

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:EBEO:Br2LACamillo
WTA-N-105119-97

date JUL 28 1998

to Returns Operations Office B T:ETA:O:P
Attn: Beatrice Howell

from Office of Associate Chief Counsel CC:EBEO
(Employee Benefits and Exempt Organizations)

subject Form 940 Questions from [REDACTED]

This responds to your request via fax for clarification of the rules regarding filing requirements for Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, and related issues. We apologize for the delay in responding to your inquiry.

You inquired as to whether an employer that owes no FUTA taxes, but does owe State Unemployment Insurance¹ is required to file a Form 940 or, alternatively, whether such employer is automatically considered to be exempt from FUTA.

Section 6011(a) of the Code provides as follows:

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

In general, employers must file Forms 940 if either of the following tests applies:

¹ Generally this will occur only in unusual circumstances. For example, a religious, educational or charitable organization that is exempt from FUTA under I.R.C. § 501(c)(3) and § 501(a) may elect to obtain state unemployment insurance coverage for its employees. However, in the vast majority of cases, a common law employer who pays state unemployment insurance premiums will generally owe FUTA tax, although the amount of the FUTA liability is reduced.

1. The employer paid wages of \$1,500 or more in any calendar quarter in the calendar year to which the return relates or the preceding calendar year;

or

2. The employer had one or more employees for at least some part of a day in any 20 or more different weeks in the preceding calendar year or 20 or more different weeks in the calendar year to which the return relates.

Employers who meet either of the tests set forth above must file a Form 940 unless they are covered by a specific exemption from the filing requirement. For example, an exemption exists for religious, educational or charitable organizations described in section 501(c)(3) and exempt from tax under section 501(a). Such organizations are not subject to FUTA tax and are not required to file Forms 940. However, in the absence of a specific exemption, employers who meet either of the above tests (except household and agricultural employers, who are subject to different requirements, see I.R.C. § 3306(a)(2)) are required to file a Form 940. The return must contain sufficient information to enable the District Director to compute the amount of taxable wages, if any. See Rev. Rul. 57-554, 1957-2 C.B. 854.

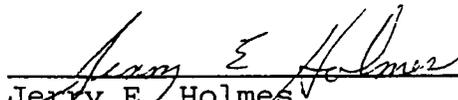
You also inquired about the procedures for obtaining a refund of FUTA taxes in a situation where the employer applied for FUTA exempt status and received it, but after FUTA taxes had already been paid. Section 31.6402(a)-3 of the Employment Tax Regulations provides, in effect, that an employer that pays more than the correct amount of FUTA tax may file a claim for refund within the applicable period of limitations of the overpayment on Form 843, Claim for Refund.

In addition, you asked what the appropriate "filing indicator" is for employers who do not pay State Unemployment Insurance. As you know, employers generally get a credit for contributions paid to a state unemployment fund. "Contributions" are payments that a state requires an employer to make to its unemployment fund for the payment of unemployment benefits. We are not certain what you mean by "filing indicator." However, we have enclosed a copy of the instructions for completing the Form 940 for your information. The instructions contain guidance on how to compute the credit allowable for an employer's payments to state unemployment funds. Additionally, the instructions indicate that the amount of such credit should be entered on line 6 of the return and, if the employer does not have to make payments to the state, the amount entered on line 6 should be zero.-- We hope--this--is--responsive--to--your--question.



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We hope this information is helpful to you. The attorney assigned to this matter is Lynne Camillo. She can be reached at (202) 622-6040.



Jerry E. Holmes
Chief, Branch 2

Enclosure:
As stated

1997



Department of the Treasury
Internal Revenue Service

Instructions for Form 940

Employer's Annual Federal Unemployment (FUTA) Tax Return

For Paperwork Reduction Act Notice, see page 4.

(Section references are to the Internal Revenue Code unless otherwise noted.)

General Instructions

Items to Note

FUTA tax rate and wage base. The FUTA tax rate is 6.2% through 2007 and the Federal wage base is \$7,000. Your state wage base may be different.

Services performed by inmates. Services performed by an inmate of a penal institution in a private-sector job are not subject to FUTA. This applies to services performed after January 1, 1994. Services for a government agency performed by inmates of a penal institution continue to be exempt from FUTA.

