These workers may be employed by the government entity exclusively for election work, or in other capacities as well. Election worker compensation is includible in income and may be treated as wages for social security and Medicare (FICA) tax purposes.

Employment Taxes

Compensation paid to election workers is not subject to income tax withholding under Section 3401(a) of the Internal Revenue Code (IRC). The IRC provides specific rules for determining whether amounts paid to election workers are subject to FICA taxes. If the employer has a Section 218 Agreement with the Social Security Administration that covers services performed by an election worker, the terms of the Section 218 Agreement will determine whether the payments are subject to FICA. If there is no section 218 coverage, then the rules provided by the IRC apply. For calendar year 2012, FICA taxes apply to a worker whose remuneration is \$1,500 or greater. When payments made to a worker meets the current \$1,500 threshold, all payments paid to the worker are subject to FICA, including the first \$1,499. The threshold dollar amount is indexed annually and adjusted for inflation.

Reporting Requirements

Information reporting requirements are defined in Section 6041(a) and 6051(a) of the Internal Revenue Code. Specifically, Regulation section 1.6041-1(a)(2)(ii) provides that compensation paid to an employee must be reported on Form W-2, Wage and Tax Statement.

A Form W-2 must be filed for election workers who receive payments of \$600 or more, even if no FICA and income tax was withheld. A Form W-2 must also be filed for each election worker who received payments of less than \$600 that are subject to FICA taxes under a Section 218 Agreement. IRS regulations provide that an employer may choose to use separate Forms W-2 to report employee compensation derived from separate components. Therefore, amounts paid to an individual who provides both election worker services and non-election worker

services can be reported on separate Forms W-2. Form 1099-MISC should not be used to report election worker payments.

The following examples illustrate typical election worker situations.

Situation #1

Government entity A pays worker Y \$1,501 in 2012 for election worker services. Worker Y does not provide any other service to government entity A and election workers are excluded from the entity's Section 218 Agreement. However, because the payment made to worker Y is greater than \$1,500, FICA withholding is applicable and the payment must be reported on Form W-2. No income tax withholding is applicable.

Situation #2

Government entity A pays worker Y \$650 in 2012 for election worker services. Worker Y does not provide any other service to government entity A and election workers are excluded from the entity's Section 218 Agreement. Since the payment is greater than \$600, the amount must be reported on Form W-2. However, since the payment made to worker Y is less than \$1,500, FICA withholding is NOT applicable. No income tax withholding is applicable.

Situation # 3

Government entity A pays worker Y \$100 in 2012 for election worker services, and also employs Y in another capacity in which Y earns \$1,000 (subject to income tax withholding). The election worker services of Y are excluded from the Section 218 Agreement, but the non-election services are covered. The \$1,000 payment is subject to income tax and FICA withholding, but the \$100 payment is not. Because it made payments of more than \$600 to worker Y government entity A must report all payments on Form W-2. Separate Forms W-2 may be used for the two types of payments.

Conclusion

Remember, compensation paid for election worker services is included in income, and may be subject to FICA taxes and reporting requirements. For additional guidance on election worker treatment, refer to the [General Instructions for Forms W-2 and W-3](#), [Publication 963](#), [Publication 15 \(Circular E\)](#) and [Revenue Ruling 2000-6](#).

More information on the treatment of election workers is available on the [SSA election worker page](#).

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