Electronic deposit requirement. If your total deposits of social security, Medicare, railroad retirement, and withheld income taxes were more than \$50,000 in 1996, you must make electronic deposits for all depository tax liabilities (including FUTA tax) that occur after 1997 using the Electronic Federal Tax Payment System (EFTPS). However, if you were first required to use EFTPS on or after July 1, 1997, no penalties for failure to use EFTPS will be imposed prior to July 1, 1998. To enroll in EFTPS, call 1-800-945-8400 or 1-800-555-4477. For general information about EFTPS, call 1-800-829-1040.

State unemployment information. Employers must contact their state unemployment insurance offices to receive their state reporting number, state experience rate, and details about their state unemployment tax obligations.

Other new law provisions for 1997. Generally,

- Employer payments to a medical savings account (MSA) are not subject to FUTA tax.
- Employer contributions under a SIMPLE retirement account are not subject to FUTA tax, but elective salary reduction contributions are subject to FUTA tax.
- Payments under adoption assistance programs are subject to FUTA tax.

For more information on these and other changes, see Circular E, Employer's Tax Guide (Pub. 15) and Pub. 15-A, Employer's Supplemental Tax Guide.

Household employers. If you have only household employees, do not make deposits of FUTA tax nor file Form 940. Instead, report and pay FUTA tax on Schedule H (Form 1040), Household Employment Taxes, with your individual income tax return (e.g., Form 1040 or 1040A), or estate or trust tax return (Form 1041).

Purpose of Form

File Form 940 to report your annual Federal unemployment (FUTA) tax. You, as the employer, must pay this tax. Do not collect or deduct it from your employees' wages.

Use Form 940-EZ, Employer's Annual Federal Unemployment (FUTA) Tax Return, a simpler version of Form 940, to report your annual FUTA tax if—

1. You paid unemployment contributions to only one state.
2. You paid all state unemployment by February 2, 1998 (February 10 if you deposited all FUTA tax when due).
3. All wages that were taxable for FUTA tax were also taxable for your state's unemployment tax. If, for example, you

paid wages to corporate officers (these wages are taxable for FUTA tax) in a state that exempts these wages from its unemployment tax, you cannot use Form 940-EZ.

Note: A successor employer claiming a credit for state unemployment contributions paid by the prior employer must file Form 940.

For details, get Form 940-EZ. Do not file Form 940 if you have already filed Form 940-EZ for 1997.

Use the current year form to avoid delays in processing.

Who Must File

In general, you must file Form 940 if either of the following tests applies (household and agricultural employers see below):

1. You paid wages of \$1,500 or more in any calendar quarter in 1996 or 1997 or
2. You had one or more employees for at least some part of a day in any 20 or more different weeks in 1996 or 20 or more different weeks in 1997.

Count all regular, temporary, and part-time employees. A partnership should not count its partners.

Note: If there is a change in ownership or other transfer of business during the year, each employer who meets test 1 or 2 must file. Do not report wages paid by the other employer.

Nonprofit organizations. Religious, educational, charitable, etc., organizations described in section 501(c)(3) and exempt from tax under section 501(a) are not subject to FUTA tax and are not required to file.

Household employers. File a FUTA tax return ONLY if you paid total cash wages of \$1,000 or more (for all household employees) in any calendar quarter in 1996 or 1997 for household work in a private home, local college club, or local chapter of a college fraternity or sorority. Individuals, estates, and trusts that owe FUTA tax for household work in a private home, in most cases, must file Schedule H (Form 1040) instead of Form 940 or 940-EZ. See the instructions for Schedule H.

In some cases, such as when you employ both household employees and other employees, you may have the option to report social security, Medicare, and withheld Federal income taxes for your household employee(s) on Form 941, Employers Quarterly Federal Tax Return, or Form 943, Employer's Annual Tax Return for Agricultural Employees, instead of on Schedule H. If you reported your household employee's wages on Form 941 or 943, you must use Form 940 or 940-EZ to report FUTA tax.

Agricultural employers. File Form 940 if either test below applies:

1. You paid cash wages of \$20,000 or more to farmworkers during any calendar quarter in 1996 or 1997 or
2. You employed 10 or more farmworkers during at least some part of a day (whether or not at the same time) during any 20 or more different weeks in 1996 or 20 or more different weeks in 1997.

Count wages paid to aliens admitted on a temporary basis to the United States to perform farmwork, also known as "H-2(A)" visa workers, to see if you meet either test. However, wages paid to H-2(A) visa workers are not subject to FUTA tax.

Magnetic Media Reporting

You may file Form 940 using magnetic media. See Rev. Proc. 96-18, 1996-1 C.B. 637, for the procedures and Pub. 1314 for the tape specifications.

Penalties and Interest

Avoid penalties and interest by making tax deposits when due, filing a correct return, and paying all taxes when due. There are penalties for late deposits and late filing unless you can show reasonable cause. If you file late, attach an explanation to the return. Get Circular E for more information on penalties.

There are also penalties for willful failure to pay tax, keep records, make returns, and for filing false or fraudulent returns.

Not Liable for FUTA Tax

If you receive Form 940 and are not liable for FUTA tax for 1997, write "Not Liable" across the front, sign the return, and return it to the IRS.

Credit for Contributions Paid To a State Fund

You get a credit for amounts you pay to a state (including Puerto Rico and the U.S. Virgin Islands) unemployment fund by February 2, 1998 (or February 10, 1998, if that is your Form 940 due date). Your FUTA tax will be higher if you do not pay the state contributions timely.

"Contributions" are payments that a state requires an employer to make to its unemployment fund for the payment of unemployment benefits. However, contributions do not include:

- Any payments deducted or deductible from your employees' pay.
- Penalties, interest, or special administrative taxes not included in the contribution rate the state assigned to you.
- Voluntary contributions paid to get a lower assigned rate.

You may receive an additional credit if you have an experience rate lower than 5.4% (.054). This applies even if your rate is different during the year. This additional credit is equal to the difference between actual payments and the amount you would have been required to pay at 5.4%.

The total credit allowable may not be more than 5.4% of the total taxable FUTA wages.

Special credit for successor employers. A successor employer is an employer who received a unit of another employer's trade or business or all or most of the property used in the trade or business of another employer. The successor employer must employ one or more individuals who were employed by the previous owner immediately after the acquisition.

You may be eligible for a credit based on the state unemployment contributions paid by the previous employer. You may claim these credits if you are a successor employer and acquired a business in 1997 from a previous employer who was not required to file Form 940 or 940-EZ for 1997. If you are eligible to take this credit, you must file Form 940; you may not use Form 940-EZ. See section 3302(e). Enter in Part II, line 3, columns (a) through (i) the information of the previous employer as if you paid the amounts.

Successor employers may be able to count the wages that the previous employer paid to their employees to meet the \$7,000 wage base. See the instructions for Part I, line 3 on page 3.

When To File

File Form 940 by February 2, 1998. However, if you deposited your total FUTA tax when due, you have until February 10, 1998, to file your return. Your form is considered timely filed if it is properly addressed and mailed First Class or sent by an IRS-designated delivery service by the due date. See Circular E for a list of designated delivery services.

Caution: Private delivery services cannot deliver items to P.O. boxes.

Where To File

In the list below, find the state where your legal residence, principal place of business, office, or agency is located. Send your return to the Internal Revenue Service at the address listed for your location. No street address is needed.

Note: Where you file depends on whether or not you are including a payment.

Florida, Georgia, South Carolina

Return without payment:
Atlanta, GA 39901-0006

Return with payment:
P.O. Box 105887
Atlanta, GA 30348-5887

New Jersey, New York (New York City and counties of Nassau, Rockland, Suffolk, and Westchester)

Return without payment:
Hottsville, NY 00501-0006

Return with payment:
P.O. Box 1365
Newark, NJ 07101-1365

New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Return without payment:
Andover, MA 05501-0006

Return with payment:
P.O. Box 371307
Pittsburgh, PA 15250-7307

Illinois, Iowa, Minnesota, Missouri, Wisconsin

Return without payment:
Kansas City, MO 64999-0006

Return with payment:
P.O. Box 970010
St. Louis, MO 63197-0010

Delaware, District of Columbia, Maryland, Pennsylvania, Puerto Rico, Virginia, Virgin Islands

Return without payment:
Philadelphia, PA 19255-0006

Return with payment:
P.O. Box 8726
Philadelphia, PA 19162-8726

Indiana, Kentucky, Michigan, Ohio, West Virginia

Return without payment:
Cincinnati, OH 45999-0006

Return with payment:
P.O. Box 6977
Chicago, IL 60680-6977

Kansas, New Mexico, Oklahoma, Texas

Return without payment:
Austin, TX 73301-0006

Return with payment:
P.O. Box 970017
St. Louis, MO 63197-0017

Alaska, Arizona, California (counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba), Colorado, Idaho, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming

Return without payment:
Ogden, UT 84201-0006

Return with payment:
P.O. Box 7024
San Francisco, CA 94120-7024

California (all other counties), Hawaii

Return without payment:
Fresno, CA 93888-0006

Return with payment:
P.O. Box 60378
Los Angeles, CA 90060-0378

Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Tennessee

Return without payment:
Memphis, TN 37501-0006

Return with payment:
P.O. Box 1210
Charlotte, NC 28201-1210

FUTA Tax Depositing

When to deposit. Although Form 940 covers a calendar year, you may have to make deposits of the tax before filing the return. Generally, deposit FUTA tax quarterly but only when your liability exceeds \$100. Determine your FUTA tax for each of the first three quarters by multiplying by .008 that part of the first \$7,000 of each employee's annual wages you paid during the quarter. If any part of the amounts paid are exempt from state unemployment tax, you may deposit more than the .008 rate. For example, in certain states, wages paid to corporate officers,

certain payments of sick pay by unions; and certain fringe benefits, are exempt from state unemployment tax.

If your FUTA tax liability for any of the first three quarters of 1997 (plus any undeposited amount of \$100 or less from any earlier quarter) is over \$100, deposit it by the last day of the month after the end of the quarter. If it is \$100 or less, carry it to the next quarter; a deposit is not required. If your liability for the fourth quarter (plus any undeposited amount from any earlier quarter) is over \$100, deposit the entire amount by February 2, 1998. If it is \$100 or less, you can either make a deposit or pay it with your Form 940 by February 2. (If you deposit it by February 2, you may file Form 940 by February 10, 1998.)

The deposit due dates are shown in the following chart:

If undeposited FUTA tax is over \$100 on—	Deposit it by—
March 31	April 30
June 30	July 31
September 30	October 31
December 31	February 2

How to deposit. Use Form 8109, Federal Tax Deposit Coupon, when you make each tax deposit (Caution: See *Electronic deposit requirement* under *Items to Note* on page 1.) The IRS will send you a book of deposit coupons when you apply for an employer identification number (EIN). Follow the instructions in the coupon book. If you do not have coupons, see Section II in Circular E.

Make your deposits with an authorized financial institution (e.g., a commercial bank that is qualified to accept Federal tax deposits) or the Federal Reserve bank for your area. To avoid a possible penalty, do not mail deposits directly to the IRS. Records of your deposits will be sent to the IRS for crediting to your business accounts.

Specific Instructions

Employer's name, address, and employer identification number. Use the preaddressed Form 940 mailed to you. If you must use a form that is not preaddressed, type or print your name, trade name, address, and EIN on it. If you do not receive your EIN by the time a return is due, write "Applied for" and the date you applied for the number.

Questions A through C. The answers to the questions will direct you to the correct form to file. If you answered "Yes" to all the questions, you may file Form 940-EZ, a simpler version of Form 940. If you answer "No" to any of the questions or you are a successor employer claiming a credit for state unemployment contributions paid by the prior employer, complete and file Form 940.

Final return. If you will not have to file returns in the future, check the box on the line below question C. Then complete and sign the return. If you start paying FUTA wages again, file Form 940 or 940-EZ.

Amended return. Use a new Form 940 to amend a previously filed Form 940. Check the Amended Return box above Part I. Enter all amounts that should have been on the original return, for the tax year you are correcting, and sign the form. Attach an explanation of the reason for the amended return. For example, you are filing to claim the 90% credit for contributions paid to your state unemployment fund after the due date of Form 940. File the amended return with the Internal Revenue Service Center where you filed the original return.

If you are filing an amended return after June 30 to claim contributions to your state's unemployment fund that you paid after the due date of Form 940, attach a copy of the certification from the state. This will expedite the processing of the amended return.

Part I—Computation of Taxable Wages

Line 1—Total payments. Enter the total payments you made during the calendar year for services of employees, even if the payments are not taxable for FUTA tax. Include salaries, wages,

commissions, fees, bonuses, vacation allowances, amounts paid to temporary or part-time employees, the value of goods, lodging, food, clothing, and noncash fringe benefits, contributions to a 401(k) plan, payments to medical savings accounts (MSA), adoption assistance programs, and SIMPLE retirement accounts (including elective salary reduction contributions), section 125 (cafeteria) plan benefits and sick pay (including third party if liability transferred to employer). For details on sick pay, see Pub. 15-A. Include tips of \$20 or more in a month reported to you by your employees. Also, include payments made by a previous employer if you are counting those payments for the \$7,000 wage base as explained under **Successor employer** in the line 3 instructions below. Enter the amount before any deductions.

How the payments are made is not important to determine if they are wages. Thus, you may pay wages for piecework or as a percentage of profits. You may pay wages hourly, daily, weekly, monthly, or yearly. You may pay wages in cash or some other way, such as goods, lodging, food, or clothing. For items other than cash, use the fair market value when paid.

Line 2—Exempt payments. The amounts reported on line 2 are exempt from FUTA tax. For FUTA purposes, "wages" and "employment" do not include every payment and every kind of service an employee may perform. In general, payments excluded from wages and payments for services excepted from employment are not subject to tax. You may deduct these exempt payments from total payments only if you explain them on line 2. Amounts that may be exempt from your state's unemployment tax, for example, corporate officers' wages, may not be exempt from FUTA tax.

Enter payments such as the following on line 2:

1. Agricultural labor if you did not meet either of the tests under **Agricultural employers** on page 1.
2. Benefit payments for sickness or injury under a workers' compensation law.
3. Household service if you did not pay total cash wages of \$1,000 or more in any calendar quarter in 1996 or 1997, and you included the amount on line 1.
4. Certain family employment.
5. Certain fishing activities.
6. Noncash payments for farmwork or household services in a private home that are included on line 1. Only cash wages to these workers are taxable.
7. Value of certain meals and lodging.
8. Cost of group-term life insurance.
9. payments attributable to the employee's contributions to a sick-pay plan.
10. Employer contributions to a SIMPLE retirement account (other than elective salary reduction contributions).
11. Employer payments to a medical savings account (MSA).
12. Benefits excludable under a section 125 (cafeteria) plan.
13. Any other exempt service or pay.
14. Certain statutory employees (see Pub. 15-A).

For more information, see **Special Rules for Various Types of Services and Payments** in Circular E.

Line 3—Payments for services of more than \$7,000. Enter the total amounts over \$7,000 you paid each employee. For example, if you have 10 employees and paid each \$8,000 during the year, enter \$80,000 on line 1 and \$10,000 on line 3. **Only the first \$7,000 paid to each employee is subject to FUTA tax. Do not use the state wage base for this entry. The state wage base may be different than the Federal wage base of \$7,000. Do not include any exempt payments from line 2 in figuring the \$7,000.**

Successor employer. If you acquired a business from an employer who was liable for FUTA tax, you may count the wages that employer paid to the employees who continue to work for you when you figure the \$7,000 wage base. Include on line 3 the payments made by the previous employer. See section 3306(b)(1) and Regulations section 31.3306(b)(1)-1(b).

Line 5—Total taxable wages. This is the total tax amount subject to FUTA tax. Use this amount in Part II to compute the maximum FUTA tax and the maximum credit.

Part II—Tax Due or Refund

Line 1—Gross FUTA tax. Multiply the total taxable wages in Part I, line 5, by .062. This is the maximum amount of FUTA tax.

Line 2—Maximum credit. Multiply the total taxable wages in Part I, line 5, by .054. This is the maximum credit against FUTA tax.

Line 3—Computation of tentative credit. You must complete all applicable columns to receive any credit. Your state will provide an experience rate. If you have been assigned an experience rate of 0% or more, but less than 5.4%, for all or part of the year, use columns (a) through (i). If you have not been assigned any experience rate, use columns (a), (b), (c), and (i) only. If you have been assigned a rate of 5.4% or higher, use columns (a), (b), (c), (d), (e), and (i) only. If you were assigned an experience rate for only part of the year or the rate was changed during the year, complete a separate line for each rate period.

If you need additional lines, attach a separate statement with a similar format. Also, if you are a successor employer, see **Special credit for successor employers** on page 2.

Column (a). Enter the two-letter abbreviation for the state(s) to which you were required to pay contributions (including Puerto Rico and the Virgin Islands).

Column (b). Enter the state reporting number that was assigned to you when you registered as an employer with each state. Failure to enter the correct number may result in unnecessary correspondence.

Column (c). Enter the state taxable payroll on which you must pay state unemployment taxes for each state shown in column (a). If your experience rate is 0%, enter the wages that would have been subject to state unemployment tax if the 0% rate had not been granted.

Column (d). Enter the beginning and ending dates of the experience rate shown in column (e).

Column (e). Your state experience rate is the rate the state assigned to you for paying your state unemployment tax. This rate may change based on your "experience" with the state unemployment fund, for example, because of unemployment compensation paid to your former employees. If you do not know your rate, contact your state unemployment insurance service. The state experience rate can be stated as a percent or a decimal.

Column (f). Multiply the amount in column (c) by .054.

Column (g). Multiply the amount in column (c) by the rate in column (e).

Column (h). Subtract column (g) from column (f). If zero or less, enter "0." This additional credit is the difference between 5.4% and your state experience rate.

Column (i). Enter the contributions actually paid to the state unemployment fund by the due date for filing Form 940. Do not include amounts you are required to pay but have not paid by the Form 940 due date (see **When To File** on page 2). See **Amended return** on page 3. If you are filing after the due date, include all payments made before the return is filed, and see the instructions for line 3b below. If you are claiming excess credits as payments of state unemployment contributions, attach a copy of the letter from your state. Do not include any penalties, interest, or special administrative taxes (such as surcharges, employment and training taxes, excise tax, and assessments which are generally listed as a separate item on the state's quarterly wage report) not included in the experience rate assigned to you.

Line 3a—Totals. Enter the totals of columns (c), (h), and (i).

Line 3b—Total tentative credit. Add line 3a, columns (h) and (i) only. However, if you file Form 940 after its due date and any contributions in column (i) were made after the due date for

filing Form 940, your credit for late contributions is limited to 90% of the amount that would have been allowable as a credit if such contributions were paid on or before the due date for filing Form 940. For example, you paid \$1,500 of state contributions on time and \$1,000 after the due date for filing Form 940. There is no additional credit in column (h). Enter \$2,500, your total state contributions, in column (i). Your total tentative credit on line 3b is \$2,400 (\$1,500 (timely payment) + \$900 (90% of \$1,000 paid late)). Because the 90% limit applies to part of your payment, explain below the signature line how you computed the amount on line 3b.

Note: If you are receiving an additional credit (column (h)) because your state experience rate is less than 5.4%, the additional credit is not subject to the 90% limit.

Line 6—Credit. Enter the smaller of Part II, line 2 or line 3b. This is the credit allowable for your payments to state unemployment funds. If you do not have to make payments to the state, enter zero on this line.

Line 9. If the amount on line 9 is under \$1, you do not have to pay it. Write your EIN, "Form 940," and 1997 on your check or money order. This will help ensure proper crediting of your account. On payments of \$100 or less, make your check or money order payable to the "Internal Revenue Service." Enter the amount of the payment in box 1 of Form 940-V at the bottom of Form 940. If the employer information is not preprinted on the payment voucher, enter the requested information. On payments over \$100 that you are depositing, make your check or money order payable to the depository or Federal Reserve bank where you make your deposit.

Line 10. If the amount on line 10 is under \$1, we will send a refund or apply it to your next return only on written request.

Part III—Record of Quarterly Federal Unemployment Tax Liability

Complete this part if your total tax (Part II, line 7) is over \$100. To figure your FUTA tax liability for each of the first three quarters of 1997, see **FUTA Tax Depositing** on page 2. Enter this amount in the column for that quarter. This is your tax liability, not your deposit.

Your liability for the fourth quarter is the total tax (Part II, line 7) minus your liability for the first three quarters of the year. The total liability must equal your total tax. If not, you may be charged a failure to deposit penalty.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: Recordkeeping - 11 hr., 43 min., Learning about the law or the form - 18 min., Preparing and sending the form to the IRS - 30 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. Do not send the tax form to this office. Instead, see **Where To File** on page 2.